



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

**Group Registration of Two-Dimensional
Artworks**

Docket No. 2024-2

COMMENTS OF THE COPYRIGHT ALLIANCE

The Copyright Alliance appreciates the opportunity to submit the following comments in response to the [notice of proposed rulemaking](#) (“NPRM”) published by the U.S. Copyright Office in the Federal Register on February 15, 2024, regarding the creation of a new Group Registration for Two-Dimensional Artwork (GR2D).

The Copyright Alliance is a non-profit, non-partisan public interest and educational organization representing the copyright interests of over 2 million individual creators and over 15,000 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 copyrighted works for the public to enjoy.

A strong and effective copyright system is crucial to the U.S. economy, culture, and creativity. One way to effectuate a strong and effective copyright system is for the U.S. Copyright Office to encourage creators and copyright owners to register their works. Doing so not only benefits rights holders but it also benefits the public and the Library of Congress. One simple way to

encourage copyright registration is for the Office to develop and implement modern, effective registration systems that are responsive to the needs of the creative community.

We are grateful for the Office's ongoing work in modernizing the registration system while balancing its limited resources and staff to address other pressing copyright issues, including the ongoing Artificial Intelligence Study. We also understand that the Library of Congress and the Office continue to develop the long-awaited Electronic Copyright System (ECS) while at the same time attempting to find solutions to existing (often longstanding) registration needs of creators and copyright owners. This is not an easy task. Thus, instead of creating new registration forms to address these needs, the Office has in at least two instances chosen to address longstanding registration needs by cloning new registration forms from preexisting registration forms—both in this NPRM for GR2D and in the NPRM on a new group registration of updates to news websites. While this approach works well for the NPRM on the group registration of updates to news websites, (as explained below) it does not work nearly as well for the proposed rule for GR2D.

As the Office knows, for many years, graphic artists, illustrators, and other creators of two-dimensional works have requested the Office implement a more flexible, accessible, user-friendly, and cost-effective registration system for such works. We appreciate the Office's efforts to address these requests in this NPRM. However, we are concerned that this proposed rule does not adequately or effectively address the needs of creators and copyright owners of two-dimensional works and that, if implemented, this rule will remain in place even after transitioning to the ECS. On the other hand, if the rule is not implemented, we are concerned that the Office may not see fit to propose another NPRM for group registration for two-dimensional works at all or until after the ECS has been launched.

We explain our specific concerns with the NPRM below. These concerns are broken up into three groups: Section I details serious concerns that we believe must be addressed if this proposed rule is to go into effect; Section II details additional issues that we think should also be addressed; and Section III details our serious concerns regarding the progress and status of the Office's modernization efforts, particularly as it concerns the ECS.

I. Critical Issues in The NPRM That Must Be Addressed

In our view, there are several critical issues in the proposed rule that must be resolved before the rule is finalized. If significant changes in the proposed rule are not made to address these issues, we fear that many visual artists may continue to simply not attempt to register their two-dimensional works at all, as is unfortunately often the case today. Equally concerning is that the proposed rule requires layers of complexities and nuances arising from the Office cloning the existing GRUW form, which may lead to many mistakes by those who do attempt to register their works. This may leave visual artists so disillusioned with the registration process over rejections and modifications to applications due to fixable mistakes that they would choose not to register when ECS comes online. Those results benefit no one.

We are concerned that underutilization and incorrect usage of GR2D as describe above could result in the Office getting “bad data” about visual artists’ interest in and use of the copyright registration system that might then be erroneously relied upon by the Office during the transition to ECS.¹ Therefore, without knowing more about the status of the Copyright Office’s ongoing development and implementation of group registrations for two-dimensional and other works of visual art in the ECS, at this stage, we believe it may be more prudent to dedicate the Office’s limited resources to expediently launching the ECS system and designing it to fully address the needs of visual artists and other creators.

A. Number of Complexities and Nuances

The proposed rule contains many administrative complexities and nuances, some which can be quite burdensome and difficult to get right, particularly for an individual creator. For example, (i) each work must have been published (as discussed many times previously, publication is a very difficult legal concept.); (ii) all works must be published within a thirty day timeframe (as discussed more below); (iii) the work must be a two-dimensional work but cannot be a technical

¹ Group Registration of Two-Dimensional Artwork, 89 Fed. Reg. 11794 (proposed Feb. 15, 2024) (to be codified at 37 C.F.R. pt. 201)(hereinafter “NPRM”).

drawing, architectural work, or work of applied art; (iv) multiple images can be registered but must be registered individually within the group; (v) each work must be created by the same author even if the works are created by different authors but all owned by the same person; (vi) a work cannot be a jointly authored (as discussed more below); (vii) the author must also be the copyright claimant for each work (as discussed more below); (viii) apparently only the first and last publication dates must be listed—not the publication date for each work;² (ix) works made for hire cannot be registered with works that are not works made for hire; (x) the deposit copy must not be more than 500 megabytes; and (xi) only ten works can be registered in the group.

To be clear, we are listing these requirements not because we have concerns with all of them—because we do not. (Those that we are concerned with are identified below.) We are also not listing these requirements because we think they are new or different—we acknowledge that at least some of these requirements can be found in other registration applications and many of them would likely not pose a problem standing alone. Nor, by listing these requirements, are we suggesting that artists of two-dimensional works are incapable of understanding and complying with them. The reason we list all the requirements is to demonstrate how the vast number of complexities and nuances in this proposed rule taken together dramatically amplify the opportunity for applicant error—regardless of the applicant’s registration experiences or sophistication (which makes our comment in paragraph B below that much more important).

In large part these complexities and nuances seem to be due to the Office’s plan to clone this new application from an existing application (the Group Registration for Unpublished Works (GRUW) application) and to adopt requirements to correspond with the technical limitations that flow from that. We are very concerned that those who file a GR2D application may be deterred from registering their works in the future if they attempt to register and are frustrated by the process or fail to end up with their works registered as intended (see Section B below). Not only will they be deterred from filing, but word may spread in the community over time and others may simply not file because of bad word of mouth.

² However, the Office seems to make a contradictory statement that applicants must list the specific publication date for each work. If this was not the Office’s intent, we would like the point to be clarified and retracted as to avoid confusion over the requirements. *See* NPRM at 11791.

B. Examiner Correspondence

One key concern with this NPRM is the Office’s discussion of the examiner’s process for addressing mistakes or inconsistencies made by the applicant for the GR2D option. We counted at least four instances in the NPRM where the Office states that if an applicant does not comply with a particular requirement(s), an examiner can simply reject or otherwise modify various parts of the application, such as excluding specific works from the scope of the registration or making annotations to exclude certain works or elements from the scope of the registration, *without providing prior notice or a chance to remedy to the applicant*.³ This is highly problematic, and directly contradicts the Office’s examination practices as outlined in the Compendium which states that “[i]n exceptional cases, the specialist may refuse registration if he or she determines that [an issue] *cannot be resolved through correspondence*.”⁴ (emphases added) There is no reason why an applicant should be penalized for their failure to comply with a non-substantive, administrative requirement when such failure can be resolved by contacting the applicant to discuss the application’s shortcoming and the way to remedy it. Reaching out to applicants to resolve application deficiencies and mistakes should not only incentivize repeat participants in the copyright registration system, but also result in better-informed applicants who submit future applications containing fewer or no errors.

³ “If an applicant submits a work that is not eligible for this group registration option, the examiner may remove the title and deposit for that work from the registration record and send a post-registration email to the applicant explaining why the change was made.” *Id.* at 11791; “If an applicant submits more than ten works, the examiner may accept the first ten titles listed in the application, remove the additional titles from the registration record, and send a post-registration email notifying the applicant that those works were not included in the registration.” *Id.* at 1792; “If the titles and file names do not match, the examiner may remove the mismatched titles and files from the registration record and send a post-registration email to the applicant explaining why the change was made,” *Id.* at 11794; “If the applicant submits a file that contains multiple pieces of artwork or if the titles and file names do not match each other, the examiner may remove that file from the record and send the applicant a post-registration email explaining that those works were not included in the registration.” *Id.* at 11796. There are two other instances that are of some concern where the Office states that an examiner can add annotations to the registration record regarding the Office’s limited review of the two-dimensional visual work elements and the limited scope of the registration to those elements. *See id.* at 11791 and 11795 n. 68.

⁴ U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 6013.2 (C) (3d ed. 2021).

We have noted in past filings to the Office that we have historically received unsolicited complaints from individual creators of their applications being refused due to mistakes without being given an opportunity to correct those mistakes.⁵ If examiners can refuse or alter applications *without first corresponding with the applicant*, the applicant may need to file a new application or correction in the future, which artificially inflates the cost of registration. This is a problem—especially for many creators of two-dimensional works who often struggle to even afford the initial cost of registration.

There are additional problems arising from not allowing creators to correct mistakes in their applications before the registration certificate is issued or the application is rejected. Particularly relevant in the context of this NPRM, is that statutory damages cannot be awarded for a published work that has not been timely registered—i.e., the effective date of registration must be within three months of the date of publication. If an applicant does not find out that their registration application doesn't cover certain works until after the time period to be eligible for statutory damages has lapsed, they would not be able to recover statutory damages for infringement of that work.⁶

We appreciate the Office's vigilance regarding pendency times. While reducing pendency times is important, it should not be achieved at the expense of the applicant or by sidestepping sensible steps in the registration examination process. At the very least, the Office should (1) design the GR2D registration form such that it prevents applications from even being submitted at the outset if they contain easily fixable, administrative, and non-substantive errors,⁷ and (2) provide applicants with notice and an opportunity to cure any deficiencies in their applications, so that they can timely and correctly register their works and can learn from the registration process to prevent similar mistakes in future applications.

⁵ Copyright Alliance, Comment on Public Draft of the Compendium of U.S. Copyright Office Practices, Third Edition (Mar. 15, 2019), <https://copyrightalliance.org/wp-content/uploads/2020/04/CA-Compendium-Comments-2019.pdf>.

⁶ 17 U.S.C. § 412. Additionally, registration is a prerequisite of filing a federal lawsuit. *See* 17 U.S.C. § 411(a).

⁷ Though we understand that this may not be possible to the extent until the ECS is completed.

Not communicating with applicants, and instead unilaterally altering parts of an application or rejecting a whole application and then alerting applicants after such action has already taken place will discourage applicants from filing future applications and result in a less robust public record. As we explained in past comments, for many creators, the registration system is their sole interaction with the Copyright Office and exposure to the copyright system. As a result, the experience of engaging with the registration system can make the difference between a lifelong registrant, and a creator who opts never to register their works.⁸ Reducing pendency is important, but it should not occur at the expense of these important objectives of the copyright system, and to the detriment of the registration process, the applicants, and the public record.

C. Ten-Work Limit

Another major concern with this NPRM is with the ten-work limit imposed in the proposed rule. This limit is too small to make GR2D a *sufficiently beneficial* registration option for visual artists, especially those who are prolific creators. The NPRM states that because the form for the GRUW, upon which the GR2D form will be based, only includes ten spaces for works, the GR2D must likewise be limited to ten works. While the Office attempts to further justify the ten-work limit based on prior survey data from the Coalition of Visual Artists, the truth is that this limit simply will not be able to meet the needs of visual artists to register many works resulting from their dynamic, timeline sensitive, and prolific workflows.⁹ Additionally, this solution is not workable for visual artists who are seeking to register large quantities of works from their lifelong portfolios for reasons such as estate planning.

⁸ Copyright Alliance, Comment in response to Notice of Inquiry, 83 Fed. Reg. 52336 (Oct. 17, 2018), <https://copyrightalliance.org/wp-content/uploads/2020/04/Copyright-Alliance-Registration-Modernization-Comments.pdf>.

⁹ We also defer to the comments filed by the Coalition of Visual Artists in response to this NPRM and their more recent survey data to further explain the shortcomings of the ten-work limit.

The Office also justifies this limitation in its extensive discussion on why it did not base the GR2D form on the form for Group Registration for Published Photographs (GRPPH), which has a limit of up to 750 photographs. The Office was again concerned about its pendency times, stating that it takes longer to process and examine works of visual art than it takes to process and examine photographs and that longer period is due in part to correspondence rates being higher for works of visual art registered as part of a GRUW as compared to the correspondence rates for photographs registered as a group. But, according to the NPRM, the correspondence rate is only 8% higher and the examination time is only about 4 weeks longer for works of visual art. These small differences hardly justify *a shockingly smaller limit of 75 times fewer works of visual art* that can be registered using the GR2D application.¹⁰

To be clear, we are not asking for the Office to build the GR2D application based on the GRPPH form. As the Office notes, there would be other issues arising from using the GRPPH form to develop the GR2D form including the inability to include derivative works and technical limitations like when the registration system submits different terms to indicate the kind of work being registered. Rather, we are pointing out that it may not make sense to build GR2D's registration form based on *any* preexisting forms and registration options, because *none* of the preexisting group registration forms or options were originally designed to address the needs of visual artists.

This is a far cry from the simple upgrades that were doable when upgrading the registration form from a group registration option for physical newspapers to create a group registration option for digital news content, because the preexisting system in that case had already been largely designed to consider the particular needs of news publishers. This NPRM instead attempts to fit a square peg into a round hole. Accordingly, it may be more appropriate to reconsider whether this proposed rule makes sense at this time or, instead, whether it makes sense to devote resources to create a new form under the ECS system that more effectively addresses the needs and concerns of the visual artists community.

¹⁰ NPRM at 11793 nn.57 and 58.

As noted above, standing alone, this ten-work limit significantly restricts the benefits from this registration option. But this limit cannot be considered in a vacuum. When combined with the other concerns identified in this section—especially the thirty-day time period—it is not clear that the benefits of this new group registration option outweigh the many complexities and nuances associated with filing such a registration.

D. Thirty-Day Time Period

The thirty-day publication period limit in GR2D is too restrictive for visual artists, particularly when paired with the ten-work limitation (as noted above) and when considering the less limiting publication requirements in other group registrations. Visual artists often create their works for a particular project over a period that exceeds thirty days. The thirty-day time-period limit artificially increases the costs of using GR2D for the applicant. For example, a creator who creates a total of 25 visual works for a client over a three-month period, with three works in April, eleven works in May, and eleven works in June, must file five registration applications to cover all 25 works. If the time period were sixty days, the number of registrations that would need to be filed to cover that same number of works would be reduced to four, and if that period were ninety days, it would require the filing of only three registration applications. That is a significant difference. Again, this problem could also be addressed by increasing the number of works which could be registered in a single GR2D application. But at the very least, imposing both requirements at the same time makes the thirty-day limit extremely burdensome.

In the NPRM, the Office gives two reasons for imposing this thirty-day time period: (1) the public record is better developed with this limitation in place; and (2) the limitation streamlines the examination process because the registration system can automatically calculate between the start and end dates provided over a thirty-day time period. While we appreciate the Office's concern for a robust public record, we note that this can also be achieved using flexible criteria as exemplified in GRPPH. First, we note that in GRPPH, an applicant is able to submit photographs published within one year and only need provide the month and year of publication. There does not seem to be a negative effect to the public record from this feature of GRPPH. So, it is possible to allow for longer timeframes with flexible criteria when it comes to the

publication requirements while upholding the integrity and value of the public record. Second, as far as we are aware, these flexible criteria do not seem to be bogging down the examination process for GRPPH. Again, while we are grateful for the Office's continued focus on reducing pendency and its ability to serve applicants efficiently, we stress that applicants need to be encouraged to file in the first place, which can be accommodated by implementing flexible, workable publication date requirements.

E. Filing Fee

The filing fee is much too high, especially given the ten-work and thirty-day time period limitations. Comparing the registration cost per work to other group registration forms, the rate for GR2D would be the same as GRUW at \$8.50 per work (if ten works are grouped together) which is on the costlier side when compared to other group registration options. For example, the group registration options for photographs cost as little as \$0.07 per work and the group registration option for short online literary works costs as little as \$1.30 per work, when the maximum number of works for each form are registered. Certainly, as the NPRM points out, *any* group registration option for works of visual art would result in *some* cost-savings over current options of registering on a work-by-work basis. However, when the fee is considered in conjunction with the two restrictive limitations noted above, a fee of \$85 is simply too high in the context of a group registration option. Again, this is especially the case for visual artists who are more prolific and when considering the per-work registration cost of other group registrations.

F. Joint Authorship

The proposed rule does not permit the applicant to claim that two or more authors jointly created each work in the group. The Office states that after its analysis of two-dimensional visual works registered using the Standard and GRUW Applications, it concluded that in the majority of these applications only one author was named. Regardless of the Office's conclusion from its analysis of its own registration records, the truth is that many visual artists do collaborate with each other on projects and frequently partner with other artists. We would be happy to conduct a study to

bear that out, if necessary. The fact that these joint authors do not register Standard and GRUW applications may say more about the registration system, confusion about registration requirements, and the type of authors who are presently register their works using the Standard Application at a cost of \$65 for each two-dimensional image they create, than it says about the frequency by which two-dimensional works are jointly authored. Therefore, in our view, relying on this data is a false equivalency.

Furthermore, it would appear that allowing joint authors to use the GR2D may not prove to be difficult, as the technical aspects of providing multiple authors from the GRUW form could simply be cloned in the GR2D form (the efficiencies and cost savings of adapting from the GRUW was a key point that the Office relies on throughout the NPRM to justify the restrictive aspects of GR2D). The Office's registration practices should encourage creators and rights holders through broad and flexible policies instead of taking rigid approaches that would only limit and thus exclude participants from engaging in the registration system.

II. Additional Concerns

In addition to our concerns on major issues with the GR2D as noted above, we raise the following additional concerns to the Office's attention and request that these concerns also be addressed.

- **Three-Dimensional Works**

The Office's discussion of three-dimensional (3D) works in this NPRM only highlights the need to enable applicants filing registrations for these works to use this registration option to cover both the 2D and 3D elements of a three-dimensional work in the same application. Under the current registration options, even if a GR2D registration option is implemented, a 3D artist would still have to file at least two separate registration applications—one for the 2D illustrations (of the 3D work) and one for the 3D work itself. However, in most instances the deposit copies provided in both instances are going to be the same. To address this inefficiency and reduce costs and pendency times to the applicant and to the Office by streamlining two applications into one, we suggest that the

scope of the registration cover both 2D elements of the two-dimensional sketches, and, by virtue of those deposits, the 3D elements of three-dimensional works.

- **Architectural Works and Technical Drawings**

Architectural works and technical drawings should also be allowed to be registered in the GR2D form. The Office notes that processing claims involving architectural works and technical drawings tend to be complex, and that this would be burdensome on the examination process. More clarification on how burdensome that process is relative to other two-dimensional works would be helpful to better understand why these works have been excluded (despite being a 2D artwork and a ten work per group limit) from GR2D.

- **Author and Copyright Claimant Information**

The Office requires that author and copyright claimant information be the same in the GR2D application. We do not understand why the information must list the same person or company as both author and claimant. Allowing for more accurate copyright ownership information by filling out the name of the copyright claimant at the time of registration would result in more accurate and current public records. This requirement could also be more onerous, and potentially confusing, to registration applicants. If the copyright claimant is a different person at the time of registration, an applicant would have to go through an additional process of recordation in order to clarify ownership. The average applicant not versed in such legal matters is unlikely to take this additional step because recordation is not legally required and provides little, if any, benefit to such an applicant. To allow the applicant to provide information about the copyright owner at the time of filing helps the Office and improves the public record by keeping it current while eliminating extra costs and expenditure of resources associated with a separate process of recordation that applicants must bear.

- **Work Made For Hire**

While we appreciate that works created as a work made for hire can be included in GR2D, the Office notes that this is only “for the time being.” This feature should be a

permanent part of GR2D. Being able to register works made under the work-made-for-hire doctrine is very important. The ability to use a registration option should not discriminate between applicants who are “individual creators” and those who are corporate entities. Moreover, not all work-made-for-hire situations involve sophisticated or large enterprises—it is entirely possible that these companies could be small or single-person businesses. In fact, often there is a fine line between an individual creator and the small business it runs. Therefore, works created as a work made for hire should be included in GR2D, now and in the future.

- **Publication**

In past submissions to the Office, we have raised various concerns about registration issues related to publication.¹¹ We see no reason to reiterate those concerns here. Needless to say, many of those same concerns continue to apply in the context of this NPRM. However, there is one point about publication that is specific to creators of two-dimensional works that was raised in the NPRM that warrants being highlighted here.

In the NPRM, the Office encourages applicants (as it has done before) to register their unpublished works to avoid publication issues and obtain “optimal statutory protection.”¹² This statement appears to demonstrate a failure to understand the visual artist’s development process. Visual artists often work on deadlines that are fluid and have quick turnaround times. Moreover, these artists often do not know when the revision process will end, resulting in a final version of the work. These considerations make it extremely difficult for creators of two-dimensional works to know when to register their works, which (of course) affects which form they would use to do so. So, while in theory,

¹¹ See Copyright Alliance, Comment in response to Notice of Inquiry, 84 Fed. Reg. 233 (Dec. 4, 2019), <https://copyrightalliance.org/wp-content/uploads/2020/04/CA-Online-Publication-Comments-FINAL.pdf>.

¹² NPRM at 11794 n.64.

the Office’s statement is correct, in reality, registering a work before it is published is often not a workable solution.¹³

- **Copyrightability of Photographs and Two-Dimensional Artworks**

In the NPRM, the Office makes a few statements about the copyrightable expressions contained in photographs and works of visual art that are extremely troubling and should be corrected by the Office. First, the Office states that photographs “generally include some selection, coordination, or arrangement sufficient to meet the minimum level of creativity for copyright described in the Supreme Court’s *Feist Publications v. Rural Telephone Service Company*.”¹⁴ This standard from *Feist* is used to determine the copyrightability of compilations, not the copyrightability of individual photographs (or group registration of individual photographs). It is essential that the Office correct or withdraw this statement, so it does not get mistakenly relied upon as authority to contest the copyrightability of photographs or other works of visual arts.

Second, the Office incorrectly states that “works of visual art contain borderline or *de minimis* amounts of expression.” This categorical statement is also very concerning and almost assuredly untrue of works of visual arts as a whole. Again, the Office bases the statement on its “experience with GRUW” which is not necessarily reflective of *all* works of visual arts. It is essential that the Office correct or withdraw this statement as it can be mistakenly relied upon as authority to contest the copyrightability of works of visual arts.

¹³ If the Office is looking to encourage visual artists to register their works as soon as possible, one of the best solutions is to enable Application Programming Interfaces (APIs) which can be integrated with visual artists’ workflow to enable near automatic registration of their works as well as implementing subscription models. See Copyright Alliance, Comments in response to Notice of Inquiry, 83 Fed. Reg. 52336, 21-22 (Oct. 17, 2019), <https://copyrightalliance.org/wp-content/uploads/2020/04/Copyright-Alliance-Registration-Modernization-Comments.pdf>.

¹⁴ NPRM at 11793.

III. Modernization Related Concerns

We understand this NPRM is part of the Office’s efforts to modernize the existing registration system while not diverting resources from or slowing work on the new registration system, ECS. We are deeply troubled by many of the Office’s statements in this NPRM that relate to the status of modernization, and the development of the ECS.

Throughout this NPRM, the Office indicates that it “*will consider*” addressing longstanding registration issues in the ECS that the Copyright Alliance and others in the creative community have long urged the Office to include as part of the modernization process. We are almost a decade into modernizing the Office’s systems—why hasn’t the Office already considered or in the process of considering these issues? These issues should have already been built into or be scheduled to be included in the development of the ECS. To make matters more uncertain, the Office makes no promises or commitments that they *ever* will be implemented, even in the ECS. Some examples of these disconcerting statements in the NPRM include:

- When generally discussing flexible registration options, including registering published and unpublished works together and providing flexible fee structures and payment options, the Office notes that it “*will take* these interests into consideration as part of the ongoing development of the new Enterprise Copyright System.” (emphasis added)¹⁵ We were disheartened to learn that the Office has not *already been taking or have already taken* these interests into consideration whilst developing the ECS.
- When discussing combining unpublished and published works in a group registration, the Office notes that it “*will take* these interests into account when it *begins* to develop the requirements for the group registration features of its next-generation system, and *will consider* the feasibility of allowing published and unpublished works to be registered

¹⁵ NPRM at 11791.

with the same application when the group applications are migrated into this system.”¹⁶ (emphases added) We were discouraged to hear that the Office has not yet begun developing the requirements for the group registration features for the ECS. Further, we wonder why the Office would not consider the feasibility of combining unpublished and published works in the same group registration until the time when the group applications are migrated into the ECS.

- When discussing economic barriers to registration for small business owners, the Office notes that it “*may be able to offer* different tiers of services for different types of creators as part of its next-generation registration system.”¹⁷ (emphasis added) This is a fairly neutral statement and thus is not as concerning as other statements. Nevertheless, we would be more encouraged if the Office said something like it “hopes to be able to offer...” or “is working to be able to offer...” these features in the ECS.
- When discussing the idea of a tiered fee structure, subscription plans, and bulk registration options, the Office notes that “it will not be able to offer alternate fee structures for high-volume creators until *after* the ECS system is *fully operational and has been released* to the public.” (emphasis added)¹⁸ We worry about what the Office means when it uses the phrase “fully operational.” After all, the Office and its stakeholders have been discussing the Office being in a constant state of modernizing the Office, and thus we wonder at what stage the ECS would be deemed “fully operational” or how long that would take. We request further understanding and explanations as to why these fee structures cannot be implemented simultaneously with the roll out of ECS.

We are also very concerned with the Office’s statements throughout the NPRM about the Office’s very limited resources. The Copyright Alliance and its members want to make sure the

¹⁶ NPRM at 11795.

¹⁷ NPRM at 11796.

¹⁸ NPRM at 11797.

Office has the resources it needs to fully, effectively, and quickly modernized the Office. If resources are limited such that it has slowed or restricted modernization efforts, those difficulties should be shared with members of Congress, members of the Copyright Public Modernization Committee, and stakeholders so that all we can work together to provide the Office with the necessary resources to modernize. Because this is the first time we have heard the Office talk so frequently about having “limited resources,” we have obvious concerns.

Copyright Alliance members are eagerly awaiting the ECS and hope that it will provide flexible solutions and options to usher in robust participation by many creators and rights holders in the copyright registration system. As noted above, language sprinkled throughout the NPRM dramatically tempers that hope, and that has us very concerned.

IV. Conclusion

Overall, the concerns related to implementing this rule in its present form seem to outweigh the benefits of the proposed rule—particularly if most, if not all, the significant concerns outlined in Section I of our comments are not addressed prior to implementation. If the Office moves forward without making these changes, we urge the Office to refrain from using data from registrations filed under the GR2D to make decisions on how to tailor and implement similar registration options in ECS. As we noted earlier in these comments, many of the restrictions and limitations imposed in this proposed rule are due to the fact that the most cost-effective way for the Office to develop GR2D is to effectively clone the GRUW form, which was not specifically designed nor tailored to the particular needs of visual artists. Thus, it would be inappropriate for the Office to retain the proposed rule in its present form once the ECS goes live.

If the Office decides not to move forward with the proposed rule, then we would like a commitment from the Office that it will revisit a rule for group registration of two-dimensional works during the development of the ECS and prior to implementing the ECS.

We thank the Office for its continued work on modernization efforts, particularly on registration issues. We understand that it is not easy to balance addressing outstanding concerns from the

creative community whilst working on launching an overhauled and modernized registration system. We stand ready to assist the Office in any way we can and are happy to discuss any aspect of these comments in further detail with the Office, if appropriate, in an *ex parte* meeting.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Kupferschmid', is written over a light gray rectangular background.

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