



LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Parts 201 and 202

[Docket No. 2016-9]

Supplementary Registration

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

ACTION: Final rule.

SUMMARY: The United States Copyright Office is modernizing its registration practices to increase the efficiency of the registration process for both the Office and copyright owners. To further these efforts, this final rule adopts modifications to the Office's procedures for supplementary registration. Specifically, the Office adopts a new rule that, in most cases, requires applicants to submit an online application in order to correct or amplify the information set forth in a basic registration. In addition, the Office is amending the regulation to codify and update certain practices that are set forth in the *Compendium of U.S. Copyright Office Practices, Third Edition* and to improve the readability of the regulation.

DATES: Effective **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Robert J. Kasunic, Associate Register and Director of Registration Policy and Practice, by telephone at (202) 707-8040; Erik Bertin, Deputy Director of Registration Policy and Practice, by telephone at 202-707-8040; or Emma Raviv, Barbara A. Ringer Fellow, by telephone at 202-707-3246.

SUPPLEMENTARY INFORMATION:

I. Background

On December 1, 2016, the Copyright Office (the “Office”) published a Notice of Proposed Rulemaking (“NPRM”) setting forth proposed regulatory amendments designed to make the procedure for supplementary registration more efficient. *See* 81 FR 86656 (Dec. 1, 2016). 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.” *Id.* Specifically, it identifies an error or omission in an existing registration (referred to herein as a “basic registration”) and places the corrected information or additional information in the public record. Section 408(d) of the Copyright Act authorizes the Register of Copyrights to establish such procedures. 17 U.S.C. 408(d).

The NPRM explained in detail the rationale for one major change to the supplementary registration procedures. Previously, and since 2007, the Office allowed and encouraged applicants to register their works through the electronic registration system, *see* 72 FR 36883 (July 6, 2007), but to seek a supplementary registration, applicants had to submit a paper application using Form CA. 37 CFR 201.5(c)(1), (c)(2). Under the rule proposed in the NPRM, applicants will be required to file an online application to correct or amplify the information set forth in a basic registration for any work that is capable of being registered through the electronic system, rather than filing a paper application. The NPRM identified the types of works that will be subject to this online filing requirement when the rule goes into effect, as well as other works that will be subject to this requirement in the near future. 81 FR at 86657–58 & nn. 3–8. The NPRM stated that if the Office subsequently moves registrations for other classes of

works into the electronic system, supplementary registrations for those works will also be subject to this same requirement. *Id.* at 86658. Finally, the NPRM stated that applicants will be required to submit a paper application using Form CA to correct or amplify the registration record for works that cannot be registered through the electronic system, and it identified the three types of works that remain subject to the paper filing requirement. 81 FR at 86658 & nn. 11–13.

The NPRM also proposed modifications to certain practices relating to supplementary registration. First, it clarified that the fee for online submission of a supplementary registration will be the same as the fee for paper submission, and that applicants may be assessed an additional fee if the basic registration has not yet been digitized by the Office, and if the applicant fails to provide a copy of that registration during the examination. Second, the NPRM proposed updating the regulation to reflect examination practices described in the *Compendium of U.S. Copyright Office Practices, Third Edition* (hereinafter “*Compendium*”), the rules regarding when supplementary registration will be declined, and the practices regarding cross-references in the Office’s public record. The NPRM also proposed clarifying the relationship between the basic and supplementary registrations, requiring a certification that the applicant has reviewed the basic registration, and laying out the referral procedure in the event of an Office error.

The Office received four comments in response to the NPRM, from Authors Guild (“AG”); the Motion Picture Association of America, Inc. (“MPAA”); Author Services, Inc., representing the literary, theatrical, and musical works of L. Ron Hubbard (“Author Services”); and a coalition of organizations and advocates representing visual artists including photographers, videographers, illustrators, artists, and designers, as well

as their licensing representatives (the “Coalition of Visual Artists”). The Coalition of Visual Artists generally supported the modifications proposed in the NPRM, but articulated some concerns relating to the Office’s separate rulemaking regarding group registration of photographs.¹ Author Services, MPAA, and AG noted some objections but overall supported the proposed modifications. Having reviewed and carefully considered the comments received, the Office now issues a final rule that closely follows the proposed rule, with some alterations in response to the comments, as discussed below.²

II. Discussion of Comments

A. Online Filing Requirement

MPAA, Author Services, and the Coalition of Visual Artists all generally support the proposal to require applicants to use the Office’s electronic registration system to seek a supplementary registration. But these parties did voice some concerns about a complete transition to the digital system.

MPAA noted that there may be situations where the online system may be unavailable. MPAA suggested that applicants should be allowed to submit a paper application on the “rare occasion(s)” where the online system is down and an online application cannot be filed. MPAA Comments at 2. This is a legitimate concern, but it is not limited to supplementary registration. It potentially affects any USCO service or function that is offered or provided solely online, including preregistration, the designation for agents for online service providers, and responses to notices of proposed

¹ 81 FR 86643 (Dec. 1, 2016).

² The final rule also makes some technical amendments to the proposed rule. It moves the regulation on supplementary registration to part 202 of title 37, which is the part that specifically addresses copyright registration. It also corrects spelling and punctuation discrepancies that appeared in §§ 201.3(c)(9)(ii) and 201.5(d)(4)(i) and (ii) of the proposed rule.

rulemaking. The Office recently proposed a rule in a separate rulemaking to provide a means for preserving/establishing a filing date for a supplementary registration—or any other type of registration—in cases where the electronic system is offline. *See* 82 FR 12326 (March 2, 2017).

AG agreed that the “policy considerations” for requiring applicants to use an online application “are sound.” AG Comments at 3. They recognized that paper applications “result in more work for the [Office].” *Id.* at 2. However, AG expressed concern that a number of authors may prefer to use a paper application or may not have convenient access to the internet. *Id.* AG stated that the Office should continue to offer the paper application for a modest fee and should determine if there is sufficient demand for Form CA before phasing it out.³ *Id.*

Although the Office acknowledges the concerns, it has decided to implement the online application requirement and eliminate the paper application option for most works. The Office recognizes, however, that authors are accustomed to using Form CA. To ease the transition from the paper application to the online form, the Office is developing several new resources. The Office will revise Chapters 1400 and 1800 of the *Compendium*, which discuss the Office’s practices and procedures for issuing supplementary registrations. The Office will also update Circular 8, which provides a general introduction to the topic of supplementary registration. The Office is also revising the instructions for Form CA to clarify the situations where this form can and

³ AG filed comments on behalf of its 9,000 members but apparently did not poll its members to determine if they would prefer to use a paper application or if they would be unable to use the online application due to a lack of internet access.

cannot be used. And the Office has added a notice to the current form and instructions noting that in most cases, Form CA may not be used once the final rule goes into effect.

In addition, the Office is also preparing an online tutorial that explains how to use the online application, and has prepared extensive help text within the application itself that should provide answers to frequently asked questions. In addition, Copyright Office staff will make themselves available to deliver tutorials for groups that are interested in learning more about the online registration process.

The Office recognizes that some authors may not have broadband internet service or a convenient means of accessing the Office's website. In such cases, applicants could conceivably hire an attorney or seek pro bono representation to file the application on their behalf. But the Office recognizes that, as AG noted in its comments, this may impose a burden on applicants. AG Comments at 2. As AG suggested, the Office will address these concerns by offering "special dispensation on a case by case basis." *Id.* The following provision (§ 202.6(e)(7)) has accordingly been added to the final rule: "In an exceptional case, the Copyright Office may waive the requirements set forth in paragraph (e)(1) of this section, subject to such conditions as the Associate Register and Director of the Office of Registration Policy and Practice may impose on the applicant." Authors who do not have internet access and are unable to use the online application should contact the Office, and the Office will review the specific details of their cases and determine their eligibility.

The Office will then make accommodations for applicants who receive a waiver under this provision. One accommodation that the Office plans to implement will be to allow such applicants to contact the Public Information Office ("PIO") by telephone for

assistance in filling out the application. A member of the staff will ask the applicant to provide the information that is called for in the application, such as the title of the work and the number assigned to the basic registration. In addition, PIO staff will ask the applicant to identify the information in the basic registration that should be corrected or amplified. PIO staff will enter this information into the electronic registration system. Then they will print a copy of the application and mail it to the applicant for his or her review. If the applicant approves the draft, he or she will sign the application and mail it back to the Office, along with a check to cover the filing fee. In providing this service, members of the PIO staff are not providing legal advice; their assistance is merely a service for convenience, and applicants remain responsible for providing accurate and complete information in their applications. Applicants should be aware that if they use this option, the effective date for their supplementary registration will be based on the date that the signed application and the filing fee are received. At this time, the Office does not intend to charge an additional fee for applicants who submit applications with the assistance of PIO. The Office will track the number of applicants who use this option and the amount of time needed to handle these requests. The Office will use this information in conducting its next fee study.

B. Copy of the Basic Registration

The NPRM explains that in certain circumstances, a registration specialist may ask the applicant to provide a copy of the basic registration certificate if that certificate had not previously been digitized by the Office (and thus cannot be retrieved through the electronic system). 81 FR 86659. Author Services contends that applicants should be allowed to digitally upload a copy of the basic registration certificate at the time of

application (rather than waiting for the Office to request the certificate), and, indeed, should be required to do so in all cases. Author Services Comments at 1. Absent such an option, it opposes the proposed fee for preparing an additional copy of the basic registration. *Id.* at 2.

While it may be possible to add an upload feature to the online application, doing so would increase the cost of development and delay the implementation of the release. And, in any event, submitting a copy of the basic registration certificate is unnecessary in most cases. As explained in the NPRM, the examiner should be able to generate a copy of the certificate from the Office's electronic system, if the registration was issued after 1994. If the certificate is not available through the electronic system, the examiner will ask the applicant to submit a copy via email. In most of those cases, the applicant should be able to provide a copy of the certificate, because the rule requires the applicant to certify that he or she reviewed the basic registration certificate before submitting the application. If the applicant nevertheless is unable to submit a copy of the certificate in response to the examiner's request, *only then* will the Office will charge an additional fee to generate the basic certificate. 81 FR 86659 & n.21. Thus, Authors Services' concern regarding the fee will not arise in any case where the applicant has the basic registration certificate at hand.

C. Other Concerns

The Coalition of Visual Artists expressed concern that defendants often challenge the validity of basic registrations if there appear to be any errors in the certificate, even if they are merely technical mistakes. Coalition of Visual Artists Comments at 11–12. It urged that such errors “should not invalidate registrations, and shouldn't require

subsequent filing or correction costs,” and encouraged the Office to provide more guidance as to the types of errors that are considered harmless/immaterial and, as such, do not require the filing of a supplementary registration for purposes of correcting the basic registration. *Id.* at 12.

Compendium section 1800 provides detailed guidance on the types of corrections and amplifications that can or cannot be made with a supplementary registration, but the Office generally does not distinguish between material and immaterial errors. Nor would it be appropriate, in the context of this rulemaking, for the Office to attempt to catalog what errors are or are not material. In general, the Office encourages applicants to file applications for supplementary registration as soon as any errors in the basic application are discovered, and especially before initiating an infringement suit. If the Office is aware that a lawsuit has been filed, it may suspend further action on an application for supplementary registration until the dispute has been resolved if the proposed change is likely to be directly at issue in the case.

Photographers represented by the Coalition of Visual Artists expressed concern that they would need to submit a separate application in order to correct each defect in a registration, such as errors in publication status, publication year, or the nation of first publication. Coalition of Visual Artists Comments at 13–14. This concern appears to be based on a misunderstanding of the rule: it should be possible to address all of the errors in a basic registration as part of one supplementary registration application, so long as those changes are otherwise permitted. *Compendium* sec. 1802.9(D).

The photographers also expressed concerns with respect to the interaction between this rule and the separate proposed rule regarding group registration for

unpublished photographs. *See* 81 FR 86643 (Dec. 1, 2016). They worried that if they use the group option for unpublished photographs, they may need to file a supplementary registration if some of the photographs in that group are published at some point in the future. They also expressed concern that a supplementary registration may be needed if the photographer needs to “change, revise or edit” the works that are later chosen for publication. Coalition of Visual Artists Comments at 11. Both concerns are misplaced. When the Office issues a group registration, it is effective as of the date that the application fee and deposit are received. If the photographs were unpublished as of that date, there is no need to correct or amplify the record if some or all of those works are later published. The fact that some or all of the photographs may be published at some point in the future does not affect the validity of the original registration. Indeed, if an applicant sought a supplementary registration seeking to change a registration for a group of unpublished photographs based on the later publication of some or all of those photographs, the Office would refuse to issue it. The regulation expressly states that a supplementary registration cannot be used to reflect “changes in facts” that occurred after the basic registration was issued, such as a subsequent change in publication status. Nor may a supplementary registration be used to reflect changes in the content of the work, such as the preparation of a new version of a preexisting work. 37 CFR 201.5(b)(2)(iii).

Of course, photographers may seek a new basic registration when they create a new or derivative version of a preexisting image. And they may seek a new basic registration when a previously unpublished photograph has been published. 37 CFR 202.3(b)(11)(i). But this is not necessary to maintain the validity of an existing

registration for the unpublished photograph or the preexisting photograph that was used to create the derivative work.

Finally, the photographers represented by the Coalition of Visual Artists noted that it is difficult to distinguish between a published and an unpublished photograph. Coalition of Visual Artists Comments at 15. According to them, photographers may (presumably unintentionally) combine published and unpublished photographs in the same registration application, even though the Office's various registration options for multiple works require published and unpublished works to be registered separately. *Id.*

Although the distinction between published and unpublished works is beyond the scope of this rulemaking, the Office notes that its rules regarding supplementary registration allow correction of such mistakes. Specifically, a supplementary registration may be used to exclude any published photographs from the group and limit the claim to the unpublished photographs that were unpublished as of the effective date (or vice versa). The Office notes, however, that under its rule it will not be possible to split the registration into two separate claims—one registration covering the unpublished photographs and the other covering the published ones. In such cases, a new basic registration would be needed to register the photographs that were excluded from the earlier registration. The deposit requirements for published and unpublished photographs are the same, as the Coalition for Visual Artists noted, but the eligibility and application requirements for such works are significantly different. Indeed, in general, when the Office registers works under one type of registration procedure, it will not accept an application that seeks to reclassify the works under a different type of procedure. For example, a supplementary registration cannot be used to change a registration for a group

of published photographs into a registration for a compilation, a collective work, photographic database (or vice versa). These types of changes would alter the fundamental nature of the claim, and would undermine the legal presumptions afforded to the initial examination of the works. And it would be inconsistent with the statutory and regulatory provisions stating that a supplementary registration augments—but does not supersede—the basic registration. 17 U.S.C. 408(d); 37 CFR 201.5(d)(2).

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 revising paragraph (c)(9) to read as follows:

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

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| (9) Registration of a correction or amplification to a claim: | |
| (i) Supplementary registration: electronic filing or paper filing | 130 |

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§ 201.5 [Removed and Reserved]

3. Remove and reserve § 201.5.

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

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

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

§ 202.3 [Amended]

5. Amend § 202.3 as follows:

a. In paragraph (b)(11)(iii), remove the phrase “by that applicant; and” and add in its place “by that applicant.”

b. Remove paragraph (b)(11)(iv).

6. Add § 202.6 to read as follows:

§ 202.6 Supplementary registration.

(a) *General.* This section prescribes conditions relating to the filing of an application for supplementary registration under section 408(d) of title 17 of the United States Code to correct an error in a copyright registration or to amplify the information given in a registration. No correction or amplification of the information in a basic registration will be made except pursuant to the provisions of this section. As an exception, where it is discovered that a basic registration contains an error caused by the Copyright Office’s own action, the Office will take appropriate measures to rectify its mistake.

(b) *Definitions.* (1) A *basic registration* means any of the following:

(i) A copyright registration made under sections 408, 409, and 410 of title 17 of the United States Code;

(ii) A renewal registration made under section 304 of title 17 of the United States Code;

or

(iii) A copyright registration or a renewal registration made under title 17 of the United States Code as it existed before January 1, 1978.

(2) A *supplementary registration* means a registration issued under section 408(d) of title 17 of the United States Code and the provisions of this section.

(c) *Persons entitled to file an application for supplementary registration.* Supplementary registration can be made only if a basic copyright registration for the same work has already been completed. After a basic registration has been completed, any author or other copyright claimant of the work, or the owner of any exclusive right in the work, or the duly authorized agent of any such author, other claimant, or owner, who wishes to correct or amplify the information given in the basic registration for the work may file an application for supplementary registration.

(d) *Basis for issuing a supplementary registration.* (1) Supplementary registration may be made either to correct or to amplify the information in a basic registration.

(2) A *correction* is appropriate if information in the basic registration was incorrect at the time that basic registration was made.

(3) An *amplification* is appropriate:

(i) To supplement or clarify the information that was required by the application for the basic registration and should have been provided, such as the identity of a co-author or co-claimant, but was omitted at the time the basic registration was made; or

(ii) To reflect changes in facts, other than those relating to transfer, license, or ownership of rights in the work, that occurred since the basic registration was made.

(4) Supplementary registration is not appropriate:

(i) To reflect a change in ownership that occurred on or after the effective date of the basic registration or to reflect the division, allocation, licensing, or transfer of rights in a work;

(ii) To correct errors in statements or notices on the copies or phonorecords of a work, or to reflect changes in the content of a work; or

(iii) To correct or amplify the information set forth in a basic registration that has been cancelled under § 201.7 of this chapter.

(5) If an error or omission in a basic renewal registration is extremely minor, and does not involve the identity of the renewal claimant or the legal basis of the claim, supplementary registration may be made at any time. In an exceptional case, however, supplementary registration may be made to correct the name of the renewal claimant and the legal basis of the claim if clear, convincing, and objective documentation is submitted to the Copyright Office which proves that an inadvertent error was made in failing to designate the correct living statutory renewal claimant in the basic renewal registration.

(6) In general, the Copyright Office will not issue a supplementary registration for a basic registration made under title 17 of the United States Code as it existed before January 1, 1978. In an exceptional case, the Copyright Office may issue a supplementary registration for such a registration, if the correction or amplification is supported by clear, convincing, and objective documentation.

(e) *Application for supplementary registration.* (1) To seek a supplementary registration for a work registered in Class TX, PA, VA, SR, or SE, an unpublished collection or a unit of publication registered under § 202.3, or a group of related works registered under § 202.3(b)(6) through (10) or § 202.4, an applicant must complete and submit the online application designated for supplementary registration.

(2) To seek a supplementary registration for a database that consists predominantly of photographs registered under § 202.3(b)(5), an applicant must complete and submit the online application designated for supplementary registration after consultation with and under the direction of the Visual Arts Division.

(3) To seek a supplementary registration for a restored work registered under § 202.12, a database that does not consist predominantly of photographs registered under § 202.3(b)(5), or a renewal registration, an applicant must complete and submit a paper application using Form CA.

(4) Before submitting the application, the applicant must sign a certification stating that the applicant reviewed a copy of the certificate of registration for the basic registration that will be corrected or amplified by the supplementary registration. To obtain a copy of the certificate, the applicant may submit a written request to the Records Research and Certification Section using the procedure set forth in Chapter 2400 of the *Compendium of U.S. Copyright Office Practices, Third Edition*.

(5) The appropriate filing fee, as required by § 201.3(c) of this chapter, must be included with the application or charged to an active deposit account. At the Office's discretion, the applicant may be required to pay an additional fee to make a copy of the certificate of

registration for the basic registration that will be corrected or amplified by the supplementary registration.

(6) Copies, phonorecords, or supporting documents cannot be made part of the record for a supplementary registration and should not be submitted with the application.

(7) In an exceptional case, the Copyright Office may waive the requirements set forth in paragraph (e)(1) of this section, subject to such conditions as the Associate Register and Director of the Office of Registration Policy and Practice may impose on the applicant.

(f) *Effect of supplementary registration.* (1) When the Copyright Office completes a supplementary registration, it will issue a certificate of supplementary registration bearing a new registration number in the appropriate class. The Office will cross-reference the records for the basic registration and the supplementary registration by placing a note in each record that identifies the registration number and effective date of registration for the related registration.

(2) As provided in section 408(d) of title 17 of the United States Code, the information contained in a supplementary registration augments but does not supersede that contained in the basic registration. The basic registration will not be expunged or cancelled.

Dated: May 31, 2017.

Karyn Temple Claggett,
Acting Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

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