



LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Parts 201, 202

[Docket No. 2017-15]

Group Registration of Unpublished Works

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

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The U.S. Copyright Office is proposing to create a new group registration option for a limited number of unpublished works. To qualify for this group option, all the works must be created by the same author or the same joint authors, and the author or joint authors must be named as the copyright claimant for each work. The claim to copyright in each work must be the same, and each work must be registered in the same administrative class. In general, applicants will be allowed to include up to five works in each submission. Applicants will be required to submit an online application and upload their works to the electronic registration system, although the Office may waive these requirements in exceptional cases. This new group registration option will replace the current “unpublished collections” option, which the Office has determined is an ineffective mechanism for registration of multiple unpublished works; among other things, it allows applicants to register an essentially unlimited number of works. The proposed rule will allow the Office to more easily examine each work for copyrightable authorship, create a more robust record of the claim, and improve the efficiency of the registration process. The Proposed Rule also

makes unrelated technical amendments to the “unit of publication” regulation.

DATES: Comments must be made in writing and must be received in the U.S. Copyright Office no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the regulations.gov system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through regulations.gov. Specific instructions for submitting comments are available on the Copyright Office website at <https://www.copyright.gov/rulemaking/group-unpublished/>. If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office for special instructions using the contact information below.

FOR FURTHER INFORMATION CONTACT: Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice; Erik Bertin, Deputy Director of Registration Policy and Practice; or Regan A. Smith, Deputy General Counsel, by telephone at 202-707-8040 or by email at rkas@loc.gov, ebertin@loc.gov, and resm@loc.gov.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

A. Group Registration under the 1976 Act

When Congress enacted the Copyright Act of 1976 (the “Act”), it authorized the Register of Copyrights (the “Register”) to specify by regulation the administrative classes of

works for the purpose of seeking a registration and the nature of the deposits required for each class. In addition, Congress gave the Register the discretion to allow groups of related works to be registered with one application and one filing fee, a procedure known as “group registration.” *See* 17 U.S.C. 408(c)(1). Pursuant to this authority, the Register issued regulations permitting the U.S. Copyright Office (the “Office”) to issue group registrations for certain limited categories of works, provided that certain conditions have been met. *See generally* 37 CFR 202.3(b)(5)-(7), (9)-(10), 202.4.

As the legislative history explains, allowing “a number of related works to be registered together as a group represent[ed] a needed and important liberalization of the law” H.R. REP. NO. 94-1476, at 154 (1976); S. REP. NO. 94-473, at 136 (1975). Congress recognized that requiring applicants to submit separate applications for certain types of works may be so burdensome and expensive that authors and copyright owners may forgo registration altogether, since copyright registration is not a prerequisite to copyright protection. *Id.* If copyright owners do not submit their works for registration under this permissive system, the public record will not contain any information concerning those works. This creates a void in the public record that diminishes the value of the Office’s database.

At the same time, when multiple works are combined in one application, information about the individual works may not be as robustly captured than if the applicant had submitted individual applications for each work. Therefore, group registration options require careful balancing of the need for an accurate public record and the need for an efficient method of examining, indexing, and cataloging each work.

B. The Existing Regulation on Unpublished Collections

When first implementing the Copyright Act of 1976, the Office issued a regulation that established a procedure for registering certain “multiple self-contained works” as a “single work” “on a single application and upon payment of a single registration fee.” *See* 43 FR 965, 966 (Jan. 5, 1978); 37 CFR 202.3(b)(4)(i). The regulation provided that “[i]n the case of unpublished works, all copyrightable elements that are otherwise recognizable as self-contained works, and are combined in a single unpublished ‘collection’” “shall be considered a single work.” 37 CFR 202.3(b)(4)(i). The Office refers to this procedure as the registration accommodation for “unpublished collections.”¹

The unpublished collection regulation provides that “a combination of such elements shall be considered a ‘collection’ if: (1) The elements are assembled in an orderly form; (2) The combined elements bear a single title identifying the collection as a whole; (3) The copyright claimant in all of the elements, and in the collection as a whole, is the same; and (4) All of the elements are by the same author, or, if they are by different authors, at least one of the authors has contributed copyrightable authorship to each element.” *Id.*

§ 202.3(b)(4)(i)(B). The regulation further provides that a “[r]egistration of an unpublished ‘collection’ extends to each copyrightable element in the collection and to the authorship, if any, involved in selecting and assembling the collection.” *Id.* § 202.3(b)(4)(i).

When the Office issued the regulation, it did not rely on its statutory authority to

¹ The interim regulation also established a procedure for registering published works “that are included in a single unit of publication.” 37 CFR 202.3(b)(4)(i)(A). The Office refers to this as the “unit of publication” option. As discussed below, the Office is proposing to make certain technical amendments to this portion of the regulations.

issue a group registration under section 408(c)(1) of the 1976 Act. The Office “reserved for implementation in a separate proceeding, the possibility of providing for ‘a single registration for a group of [r]elated works’ under paragraph (c)(1) of section 408” and invited “comments and suggestions as to the types of related works that could appropriately be covered by [a] group registration” 43 FR at 966.

Instead, the regulation was “based on existing Copyright Office practices.” *Id.*² In codifying these practices, the Office relied on its general authority to issue registrations for individual works under sections 408(a) and 409 of the statute, rather than its authority to issue a group registration under section 408(c)(1). *See* 17 U.S.C. 408(a), 409 (authorizing the Office to register a “work”); 43 FR at 966; *Kay Berry, Inc. v. Taylor Gifts, Inc.*, 421 F.3d 199, 205 (3d Cir. 2005) (“The single work registration provision [for registering a unit of publication] . . . was promulgated pursuant to the language of 17 U.S.C. 408(a)” and “codified the pre-existing Copyright Office practice of allowing copyright owners to register multiple works published together as a single work for a single fee.”).

C. Issues Involving Unpublished Collections

The regulatory accommodation for unpublished collections was well-intentioned but has imposed an increasing burden on the administration of the copyright registration system.

The Office did not set a limit on the number of works that may be registered with this accommodation. As a result, applicants are able to submit dozens, hundreds, even thousands of works with one application and one filing fee. *See, e.g., Palladium Music, Inc.*

² These practices were reflected in an internal manual that the Office developed under the 1909 Act. *See* U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES S-6 (1st ed. 1973).

v. EatSleepMusic, Inc., 398 F.3d 1193, 1195 (10th Cir. 2005) (noting that the plaintiff registered its works as an unpublished collection to offset the expense of submitting “several thousand works”). This has strained the resources of all three divisions within the Registration Program. It also creates an imperfect record of what was submitted for registration and what was actually reviewed for copyrightable authorship. When confronted with such a voluminous amount of material, it is difficult for the Office to conduct a full and complete examination of each and every work in the collection, and in many cases it would be impossible to do so for the fee paid for this option (currently \$55). See U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 1108 (3d ed. 2017) (“COMPENDIUM (THIRD)”). Use of the unpublished collections option in this manner has led to courts to raise concerns.³

The unpublished collection option also blurs the distinction between an unpublished collection and a collective work. A collective work is defined in the statute as a type of a compilation, and specifically, “a work . . . in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.” 17 U.S.C. 101. An “unpublished collection,” however, doesn’t usually exist as a “work”—it is often assembled solely for purposes of registration. At the same time, the unpublished collection option was not promulgated as a form of group registration, even as it has some of those features (*e.g.*, it covers each work that is eligible for copyright protection). This

³ See, *e.g.*, *Grundberg v. Upjohn Co.*, 137 F.R.D. 372, 384-85 (D. Utah 1991) (concluding that the Office erred as a matter of law by registering more than 90,000 documents as an unpublished collection, including “documents which are not copyrightable, mixed in and listed indiscriminately with copyrightable documents” without providing a “reasonable or workable means” for identifying the documents that should have been excluded from the claim).

“neither-fish-nor-fowl” feature of the unpublished collections option has always made it an oddity in Copyright Office practice.

II. THE PROPOSED RULE

To address these issues and improve the quality and efficiency of the registration process, the Office is proposing to create a new group registration option for unpublished works. The new procedure, known as the “group option for unpublished works” or “GRUW,” will replace the administrative accommodation that allows applicants to register their works as an unpublished collection. Key details of the proposal are discussed below. The Office welcomes public comment on each aspect of the proposed rule.

A. Eligibility Requirements

1. The Group Must Be Limited to Unpublished Works

As with the current unpublished collection option, applicants may use this option only if all the works in the group are unpublished. The applicant will be responsible for making this determination, and generally, the Office will accept that determination unless it is contradicted by the information contained within the registration materials.⁴ But if the applicant provides the wrong information, there is a risk that the registration may be challenged or invalidated in an infringement action.⁵

2. The Works Must Be Registered in the Same Administrative Class

⁴ The *Compendium, Third* provides a detailed discussion of the definition of “publication” and “the public,” as well as specific examples on how the Office applies these definitions to different types of works. See generally COMPENDIUM (THIRD) §§ 1000-1900.

⁵ See, e.g., *Ledesma v. Del Records, Inc.*, No. 2:15-cv-4266-ODW-GJSx, 2015 U.S. Dist. LEXIS 163109, at *8 (C.D. Cal. Dec. 4, 2015); *Family Dollar Stores, Inc. v. United Fabrics Int’l, Inc.*, 896 F. Supp. 2d 223, 231 (S.D.N.Y. 2012); *Determined Productions, Inc. v. Koster*, No. C 92-1697 BAC, 1993 U.S. Dist. LEXIS 4586, at *2 (N.D. Cal. Apr. 13, 1993).

All the works within the group must be registered in the same administrative class. For example, an applicant could register a group of unpublished poems, essays, and short stories, because each work would be classified as a “literary work.” By contrast, an applicant could not register a group of unpublished stories, photographs, and songs, because these works fall within different administrative classes.

There are two reasons for this requirement. First, the Office assigns each claim to the division that specializes in examining literary works, visual arts works, or works of the performing arts. If the applicant included different types of works within the same claim, the Office would have to assign those works to different examiners in different divisions. This would slow the examination and delay the final registration decision. Second, the Office assigns one registration number to the certificate of registration for a group of unpublished works. The prefix for this number is based on the administrative classification that best describes the works in the group (TXu for literary works, VAu for visual arts works, PAu for performing arts works, and SRu for sound recordings). If an applicant included different types of works within the same claim, the registration number would not match the group as a whole.

3. The Number of Works that May Be Included in the Group

The Office proposes that as a general rule, applicants may include up to five works in each claim. This represents a change from the current regulation, which has no limit on the number of works that may be included in an unpublished collection. As discussed above, this reduces the quality of the registration record, and makes it difficult to examine each work for copyrightable authorship.

The Copyright Office is committed to creating the best public record possible for a group registration, including pertinent information and an appropriate assessment of the copyrightability of each work within that group. To further those statutory goals, the Office must impose some limit on the number of works that may be submitted, given its limited examination staff and the modest filing fee for a group registration of multiple works. The Office has determined that a limit of five works would allow it to examine each work for copyrightable authorship and to confirm that the legal and formal requirements for registration have been met. Under the proposed rule, the application will contain only five title fields and a pop up warning for anyone that inserts punctuation into a title field warning that only five works may be listed. If an applicant submits more than five works the Office may ask the applicant to exclude the additional works from the claim or may simply refuse registration.⁶

There is a limited exception for sound recordings. Under the current regulations governing applications for individual works, an applicant may register a sound recording together with the musical work, dramatic work, or literary work embodied in that recording, provided that both works are fixed in the same phonorecord, the applicant has submitted one application for both works,⁷ and the claimant for both works is the same person or

⁶ The Office will not accept an application that includes a compilation, a collective work, a database, or a website, because they often contain individual works of authorship. Examining a work comprised of individual works increases the complexity of a claim and requires significantly more time than a claim that is limited to one individual work. Likewise, the Office will not accept claims involving multiple architectural works, because the regulations expressly state that “a single application may cover only a single architectural work.” 37 CFR 202.11(c)(2).

⁷ When submitting an online application, the applicant must select “sound recording” as the type of work. When submitting a paper application, the applicant must use Form SR. 37 CFR

organization. 37 CFR 202.3(b)(1)(iv)(A)-(C). Similarly, under the proposed rule, applicants can include up to five sound recordings, together with a musical work, literary work, or dramatic work embedded in each recording with each group registration application.⁸ To do so, they must satisfy the same conditions that apply with respect to individual sound recording registrations, as well as the generally applicable requirements for this group registration option, including that the author for each sound recording and the works embodied in those recordings must also be the claimant for those works, and that the authorship and ownership must be identical for each work. For example, applicants would be able to register a group of songs and sound recordings jointly written and performed by Peter and Paul, but they would not be able to register a song written by Peter and Paul together with a recording performed solely by Mary. The reasons for these additional requirements are discussed below.

4. Titles of the Works

Applicants will be required to provide a title for each work in the group. By contrast, they will not need to provide a title for the group as a whole, because that information will be added automatically by the electronic registration system.⁹ This represents a change from the current regulation, under which applicants are expected to provide a title for the collection as a whole but not for the works themselves. *Id.* § 202.3(b)(4)(i)(B)(2). This

202.3(b)(1)(iv), (b)(2)(ii).

⁸ To be clear, applicants would be able to submit a group of sound recordings that each contain one musical work, dramatic work, or literary work. Applicants would not be able to submit a group of recordings that each contain a combination of musical, dramatic, and literary works.

⁹ The title for the group will be used to identify the registration in the online public record, and it will consist of the title of the first work followed by the phrase “and [1, 2, 3, or 4] other unpublished works.”

change will improve the quality of the registration record. Interested parties typically search for works by title, and it may be difficult to find a particular work if the applicant fails to provide this information in the application. Indeed, the lack of titles for individual works in an unpublished collection has created confusion as to whether a registration for an unpublished collection covers the individual works or the collection as a whole. *See, e.g., Szabo v. Errisson*, 68 F.3d 940, 942-44 (5th Cir. 1995). The proposed rule addresses these issues by providing an efficient and straightforward way to identify the individual works, while providing clear guidance that the registration covers the individual works.

5. The Author and Claimant for Each Work Must Be the Same

Under the proposed rule, all the works in the group must be created by the same author or the same joint authors. For example, an applicant could submit five songs created solely by Peter or five songs created jointly by Peter, Paul, and Mary. But the applicant could not submit two songs created by Peter together with three songs created by Peter, Paul, and Mary. In this situation, the applicant would need to separate the songs into two groups and submit a separate application for each group.

This represents another change in policy. The current unpublished collections regulation states that all the elements in the collection must be created by the same author—unless they were created by multiple authors, in which case at least one author must contribute copyright authorship to each element. 37 CFR 202.3(b)(4)(i)(B)(4). This standard has made the examination of these claims unnecessarily complicated. Requiring the author or co-authors of each work to be the same simplifies eligibility requirements, which will

improve the efficiency of the examination by allowing the Office to focus on the works themselves.

The proposed rule provides that the copyright claimant for each work must be the same person or organization, similar to the regulation that currently governs unpublished collections. *Id.* § 202.3(b)(4)(i)(B)(3). But the proposed rule adds an additional requirement, namely, that the author or joint authors must be named as the claimant for each work in the group. Thus, if the applicant submitted five songs created jointly by Peter, Paul, and Mary, those individuals must also be named as co-claimants for each song—even if a different party actually owned the copyright in those works. This requirement comports with the basic principle that an author may always be named as the copyright claimant, *id.* § 202.3(a)(3), as well as the Office’s longstanding view that an author may be named as a claimant, even if the author does not own any of the exclusive rights when the claim is submitted, *see* COMPENDIUM (THIRD) § 619.7 (citing 42 FR 48944, 48945 (Sept. 26, 1977)).

Requiring the author(s) to be named as the copyright claimant(s) will again simplify the registration process. Under general Copyright Office practice, if the author and claimant are not the same person, the applicant is required to provide a transfer statement explaining how the claimant acquired all of the rights that initially belonged to the author. When registering unpublished collections, applicants often name a third party as the copyright claimant, but fail to provide a transfer statement. In such cases, the Office must correspond to determine if the claimant actually owns all of the exclusive rights in the works, which delays the registration decision and contributes to the overall backlog of pending claims. Given the reduced fee for examination of multiple works, the Office must minimize known

problems. Moreover, imposing this limitation will help target the group registration option to its intended beneficiaries: individual creators or small businesses who might not otherwise use the more expensive standard registration application to register their unpublished works on an individual basis. The Office has taken a similar approach with the group registration options for serials, newsletters, and published photographs. 37 CFR 202.3(b)(6)(i)(F), (b)(9)(iv), (b)(10)(i)-(ii). Based on this experience, the Office expects that this same approach will produce an optimal public record, while reducing the administrative burden that these claims impose on the Office.

While the Office proposes this change to facilitate the efficiency of examinations, it also expects that, in practice, this requirement will not prove difficult for those individual creators and small businesses who are the targets of this group registration option. Of course, those applicants who do not qualify for the group registration option may still register unpublished works individually using the standard application.

6. Anonymous Works and Pseudonymous Works

This group registration option may be used to register anonymous works or pseudonymous works, but all the works in the group must all be either anonymous or created under the same pseudonym. For example, an applicant could submit stories by “Anonymous” or stories by “Mark Twain” (a.k.a. Samuel Clemens) but could not register these stories with the same application. As with the regular registration application, the applicant should be careful not to inadvertently include the author’s real name, as it would

become part of the public records and cannot be changed after registration.¹⁰ In the context of this group registration application, this includes ensuring that the author and claimant fields in the application are the same (*i.e.*, both list “anonymous” or both list the pseudonym).¹¹

7. Works Made For Hire

An unpublished work may be registered as a work made for hire if it is identified as such in the application and if the employer is named as the author/claimant. Likewise, an applicant may register an unpublished work that was jointly created by an individual and an organization. But, under the proposed rule, because the author(s) and claimant(s) for each work must be the same, an applicant would not be able to submit works created for a company pursuant to a work made for hire agreement, together with works created by an individual and acquired by that same company through a transfer of ownership.

8. The Authorship Statement for Each Work Must Be the Same

Under the proposed rule, the applicant must provide a brief statement that describes the new copyrightable authorship, and the authorship statement for all works must be exactly the same. For example, if the author created five songs, the applicant would state “unpublished musical works (without or without lyrics).” If the author created five sound

¹⁰ See generally 81 FR 63440, 63441 (Sept. 15, 2016) (proposed rule regarding removal of personally identifiable information); 82 FR 9004 (Feb. 2, 2017) (final rule).

¹¹ While the statute states that the application shall include “the name . . . of the copyright claimant,” 17 U.S.C. 409(1), Congress also clearly intended to give authors the ability to register their works anonymously or under an assumed name, *Id.* § 409(3). Allowing applicants to provide a fictitious name in one part of the application, while requiring them to disclose the author’s real name in the other, would undermine that objective and discourage anonymous or pseudonymous authors from registering their works with the Office.

recordings and the songs embodied in each recording, the applicant would state “unpublished sound recordings and musical works (without or without lyrics).”

This represents a change in practice, in that the current regulation focuses on the “copyrightable elements” of the submitted works, rather than the works as a whole themselves, and the online application accordingly contains a series of checkboxes, such as “text,” “music,” and “lyrics.” 37 CFR 202.3(b)(4)(i)(B). This may encourage applicants to assert a claim in the individual elements of their works, rather than asserting a claim in the works as a whole.

9. Limitation of Claim

If the works contain an appreciable amount of material that has been previously published or previously registered, the applicant must exclude that material from the claim. Likewise, applicants should disclaim material that is owned by a third party or material that is in the public domain. This basic rule is the same as under the current regulation, though the new online application will implement it differently, by giving the applicant an opportunity to identify any elements that should be excluded from the claim using his or her own words, rather than a set of predetermined checkboxes. The new online application will also remove the requirement to identify the new material that should be “included” in the claim. As described above, applicants will be asked simply to identify the type of work the author created, and the Office will assume that the applicant intends to register all copyrightable aspects of the work that have not been expressly disclaimed.

B. Electronic Filing Requirements

1. Online Application

Under the proposed rule, applicants will be required to use an online application specifically designed for this group registration option. If an applicant attempts to register multiple unpublished works with standard online application or a paper application, the Office will refuse to register the claim. In such cases, the applicant will need to submit a new application using the designated application for GRUW, which will result in a later effective date of registration and will require a new filing fee and deposit. Recently, the Office changed its practices to require other applications to be filed online, and the rationales provided in those rulemaking documents apply equally here.¹²

To facilitate this transition, the Office will add appropriate warnings to the electronic registration system and the instructions for the paper applications. The Office will prepare an online tutorial that explains how to use the new application and “help text” within the application itself that will provide answers to frequently asked questions. In addition, the Office will revise the portions of *Compendium, Third* and *Circular 34* that discuss the Office’s practices and procedures for group registrations.

As with the other rules recently promulgated, the proposed rule allows the Office to waive the online filing and electronic upload requirements in exceptional cases. Applicants who do not have internet access and are unable to use the online application may request a waiver in writing. The Office will review each request and will make accommodations for applicants who receive a waiver, including by providing a mechanism by which staff will

¹² See 82 FR 27424, 27424-25 (June 15, 2017) (final rule for supplementary registration); 82 FR 29410, 29410-11 (June 29, 2017) (final rule for group registration of contributions to periodicals).

assist in filling out the application.¹³

2. Supplementary Registration

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,” including a registration for a group of related works. 17 U.S.C. 408(d); *see also* 37 CFR 202.6(b)(1)(i). Specifically, it identifies an error or omission in an existing registration and places the corrected information or additional information in the public record.

The Office recently issued a final rule that modified this procedure, in most cases requiring supplementary registration applicants to file an online application. 37 CFR 202.6. The Office explained that this online-filing requirement would apply to supplementary registrations for “works registered as an unpublished collection.” 81 FR 86656, 86657 (Dec. 1, 2016). It also noted that if it decided to move “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. Thus, if applicants need to correct or modify information appearing in a registration for an unpublished collection or a registration for a group of unpublished works, they must use the online application, or the Office will instruct the applicant to resubmit the claim using the online version of this form. *See id.*

To be clear, a supplementary registration cannot be used to convert a registration for an unpublished collection into a registration for a group of unpublished works. 82 FR 27424, 27426 (June 15, 2017). Reclassifying an unpublished collection as a group

¹³ *See* 82 FR at 72425.

registration would alter the fundamental nature of the claim and would be inconsistent with the statutory and regulatory provisions stating that a supplementary registration augments—but does not supersede—a basic registration. 17 U.S.C. 408(d); 37 CFR 202.6(f)(2).

3. Deposit Requirements

Under the proposed rule, applicants will be required to electronically submit one complete copy or phonorecord of each work in the group. Specifically, applicants must upload each work to the electronic registration system as an electronic file in one of the acceptable file formats listed on the Office's website (<http://copyright.gov/eco/help-file-types.html>). The Office will not accept physical copies or physical phonorecords, such as print-outs, photocopies, CDs, DVDs, or the like.

Applicants may save the deposits in a .zip file before upload that file to the system, but if the .zip file contains any unacceptable file types the claim will be refused. In all cases, the works must be submitted in an orderly manner and the size of each upload must not exceed 500 megabytes. Applicants may compress the works to comply with this limitation.

C. Filing Fee

The filing fee for registering a group of unpublished works will be \$55, which is the amount the Office currently charges for registering an unpublished collection with the online application. 37 CFR 201.3(c)(1)(ii). Once the proposed rule has been implemented, the Office will monitor the cost of examining these claims to determine if future fee adjustments may be warranted. It also will track the number of applicants who request a waiver from the online filing and electronic upload requirements (if any) and the amount of

time needed to handle these requests. The Office will use this information in conducting its next fee study.

D. The Scope of a Group Registration

As in the recently concluded rulemaking for group registration of contributions to periodicals, the Office proposes to clarify that a registration for a group of unpublished works covers each work in the group and each one is registered as a separate work. 82 FR 29410, 29414 (June 29, 2017); *see also* 81 FR 86634, 86641 (noting that this is “the Office’s longstanding position regarding the scope of a registration for a group of contributions to periodicals.”). The proposed rule also clarifies that applicants may not assert a claim in the selection, coordination, or arrangement of the works within the group and that the group as a whole is not considered a compilation or a collective work, or a derivative work. *See* 81 FR at 86641.

F. Refusals to Register

Section 410(b) of the Act directs the Office to refuse registration if it determines that “the material deposited does not constitute copyrightable subject matter or that the claim is invalid for any other reason.” 17 U.S.C. 410(b). If the Office determines that one or more of the works in a group is uncopyrightable, the examiner will ask the applicant to exclude those works from the claim. If the applicant agrees, the Office will issue a registration for the remaining works in the group. If the applicant declines to exclude the uncopyrightable works, the Office will issue a refusal for the entire group. 37 CFR 202.4(k).

G. Technical Amendments

The proposed rule confirms that a group of related works may be registered with one

application and one filing fee if the conditions set forth in § 202.4 have been met. The regulation governing the group option for unpublished works will be set forth in § 202.4(c), and the regulation governing unpublished collections under § 202.3(b)(4)(i)(B) will be removed. It also confirms that an application for a group of related works may be submitted by any of the parties listed in § 202.3(c)(1) of the regulations.

The proposed rule makes a number of other tangentially related technical amendments; these are not intended to represent substantive changes in policy. For example, the proposed rule removes the terms “single” work, “single” application, “single” registration fee, and “single” unit of publication from this portion of the regulations. It replaces them with the terms “one work,” “one application,” “one filing fee,” and “the same unit of publication.” This is intended to avoid potential confusion with the “single application,” which may only be used to register “a single work by a single author that is owned by the person who created it.” 37 CFR 202.3(b)(2)(B). For similar reasons, the proposed rule removes the last sentence from § 202.3(b)(2)(i)(B), which states that an unpublished collection or unit of publication cannot be registered with the Single Application, because once the proposed rule goes into effect, this clarification will be superfluous.

IV. Conclusion

The proposed rule will allow broader participation in the registration system by expanding the class of works that may be registered as a group, increase the efficiency of the registration process, and create a more robust record of the claim. The Office invites public comment on these proposed changes.

List of Subjects

37 CFR Part 201

Copyright, General Provisions.

37 CFR Part 202

Copyright, Preregistration and Registration of Claims to Copyright.

Proposed Regulation

For the reasons set forth in the preamble, the U.S. Copyright Office proposes amending 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 as follows:

a. Redesignate paragraphs (c)(2) through (19) as paragraphs (c)(3) through (20), respectively.

b. Add new paragraph (c)(2) to read as follows:

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

* * * * *

(c) * * *

(2) Registration for a claim in a group of unpublished works	55
--	----

* * * * *

Part 202 - PREREGISTRATION AND REGISTRATION OF CLAIMS TO

COPYRIGHT

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

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

4. Amend § 202.3 as follows:

- a. In paragraph (b)(2)(i)(B) remove “unpublished collections,” and remove the fifth sentence.
- b. Revise the heading of paragraph (b)(4).
- c. Revise paragraph (b)(4)(i).
- d. Remove paragraphs (b)(4)(i)(A), (B), and (B)(1) through (4).
- e. Redesignate paragraph (b)(4)(ii) as paragraph (c)(4).
- f. Add new paragraph (b)(4)(ii).
- g. Revise newly designated paragraph (c)(4),

The additions and revisions read as follows:

§ 202.3 Registration of copyright.

* * * * *

(b) * * *

(4) *Registration as one work.* (i) A group of related works may be registered with one application and upon the payment of one filing fee if the conditions set forth in § 202.4 are met.

(ii) For the purpose of registration on one application and upon the payment of one filing fee, the following shall be considered one work: In the case of published works, all

copyrightable elements that are otherwise recognizable as self-contained works, that are included in the same unit of publication, and in which the copyright claimant is the same.

* * * * *

(c) * * *

(4) In the case of applications for registration made under paragraphs (b)(4) through (b)(10) of this section or under § 202.4, the “year of creation,” “year of completion,” or “year in which creation of this work was completed” means the latest year in which the creation of any copyrightable element was completed.

5. Amend § 202.4 as follows:

- a. Revise paragraph (b).
- b. Add paragraph (c).
- c. Revise paragraph (g) introductory text.
- d. Remove paragraph (g)(7) and redesignate paragraphs (g)(8) and (9) as paragraphs (g)(7) and (8), respectively.
- e. In paragraph (m) remove “paragraph (g) of”.

The addition and revisions read as follows:

§ 202.4 Group Registration.

* * * * *

(b) *Definitions.* For the purposes of this section, unless otherwise specified, the terms used have the meanings set forth in § 202.3 and § 202.20.

(c) *Group registration of unpublished works.* Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that a group of unpublished works may

be registered in Class TX, PA, VA, or SR with one application, the required deposit, and the filing fee required by § 201.3(c) of this chapter, if the following conditions are met:

(1) All the works in the group must be unpublished, and they must be registered in the same administrative class.

(2) Generally, the applicant may include up to five works in the group. If the conditions set forth in § 202.3(b)(1)(iv)(A) through (C) have been met, the applicant may include up to five sound recordings and five musical works, literary works, or dramatic works in the group.

(3) The group may include individual works, joint works, or derivative works, but may not include compilations, collective works, databases, or websites.

(4) The applicant must provide a title for each work in the group.

(5) All the works must be created by the same author or the same joint authors, and the author and claimant information for each work must be the same.

(6) The works may be registered as anonymous works, pseudonymous works, or works made for hire if they are identified in the application as such.

(7) The applicant must identify the authorship that each author or joint author contributed to the works, and the authorship statement for each author or joint author must be the same.

Claims in the selection, coordination, or arrangement of the group as a whole will not be permitted on the application.

(8) The applicant must complete and submit the online application designated for a group of unpublished works. The application may be submitted by any of the parties listed in § 202.3(c)(1).

(9) The applicant must submit one complete copy or phonorecord of each work. Each work must be contained in a separate electronic file that complies with § 202.20(b)(2)(iii). The files must be submitted in one of the electronic formats approved by the Office, they must be assembled in an orderly form, and they must be uploaded to the electronic registration system, preferably in a .zip file containing all the files. The file size for each uploaded file must not exceed 500 megabytes; the files may be compressed to comply with this requirement.

(10) In an exceptional case, the Copyright Office may waive the online filing requirement set forth in paragraph (c)(8) of the section or may grant special relief from the deposit requirement under § 202.20(d), subject to such conditions as the Associate Register and Director of the Office of Registration Policy and Practice may impose on the applicant.

* * * * *

(g) *Group registration of contributions to periodicals.* Pursuant to the authority granted by 17 U.S.C. § 408(c)(2), the Register of Copyrights has determined that a group of contributions to periodicals may be registered in Class TX or Class VA with one application, the required deposit, and the filing fee required by § 201.3(c), if the following conditions are met:

* * * * *

§ 202.20 [Amended]

6. Amend § 202.20 in paragraph (c)(2)(xx) by removing “§202.3(b)(4)(i)(B) (unpublished collections) or” .

Dated: October 4, 2017.

Sarang V. Damle
General Counsel and
Associate Register of Copyrights.

[BILLING CODE 1410-30-P]

[FR Doc. 2017-21722 Filed: 10/11/2017 8:45 am; Publication Date: 10/12/2017]