



LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 202

[Docket No. 2018-2]

Group Registration of Serials

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

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is amending its regulation governing the group registration option for serials. Under the current regulation, applicants may complete and submit the online application designated for a group of serial issues, or they may complete and submit a paper application using Form SE/Group, provided the Office receives the paper form by December 30, 2019. Applicants submitting Form SE/Group may submit a physical copy of each issue in the group; applicants using the online application may upload one electronic copy of each issue through the Office's electronic registration system or they may submit one physical copy, provided the Office receives the physical copy by December 30, 2019. This final rule eliminates the reference to paper applications and physical deposit copies. Beginning December 31, 2019, the Office will no longer accept a paper application or a physical deposit for this group registration option.

DATES: Effective December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, or Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy & Practice, or Erik Bertin, Deputy

Director of Registration Policy and Practice, by email at *regans@copyright.gov*, *rkas@copyright.gov*, and *ebertin@copyright.gov*, or by telephone at (202) 707-8350.

SUPPLEMENTARY INFORMATION: When Congress enacted the Copyright Act of 1976 (the “Act”), it authorized the Register of Copyrights 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 such class. *See* 17 U.S.C. 408(c). In addition, Congress granted 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). 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. H.R. Rep. No. 94-1476, at 154 (1976); S. Rep. No. 94-473, at 136 (1975). Pursuant to the authority granted by Congress, the Register has issued regulations permitting the U.S. Copyright Office (the “Office”) to issue a group registration for limited categories of works, including serials, provided that certain conditions have been met. *See generally* 37 CFR 202.3(b)(5), 202.4.

On November 30, 2018, the Office issued a final rule amending the regulation governing the group registration of serials (“GRSE”). 83 FR 61546 (Nov. 30, 2018). Among other changes, the 2018 final rule updated the application and deposit requirements by phasing out the paper form (known as Form SE/Group) and phasing out the submission of physical copies. Beginning December 31, 2019, applicants will be required to use the online application designated for group serials and to upload a digital copy of each issue.

Requiring applications and deposits to be submitted electronically increases the efficiency of the group registration process. Electronic submissions take less time to process and are easier to track and handle than paper applications and physical copies. They reduce the burden on applicants by eliminating the cost of mailing the deposit to the Office. And they improve the quality of the registration record, because it is easier to locate and retrieve a digital deposit if it is needed for litigation or other legitimate purposes. 83 FR 22896, 22900 (May 17, 2018).

The Office provided a one-year phase-out period to give publishers time to adjust to the new application and deposit requirements. To facilitate this transition, the Literary Division contacted every applicant that has submitted a group serial claim since December 31, 2018, to notify them of the upcoming changes.

Over the past three years, there has been a steady increase in electronic deposits for group serial claims. In 2017, electronic deposits accounted for 23% of these claims and physical deposits accounted for 76%. In 2018, electronic deposits increased to 34% while physical deposits dropped to 65%.¹ This trend accelerated once the 2018 final rule went into effect: Between December 31, 2018, and July 24, 2019, electronic deposit copies accounted for 59% of group serial claims, while physical deposits accounted for the remaining 41%.

The phase out period will expire at the end of this year. Therefore, the Office is amending the regulation to eliminate the reference to Form SE/Group and physical

¹ For the remainder of claims submitted in 2017 through July 24, 2019, applicants either submitted both an electronic and physical deposit for the same claim or did not submit any deposit at all.

deposit copies. Beginning December 31, 2019, the Office will no longer accept paper applications or physical deposits for this group option.

The regulation does give the Office the discretion to waive the online application filing requirement and grant special relief from the digital deposit requirement in exceptional cases, subject to conditions imposed on the applicant by the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice. 37 CFR 202.4(d)(4), 202.20(d)(1)(iii). Requests for special relief will be considered on a case-by-case basis. But the fact that a serial is published in a physical form does not necessarily mean that a request will be granted. The Office requires digital deposits for most group registration options as a quid pro quo for allowing multiple works to be registered with one application and one filing fee.² In the case of group serials, the Office delayed this requirement for one year to give publishers time to prepare for the new workflow. Serials are typically created using digital publishing software, even though the issue itself may be distributed in a physical form. In such cases, the electronic file that was used to create the physical copy may be used to satisfy the digital deposit requirement, as long as it contains a complete copy of the issue and satisfies the other legal and formal requirements for this group option.³

Because the updates are technical and non-substantive changes that do not “alter the rights or interests of parties,” they are not subject to the notice and comment requirements of the Administrative Procedure Act.⁴ Furthermore, the Office finds good

² See 37 CFR 202.4(c)(9), (e)(6)(ii)(A), (f)(3), (g)(8), (h)(9), (i)(9).

³ These requirements are currently set forth in 37 CFR 202.4(d)(3)(i).

⁴ See *Nat’l Mining Ass’n v. McCarthy*, 758 F.3d 243, 250 (D.C. Cir. 2014); 5 U.S.C. 553(b) (notice and comment not required for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice”).

cause that providing notice and comment is “unnecessary” because the changed requirements and phase-out period were adopted in a previous public proceeding; this final rule merely removes related obsolete language.⁵

List of Subjects in 37 CFR Part 202

Copyright, Preregistration and registration of claims to copyright.

Final Regulations

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 202 as follows:

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

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

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

2. Amend § 202.4 by revising paragraphs (d)(2) and (3) to read as follows:

§ 202.4 Group registration.

* * * * *

(d) * * *

(2) *Application.* The applicant must complete and submit the online application designated for a group of serial issues. The application may be submitted by any of the parties listed in § 202.3(c)(1).

(3) *Deposit.* The applicant must submit one complete copy of each issue that is included in the group. Copies submitted under this paragraph (d)(3) will be considered solely for the purpose of registration under 17 U.S.C. 408, and will not satisfy the mandatory

⁵ See 5 U.S.C. 553(b).

deposit requirement under 17 U.S.C. 407. The issues must be submitted in digital form, and each issue must be contained in a separate electronic file. The applicant must use the file-naming convention and submit digital files in accordance with instructions specified on the Copyright Office's website. The files must be submitted in Portable Document Format (PDF), they must be assembled in an orderly form, and they must be uploaded to the electronic registration system as individual electronic files (*i.e.*, not .zip files). The files must be viewable and searchable, contain embedded fonts, and be free from any access restrictions (such as those implemented through digital rights management) that prevent the viewing and examination of the work. The file size for each uploaded file must not exceed 500 megabytes, but files may be compressed to comply with the requirement in this paragraph (d)(3).

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Dated: October 23, 2019.

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

Approved by:

Carla D. Hayden,
Librarian of Congress.

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