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LIBRARY OF CONGRESS

United States Copyright Office

37 CFR Part 202

[Docket No. 2013-6]

Single Application Option

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

ACTION: Interim final rule.

SUMMARY: The U.S. Copyright Office is amending its regulations on an interim basis in order to establish a new registration option called the “single application.” This application is being introduced in order to provide an additional option for individual authors/claimants registering a single (one) work that is not a work made for hire via the Copyright Office’s electronic registration system (“eCO”). Such applications are the most administratively simple for the Copyright Office to process and may make copyright registration more attractive to individual authors of single works. This application option will be available on June 28, 2013, and the Copyright Office is inviting public comments during the first 60 days of its implementation. The single application option will cost the same – \$35 – as a standard electronic application.

DATES: *Effective date:* June 28, 2013. *Comments date:* Comments must be received by the Copyright Office of the General Counsel no later than August 28, 2013.

ADDRESSES: The Copyright Office strongly prefers that comments be submitted electronically. A comment page containing a comment form is posted on the Copyright Office website at <http://www.copyright.gov/comments/single-application/comment->

submission.html. The website interface requires submitters to complete a form specifying name and organization, as applicable, and to upload comments as an attachment via a browse button. To meet accessibility standards, all comments must be uploaded in a single file not to exceed six megabytes (MB) in one of the following formats: The Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The form and face of the comments must include both the name of the submitter and the organization. All comments will be posted publicly on the Copyright Office website exactly as they are received, along with names and organizations. If electronic submission of comments is not feasible, please contact the Copyright Office at (202) 707–8380 for special instructions.

FOR FURTHER INFORMATION CONTACT: Robert Kasunic, Associate Register of Copyrights and Director of Registration Policy & Practice, or Chris Weston, Attorney-Advisor, Office of the General Counsel, at (202) 707-8380.

SUPPLEMENTARY INFORMATION:

I. Background

Prior Federal Register publications. On January 24, 2012, the Copyright Office (the “Office”) published a notice of inquiry in the **Federal Register** seeking public comment on several issues (the “NOI”). 77 FR 3507 (Jan. 24, 2012). One – which is the subject of the present interim rule – was whether special consideration should be provided to registration of single works where the author is also the copyright owner and the work is not a work made for hire. (This is the “single application,” as distinguished from the “standard application.”) This question was asked in the context of an ongoing

fee study by the Office. The Office received four comments to this notice responding to the question of a single application, all of them positive.

On March 28, 2012, the Office published a comprehensive notice of proposed rulemaking proposing a new schedule of fees as well as proposing to offer a separate, easier application for “a single author who is also the claimant for the online filing of a claim in a single work that is not a work made for hire” (the “NPR”). 77 FR 18743 (Mar. 28, 2012). The notice also stated that the Office would provide more details on the single author/single work registration option in a later proposed rulemaking. The Office received 10 comments directed at the proposed single application. The issues raised in these comments are addressed below.

Why an interim rule? As noted above, the Office previously stated that more details regarding the single author/single work registration option would be forthcoming. The present notice, then, serves the function of both a notice of proposed rulemaking – in that it seeks public comment on the rules governing the single application – and an interim rule – in that it simultaneously promulgates the single application. The Office believes that it received sufficient comment pursuant to its NPR that it is justified in publishing an interim rule regarding the implementation of the single application option. However, because only a description in the text of the NPR was provided, the Office is here providing the opportunity for the interested public to comment on the actual proposed text of the rule in the context of having the single application option available for public use and review. Because the rule covering this application is interim in nature, this allows the Office to modify it should such an action be warranted.

II. Discussion

The reasons for establishing a separate single registration application option are spelled out in detail in the NOI. Briefly, the Office believes that those registration applications that take the least time to process should enjoy a simpler online application. The Office hopes that providing a simplified application option will encourage more individual creators to register their works.

As initially proposed, the single application would only be available for “an application to register a single work when the application is submitted by a person who is the sole author and the sole copyright owner of the work, the work is not a work made for hire, and the work does not contain material that was previously published or registered.” 77 FR 3507 (Jan. 24, 2012). It was also suggested initially that the single application be available only via eCO, and that it may be used to register collections of works by the same author-claimant.

As restated in the NPR, the single application was proposed to apply only to “a single author who is also the claimant for the online filing of a claim in a single work that is not a work made for hire.” 77 FR 18743 (Mar. 28, 2012). . Although the single application was initially conceived to require that the author, claimant, and remitter had to be the same individual, the Office has determined to allow a third party to remit a claim on behalf of an author-claimant, provided that the third party is also listed as the correspondent, and provided the claim meets the single registration requirements. The Office also determined that a claim for a single application may contain – but will not cover – material that was previously published or registered, so as to allow for the registration of certain derivative works.

Based on the comments received the Office has determined that the following will be the boundaries of the types of claims that are eligible for submission using the single application to be implemented on June 28, 2013:

- Electronic registration only.
- Single author (does not include joint works).
- Single claimant/owner (does not include works made for hire or works where the claimant/owner is different from the author, i.e., transferred ownership).
- Single work (e.g., one song, one poem, one photograph. Does not include collective works, unpublished collections, units of publication, group registrations, databases, or websites).

Regarding the requirement of one work per registration, while the Office is aware that many individual authors, particularly photographers, create multiple works that they may want to register at one time, registering multiple works creates a more complex application. A single electronic application will provide a more simplified registration option that would benefit the many individual applicants who submit such claims for registration. Any expansion beyond the limits listed above creates more complex applications, which take additional time to process, and are thus poor candidates for an application based on simplicity.

This rationale applies as well to those commenters who argued that the single application should be available both to individual creators who incorporate for business reasons (*e.g.*, an author who seeks to register a manuscript through a self-created corporate entity for tax or liability reasons) and to individuals or small businesses who commission works made for hire. Why, ask these commenters, are such authors – who are as much a part of the independent creative community as individuals who register

their works as themselves – not also offered the benefit of a single application option?

There should be no doubt that the Copyright Office agrees that works registered through a corporate entity or created for hire are worthy of copyright protection. It also recognizes that the business of creating and licensing creative works can be a complex one, even (or especially) for individuals and small businesses. However, every deviation from the most simplified application, whether it be that the claimant is a corporation where the author is an individual, or the work is made for hire, creates, as noted above, more complexity for the registration process, and frustrates the goal of simplicity.

In addition to adding regulations governing the single application, the Copyright Office is proposing minor technical amendments to the current regulation governing electronic registration in general, in order to clarify the requirements for sending physical copies or phonorecords as deposit copies. These changes appear in the new subparagraph 202.3(b)(2)(i)(D).

It is important to the Copyright Office that registration be as simple, equitable, and economical as possible. The Office believes that providing an easier option for registration for those authors who file the simplest kind of application is worthwhile, and may encourage registration and foster the development of a more robust public record.

III. Request for Comments

The new online single registration application will appear as an option in eCO on June 28, 2013. The Office is providing the public an opportunity to comment on this implementation. The interim status of this rule means that it is likely to be revisited by the Copyright Office in the near future, which will offer the Office an opportunity to consider and act upon comments received.

List of Subjects in 37 CFR Part 202

Preregistration and Registration of Claims to Copyright.

Interim Regulations

In consideration of the foregoing, the Copyright Office amends part 202 of 37 CFR as follows:

PART 202: PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

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

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

2. Amend § 202.3 by revising paragraph (b)(2)(i) to read as follows:

§ 202.3 Registration of copyright.

* * * * *

(b) * * *

(2) * * *

(i) *Electronic applications.* (A) An applicant may submit an application electronically through the Copyright Office website [www.copyright.gov] For non-group registrations, an applicant may submit a standard electronic application, or an applicant may submit a “single” application.

(B) A “single” application can be made only for a single work by a single author that is owned by the person who created it, and is not a work made for hire. The claimant and the author must be the same. A third party may remit a “single” application on behalf of the author/claimant, provided that party lists itself as the correspondent. The following categories of work may not be registered using the “single” application: collective works,

unpublished collections, units of publication, group registration options, databases, websites, works by more than one author, and works with more than one owner. The designation of a work as eligible for a “single” registration does not include work characterized as a “single work” under paragraph (b)(4) of this section.

(C) An online submission requires a payment of the application fee through an electronic fund transfer, credit or debit card, or through a Copyright Office deposit account.

(D) Deposit materials in support of an online application may be submitted electronically in a digital format (if eligible) along with the application and payment, or a remitter may send physical copies or phonorecords as necessary to satisfy the best edition requirements, by mail to the Copyright Office, using the required shipping slip generated during the online registration process.

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Dated: June 24, 2013

Maria Strong
Acting General Counsel
U.S. Copyright Office

[BILLING CODE 4110-30]

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