



LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Parts 201 and 202

[Docket No. 2017-16]

Group Registration of Newspapers

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Copyright Office is proposing to amend its regulation governing the group registration option for newspapers. The proposed rule will make a number of changes to reflect current Office practices, promote efficiency of the registration process, and encourage broader participation in the registration system by reducing the burden on applicants. Specifically, the proposed rule revises the definition of “newspaper issues” and clarifies that the group registration option is available to any qualifying “newspaper issue.” The proposed rule will require applicants to file an online application rather than a paper application, and upload a complete digital copy of each issue through the electronic registration system instead of submitting them in physical form. The Library of Congress intends to incorporate digital copies of newspapers received by the Office under this group registration option, and provide public access to them, subject to certain restrictions set forth in the proposed rule. Applicants may continue to submit their issues on microfilm (in addition to submitting digital files) on a voluntary basis if the microfilm is received by December 31, 2019. After that date, the microfilm option will be phased out. The proposed rule will clarify that each newspaper issue in the group must be a new collective work and a work made for hire, that the author and copyright claimant for each

issue must be the same person or organization, and will clarify the scope of protection for newspaper issues, compared to individual components appearing within those issues. In addition, the proposed rule will require applicants to submit a full month of issues, and submit their claims within three months after the publication of the earliest issue in the group. The Office invites public comment on these proposed changes.

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 Web site at <https://www.copyright.gov/rulemaking/group-newspapers>. If electronic submission of comments is not feasible due to lack of access to a computer and/or the Internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice, or Erik Bertin, Deputy Director of Registration Policy and Practice, by telephone at 202-707-8040, or by email at rkas@loc.gov and ebertin@loc.gov; or Anna Bonny Chauvet, Assistant General Counsel, by telephone at 202-707-8350, or by email at achau@loc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

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 such class. 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). Pursuant to this authority, the Register has issued regulations permitting the U.S. Copyright Office (the “Office”) to issue a group registration for limited categories of works, provided that certain conditions have been met. *See generally* 37 CFR 202.3(b)(5)–(10), 202.4(g).

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, 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, and deprives the public of copies of works that might otherwise be included in the collections of the Library of Congress (the “Library”). When large numbers of works are grouped in one registration application, however, granular information about the individual works may not be adequately captured. Therefore, group registration options require careful

balancing of the need for an accurate public record and the need for an efficient method of facilitating the registration of multiple works.

II. The Existing Group Registration Option for Newspapers

To register a group of newspapers under the current regulation, the applicant must complete and submit a paper application using Form G/DN.¹ 37 CFR 202.3(b)(7)(i)(B).

The current regulation states that a newspaper is eligible for the group registration option if it is listed in “Newspapers Received Currently in the Library of Congress,”² a policy document listing newspapers that have been selected to be received and retained by the Library. 37 CFR 202.3(b)(7)(ii). The current regulation also includes a number of registration requirements. First, the group must include “a full month of issues of the same newspaper title published with issue dates in one calendar month,” and the applicant must specify the first and last day that the issues were published during that month. *Id.* § 202.3(b)(7)(i)(A), (C). Second, the applicant must submit a microfilm deposit, consisting of positive 35mm silver halide microfilm, containing the final edition of each issue published in the month specified in the application. *Id.* § 202.3(b)(7)(i)(D). The microfilm may include “earlier editions published the same day in a given metropolitan area served by the newspaper, but may not include national or regional editions distributed beyond a given metropolitan area.”³ *Id.* Finally, to be registered as a group, the applicant must seek registration within three months after the date of publication for the most recent issue included in the group. *Id.* § 202.3(b)(7)(i)(F).

¹ Although the regulation refers to this as a “GDN application,” the application itself is labeled “Form G/DN.” Applicants must also submit Form G/DN when using the group registration option for daily newsletters. 37 CFR 202.3(b)(9)(viii).

² This list is also available at https://www.loc.gov/rr/news/ncr_list.php.

³ The Office’s rationale for not including national or regional editions is that the Library considers them to be different newspapers because they have different International Standard Serial Numbers (“ISSN”).

In addition to these regulatory requirements, the instructions for Form G/DN include three additional requirements: Each issue in the group must be an “essentially all-new collective work” that has not been previously published; each issue must be a work made for hire; and the author and the copyright claimant must be the same person or organization. *Form Group/Daily Newspapers and Newsletters*. Although not referenced in the Office’s regulation, these instructions have appeared in Form G/DN since at least February 2000, and have appeared in *Copyright Office Circular 62A: Group Registration of Newspapers and Newsletters* (hereinafter “*Circular 62A*”) since at least December 1999.⁴

During the early 1990s, the Office became aware that applicants wished to use the group registration option to register newspapers that had *not* been selected for the Library’s collections. These applicants went to the trouble and expense of transferring newspapers onto archival-quality microfilm for registration purposes, even though the Library did not include that microfilm in its collections.

To reduce the number of applicants incurring such unnecessary costs in transferring non-selected newspapers to archival-quality microfilm, and to complement its existing regulation, the Office adopted an interim practice allowing applicants to use the group registration option for newspapers that have not been selected by the Library without submitting the works on microfilm. Specifically, the interim practice allows an applicant to submit: (i) complete print copies of the earliest and most recent issues from the month specified in the application; (ii) print copies of the first section from the earliest and most recent issues in that month; or (iii) print copies of the first page from the

⁴ Similar language appears in the regulations governing the group options for serials and newsletters. *See* 37 CFR 202.3(b)(6)(C)-(F), (9)(ii)-(iv).

earliest and most recent issues in that month. Although the Office's interim practice is not reflected in the current regulation, it is mentioned in the instructions for Form G/DN, in *Circular 62A*, and in the *Compendium of U.S. Copyright Office Practices*, section 1110.5(B) (3d ed. 2017) (hereinafter "*Compendium*").

III. The Proposed Rule

The Office is proposing to amend the regulation governing the group registration option for newspapers (the "Proposed Rule") to reflect current Office practices, promote efficiency, and where possible, reduce the burden on applicants.

As explained in greater detail below, the Proposed Rule will modify the eligibility requirements for this group option in several respects. First, it will make *any* newspaper, as defined in the regulation, eligible for a group registration, regardless of whether the Library has selected that newspaper for its collections. Second, it will improve the efficiency of this procedure by requiring applicants to register their newspapers through the Office's electronic registration system, rather than filing paper applications. Third, it will amend the deposit requirements by requiring applicants to upload their newspapers in digital form through the electronic registration system. Although applicants will no longer be required to submit microfilm containing a complete copy of each issue, they may do so voluntarily if the microfilm is received by December 31, 2019 (in addition to uploading digital copies). After that, the microfilm option will be phased out. Fourth, the Proposed Rule confirms that deposits submitted for the purpose of group registration will satisfy the mandatory deposit requirement under section 407 of the statute, and will not be subject to the best edition requirement. It also confirms that the Library may provide

limited access to any digital newspaper deposits it receives from the Office under the group registration option, subject to certain restrictions.

Finally, the Proposed Rule will memorialize the Office’s longstanding position regarding the scope of a registration for a group of newspaper issues (*i.e.*, a registration for a group of newspaper issues covers each issue in the group, as well as the articles, photographs, illustrations, or other contributions appearing within each issue—if they are fully owned by the copyright claimant and if they were first published in those issues). In addition, it will implement some technical amendments to address certain inconsistencies in the current regulation.

A. Eligibility Requirements

This section discusses the proposed amendments to the eligibility requirements for the group option for newspapers. Applicants failing to satisfy these requirements will not be permitted to use this option.

1. The Definition of “Daily Newspapers”

The Proposed Rule will update the regulatory definition for the term “newspaper” in several respects.⁵ Currently, the regulation states that the Office may issue a group registration “for a group of *daily* newspapers.” 37 CFR 202.3(b)(7)(i). The term “daily” is misleading, because it implies that the newspaper must be published seven days a week. In practice, the Office has never applied this standard in registering groups of newspaper

⁵ The Proposed Rule also maintains certain portions of the current definition. It reiterates that newspapers are mainly designed to be a primary source of written information on current events, either local, national, or international in scope; they contain a broad range of news on all subjects and activities; they are not limited to any specific subject matter; and they are intended either for the general public or for a particular ethnic, cultural, or national group. *See* 37 CFR 202.3(b)(7)(ii).

issues. Accordingly, the Proposed Rule will remove the term “daily” and replace it with “newspaper issues.”

As discussed above, the current regulation states that a newspaper is eligible for group registration if it is listed in “Newspapers Received Currently in the Library of Congress,” a policy document listing newspapers that have been selected to be received and retained by the Library. 37 CFR 202.3(b)(7)(ii). The Proposed Rule will make any newspaper eligible for a group registration, regardless of whether the Library has selected that title for its collections.

In addition, the Proposed Rule clarifies that for purposes of registration, a newspaper will be classified as a “periodical.” Under the current regulation, “newspapers” and “periodicals” are both subsets of “serials,” a broader category of works “issued or intended to be issued in successive parts bearing numerical or chronological designations and intended to be continued indefinitely.”⁶ See 37 CFR 202.3(b)(1)(v). Serials do not have to be collective works for registration purposes. See *id.* For example, a newsletter containing a single article may qualify as a serial, but not a collective work. See H.R. REP. NO. 94-1476, at 122 (1976) (stating that a work does not qualify as a collective work “where relatively few separate elements have been brought together,” as in the case of “a composition consisting of words and music, a work published with illustrations or front matter, or three one-act plays”). By contrast, a “periodical” is defined as “a *collective work* that is issued or intended to be issued on an established schedule in successive

⁶ In 1991, the Office began offering a group registration option for serials. 55 FR 50556. The Office subsequently offered a separate group registration option for newspapers, which are published in successive parts bearing numerical or chronological designations (*i.e.*, publications meeting the definition of a “serial”), but are ineligible for the serial group registration option because they do not meet the registration requirements, such as frequency of publication. 57 FR 39615. The Office will be issuing a proposed rule relating to group registration for serials to similarly streamline the registration process for that group registration option.

issues that are intended to be continued indefinitely,” and “[i]n most cases, each issue will bear the same title, as well as numerical or chronological designations.”⁷ 37 CFR 202.4(g)(4) (emphasis added). Accordingly, by classifying newspapers as “periodicals” rather than “serials” generally, the Proposed Rule clarifies that newspapers must be collective works for registration purposes.⁸ The Proposed Rule also amends the definition for “*Class SE: Serials*” to reflect this clarification.

Defining a newspaper as a “periodical” is consistent with section 408(c)(3) of the Act, which indicates that “newspapers” are a subset of “periodicals.” 17 U.S.C. 408(c)(3) (directing the Register to create a group registration option for works “first published as contributions to periodicals, including newspapers”). Similarly, it is consistent with section 101 of the Act, which cites a “periodical issue” as an example of a collective work. 17 U.S.C. 101 (definition of “collective work”).

Finally, the Office will use the term “GR/NP,” which stands for “group newspapers,” instead of the term “G/DN” when referring to the group registration option for newspapers. As discussed below in Section III.B.1, the Office is proposing to eliminate Form G/DN and require applicants to submit their claims through the electronic registration system. Thus, the term G/DN will soon be obsolete. The term G/DN is also confusing, because the Office uses the same term when referring to the group option for daily newsletters. *See supra* note 1.

⁷ In this respect, the Proposed Rule differs from the regulation governing the group registration option for newsletters, which are classified as “serials” generally rather than “periodicals” specifically, because newsletters can be composed of a single work, whereas newspapers are by their nature collective works. *See* 37 CFR 202.3(b)(9)(i). Put another way, while a newspaper must be a collective work to qualify for the group registration option, a publisher may register a group of newsletter issues regardless of whether the newsletter is or is not a collective work. *See* 82 FR at 29412 n.12.

⁸ Section 408(c)(1) of the Act states that “[t]he Register of Copyrights is authorized to specify by regulation the administrative classes into which works are to be placed for purposes of deposit and registration.”

2. Publication Requirements

The current regulation states that applicants may register newspaper issues “published with issue dates in one calendar month.” 37 CFR 202.3(b)(7)(i)(A). The Proposed Rule will clarify that all of the issues in the group must be published (*i.e.*, distributed to the public) within the same calendar month and must bear issue dates within that month. Claims with dates outside of one calendar month will be refused. The change in language is simply intended to clarify these requirements and does not represent a substantive change.

3. Authorship, Ownership, and Work Made For Hire Requirements

Under the Proposed Rule, each issue in the group must have been created as a work made for hire, with the same person or organization named as the author and copyright claimant. These requirements have appeared in *Circular 62A* and in the instructions for Form G/DN for more than a decade. Accordingly, this change is intended to reconcile the regulation with these longstanding Office practices.

4. The Collective Work Requirement

The Proposed Rule states that each newspaper issue in the group must be an all-new collective work that has not been previously published. This requirement has appeared in *Circular 62A* for some time. Similarly, the instructions for Form G/DN state that each issue in the group must be an “*essentially* all-new collective work” that has not been previously published. The Proposed Rule will clarify that each issue must *be* an all-new collective work for registration purposes.

A newspaper will be considered a collective work if it contains “a number of contributions” that constitute “separate and independent works in themselves,” and if the

contributions are “assembled into a collective whole” “in such a way that the resulting work as a whole constitutes an original work of authorship.” 17 U.S.C. 101 (definitions of “collective work” and “compilation”). For example, a newspaper that contains multiple articles, photographs, illustrations, and advertisements could be considered a collective work if those contributions are selected, coordinated, and arranged in a sufficiently creative manner. By contrast, a work that contains a single article and a single photograph would not be considered a collective work, because it does not contain a sufficient number of contributions. *See* H.R. REP. NO. 94-1476, at 122 (1976).

A newspaper issue may qualify as an “all-new” collective work if it contains a sufficient amount of compilation authorship. In other words, there must be a sufficient amount of new expression in the selection, coordination, and arrangement of the articles, photographs, or other content appearing in each issue. The fact that the content itself is entirely new is irrelevant to this determination. For example, an issue could be considered “all-new” if it contains a brand new selection, coordination, and arrangement of content, even if that individual content has been previously published in the newspaper—such as advertisements appearing in previous issues.

5. Scope of Protection For Newspaper Issues Versus Individual Contributions

Versus Overall Group

The Proposed Rule clarifies that a registration for a group of newspapers covers each issue in the group, and each issue will be registered as a separate collective work. As a general rule, a registration for a collective work covers the individual contributions contained within that work if they are fully owned by the copyright claimant and if they

were first published in that work.⁹ Accordingly, a registration for a group of newspaper issues covers each issue in the group, as well as the articles, photographs, illustrations, or other contributions appearing within each issue—if they are fully owned by the copyright claimant at the time the application was filed and if they were first published in those issues. By contrast, if an issue contains contributions that are not fully owned by the copyright claimant, and/or contributions that were previously published, the registration will not extend to those works. *See Morris v. Business Concepts, Inc.*, 259 F.3d 65, 71 (2d Cir. 2001) (“Unless the copyright owner of a collective work also owns all the rights in a constituent part, a collective work registration will not extend to the constituent part.”), *abrogated on other grounds by Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 160 (2010).

With respect to the information collected as part of a group registration and examination practices, the Office must balance the public interest in creating a meaningful record (*i.e.*, collecting information regarding each individual contribution within a newspaper issue) with the relative burden on applicants wishing to participate in the registration system. When an applicant submits an entire month of newspaper issues for registration, it is difficult to collect granular information concerning the individual articles, photographs, and other component works within each issue. Requiring applicants to identify the author and title of each individual contribution would impose a significant burden both on applicants and the Office alike. This would discourage registration, which

⁹ *See, e.g., Alaska Stock, LLC v. Houghton Mifflin Harcourt Pub. Co.*, 747 F.3d 673, 683 (9th Cir. 2014); *Morris v. Bus. Concepts, Inc.*, 259 F.3d 65, 68 (2d Cir. 2001); *Compendium* sections 509.1, 509.2; *see also* 17 U.S.C. 201(c) (“Copyright in each separate contribution to a collective work is distinct from copyright in the collective work as a whole, and vests initially in the author of the contribution. In the absence of an express transfer of the copyright or of any rights under it, the owner of copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that collective work . . .”).

in turn, would diminish the value of the Office's public record. It would also be contrary to the Congressional purpose of providing the Office with the authority to create group registration options to foster registrations that otherwise would be unduly burdensome.

Accordingly, the Office's application to register a group of newspaper issues does not contain spaces where the applicant can expressly assert a claim in the individual contributions appearing within each issue, provide titles, authors, or other identifying information for each contribution, or identify component works created by a third party and transferred to the claimant by written agreement. When the examiner reviews each newspaper issue, he or she will examine the issue as a whole to determine if it contains sufficient compilation authorship to warrant registration. And the examiner will review the newspaper issue to determine whether it contains "a number of contributions" constituting "separate and independent works in themselves." 17 U.S.C. 101. When the Office issues a group registration, the certificate will identify the title, author, and claimant for each newspaper issue in the group, but it will not identify the titles, authors, or claimants for the individual contributions appearing within those issues.¹⁰

The scope of protection for a group registration issued under the Proposed Rule will have several consequences in infringement actions. First, a group registration may be used to satisfy the statutory requirements for instituting an infringement action involving any of the newspaper issues that were included within the group, or any of the individual

¹⁰ There are two other options for registration of individual contributions to newspapers. Applicants may expressly assert a claim in the component works appearing within a particular issue by using the option for "literary work." When using this option, the applicant must complete a separate application and pay a separate filing fee for each issue, and may list the author(s) and title(s) of the individual contributions appearing within that issue. Alternatively, the applicant may be able to register the individual contributions by using the group option for contributions to periodicals (including newspapers), provided that the applicant satisfies the eligibility requirements (*i.e.*, the contribution must not be a work made for hire) and deposit requirements for that option. *See* 37 CFR 202.4(g).

contributions appearing within those issues—provided that the claimant fully owned those contributions at the time the application for registration is submitted, and provided that the contributions were first published in one of those issues.¹¹ 17 U.S.C. 411(a) (for works of U.S. origin, registration (or refusal) is necessary to enforce the exclusive rights of copyright through litigation).

Second, a group registration may also be used to satisfy the plaintiff's burden of proof by providing a presumption of validity for each registered issue. Specifically, a certificate of registration “constitute[s] prima facie evidence of the validity of the copyright and of the facts stated in the certificate.” 17 U.S.C. 410(c). A group registration issued under the Proposed Rule would thus create a presumption that the claimant owns the copyright in each newspaper issue listed in the certificate, and a presumption that the copyright law protects each issue as a whole.

Although the Proposed Rule does not require granular information concerning the individual component works within each newspaper issue, the Office foresees the future possibility of applicants submitting metadata for the component works appearing within each issue, and the possibility of the Office incorporating this information into the registration record. If this becomes feasible once the Office implements its next-generation registration system, it may require this type of information as a condition for using this group registration option.

Finally, the Proposed Rule also clarifies that the group as a whole is not considered a compilation, a collective work, or a derivative work. Instead, the group is merely an administrative classification created solely for the purpose of registering

¹¹ Alternatively, a plaintiff may satisfy this statutory requirement if the Office refused registration, provided that the plaintiff serves a copy of the complaint on the Register of Copyrights. 17 U.S.C. 411(a).

multiple collective works with one application and one filing fee. The chronological selection, coordination, and arrangement of the issues within the group is entirely dictated by the regulatory requirements for this option. Likewise, when a group of newspaper issues are combined for the purpose of facilitating registration, those works are not “recast, transformed, or adapted” in any way, and the group as a whole is not “a work based upon one or more preexisting works” because there is no copyrightable authorship in simply collecting a month of issues and arranging them in chronological order. 17 U.S.C. 101 (definition of “derivative work”).

6. Discrete, Self-Contained Works Protected

The Proposed Rule clarifies that each newspaper issue in the group must be fixed and distributed as a discrete, self-contained collective work.¹² An applicant may satisfy this requirement if the newspaper as a whole is fixed in a tangible medium of expression, and the content of each issue does not change once it has been distributed. For example, a publisher that hand-delivers each issue to its subscribers, or distributes them through newsstands, vending machines, or other retail outlets, would satisfy this requirement because the newspaper is clearly fixed and distributed in a physical format. A publisher that emails an electronically printed (“ePrint”) newspaper to its subscribers may satisfy this requirement if each issue contains a fixed selection of content, such as a PDF version of a physical publication. Similarly, a publisher that allows its subscribers to download an ePrint newspaper from its website may satisfy this requirement if each issue is distributed as a collective work and the content of each issue does not change once it has been downloaded.

¹² Similar language has appeared in the *Compendium* since December 2014. See *Compendium* section 1113.

By contrast, a newspaper website would not satisfy this requirement. Newspaper websites typically add, archive, and/or replace content on a continuing basis. As such, they are not fixed and distributed as discrete, self-contained works. Moreover, these updates are rarely distributed on an established schedule, and rarely contain numerical or chronological designations distinguishing one update from the next. For this reason, websites are not considered “newspapers” for purposes of registration. As discussed above, “newspapers” and “periodicals” have historically been considered subsets of “serials,” a broader category of works “issued or intended to be issued in successive parts bearing numerical or chronological designations and intended to be continued indefinitely,” and under the Proposed Rule, newspapers will be categorized as a “periodical.” *See* 37 CFR 202.3(b)(1)(v) (defining a “serial”); *see also* 75 FR 3863, 3865 (Jan. 25, 2010) (noting that works “that are constantly updated with no demarcation between particular, discrete issues of the publication” are not considered serials).

Although the Proposed Rule does not extend to newspaper websites, the Office is aware of the need for establishing new and updated practices for examining and registering online works. *See, e.g.*, Comments of Newspaper Association of America (urging the Office to create a group registration option for newspaper websites), *available at* <http://www.copyright.gov/rulemaking/online-only/comments/naa.pdf>; Comments of the National Writers Union, Western Writers of America, and American Society of Journalists and Authors (urging the Office to create a group registration option for multiple works published online on different dates), *available at* <https://www.regulations.gov/contentStreamer?documentId=COLC-2016-0005-0009&attachmentNumber=1&disposition=attachment&contentType=pdf>; *see also* 81 FR

86634, 86636-37 (Dec. 1, 2016); 81 FR 86643, 86646 (Dec. 1, 2016). The Office is considering these issues and will take them into account when developing its priorities for future upgrades to the electronic registration system. In the meantime, this Proposed Rule makes made some interim improvements to the current registration system to benefit newspaper publishers, the Library, and the public at large.

B. Application Requirements

1. Online Registration

The Office has allowed and encouraged applicants to register their works through the electronic registration system since 2007. *See* 72 FR 36883 (July 6, 2007). When the online registration system was introduced, applicants could submit their works on an individual basis. *See id.* But applicants could not submit a group registration covering multiple newspaper issues because the system was not designed to receive the information required for such a registration. Instead, applicants were required to file their claims on a paper application using Form G/DN.

On December 14, 2012, the Office made some modifications to its electronic registration system to allow newspaper publishers to submit their claims with the online application. Under the Proposed Rule, applicants will be required to use the electronic application designated for a group of newspaper issues as a condition for seeking a group registration. The Office will no longer accept groups of newspaper issues submitted for registration on paper using Form G/DN. If, after the effective date of this rule, such paper applications are received, the Office will refuse registration and instruct the applicant to resubmit the claim through the electronic system. The Office invites comment on this proposal, including whether the Office should eliminate the paper application for

newspaper issues, phase it out after a specified period of time, or continue to offer Form G/DN for applicants who prefer to use the paper-based system.

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). 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.

The Office recently issued a final rule that modified the regulation governing this procedure. 82 FR 27424 (June 15, 2017). This rule requires applicants to file an online application in order to correct or amplify the information set forth in a basic registration for any work capable of being registered through the electronic system, rather than filing a paper application. This online filing requirement will apply to supplementary registrations for groups of newspaper issues—even if the issues were originally registered using Form G/DN. *See* 81 FR at 86657 & n.3. If an applicant attempts to use a paper application to correct or amplify a registration for a group of newspaper issues, the Office will refuse registration and instruct the applicant to resubmit the claim using the online version of this form.

3. Policy Considerations Supporting Online-Only Registration

The Office’s decision to offer a group option is entirely discretionary, and Congress gave the Office broad authority to establish the requirements for these types of claims. 17 U.S.C. 408(c)(1). Currently, the vast majority of the claims submitted on Form

G/DN require correspondence or other action from the Office. Applicants routinely file claims that are not eligible for this group option, such as submitting a full year of issues instead of limiting the claim to one month, or submitting claims long after the deadline has expired (*i.e.*, more than three months after the date of publication for the most recent issue in the group). In addition, applicants routinely fail to provide information expressly requested on the form, such as the title of the newspaper, issue numbers, publication dates, or the name of the author and claimant. Often applicants add extraneous information that is not requested, such as providing a transfer statement explaining how the claimant acquired the copyright in the issues. In each case, the Office must scan these paper applications into the registration system and input the relevant information by hand. This is a cumbersome, labor-intensive process, and if it is done incorrectly, the information must be re-entered into the system. In many cases, the Office must contact the applicant to request additional information or permission to correct the application.

Addressing these issues imposes significant burdens on the Office's limited resources, and has had an adverse effect on the examination of other types of works within the Literary Division of the Registration Program. Eliminating the paper application should mitigate many of these problems. Among other improvements, the online application contains automated validations that prevent applicants from submitting applications that fail to comply with the eligibility requirements for this group option, such as including too many issues in the group (*i.e.*, more than one month of issues), or failing to submit the claim within the time allowed (*i.e.*, more than three months after the publication of the issues in the group).

For these reasons, the Office believes that requiring applicants to submit online applications is necessary to avoid a significant fee increase and to improve the overall efficiency of the group registration process. Nonetheless, the Office invites comment on this aspect of the Proposed Rule.

C. Deposit Requirements

The Proposed Rule will amend the deposit requirements for this group option by requiring applicants to submit their newspapers in digital form and upload each issue through the electronic system. Applicants will no longer be required to submit microfilm as a condition for using the group registration option—but they may do so voluntarily if the microfilm is received before December 31, 2019 (in addition to providing digital copies). After that, the microfilm requirement will be phased out. These proposals are discussed below.

1. Digital Deposit Requirement

To register a group of newspapers under the Proposed Rule, applicants will be required to submit a complete copy of each issue in the group, regardless of whether the Library has selected that newspaper for its collections. This will ensure that the Office receives the entire content of each issue for the purpose of examining, indexing, and documenting claims. The interim practice allowing applicants to submit the earliest and most recent issues for a particular month or excerpts from those issues (discussed above in Section II) will be eliminated. While this interim practice was well-intentioned, it allows newspaper publishers to register an entire month of issues without submitting a complete copy of each issue in the group. This reduces the evidentiary value of the

registration and the public record, because only a fraction of the issues in the group are examined for copyrightable authorship.

The Proposed Rule reiterates that applicants must submit the final edition of each issue that was published in the month specified in the application. The current regulation states that applicants may submit earlier editions of the same newspaper if they were published on the same date as the final edition. 37 CFR 202.3(b)(7)(i)(D). The Office is aware that most newspapers no longer publish multiple print editions throughout the day, such as the “morning,” “afternoon,” “evening,” or “late” edition of a particular newspaper.¹³ Therefore, the Office requests comment on whether this provision should be retained in the Proposed Rule. Under the current regulation, applicants may also include “local editions” of the newspaper that were published within the same metropolitan area (such as the Brooklyn, Bronx, Manhattan, Queens, and Staten Island editions of a New York City paper), but they may not include national or regional editions that were distributed outside that metropolitan area. *See id.*; *see also* H.R. REP. NO. 94-1476, at 153 (1976) (authorizing the Register “to make exceptions or special provisions” for “multipart newspaper editions”). Although the Proposed Rule retains this longstanding restriction, the Office requests comment on whether it should be retained.

In all cases, applicants will be required to submit a digital copy of each issue, rather than a physical copy. Under the Proposed Rule, the Office will no longer accept physical copies, such as a print copy or photocopy of each issue in the group (although, as discussed below, newspaper publishers may provide microfilm *in addition to* digital copies on a voluntary basis until December 31, 2019). Likewise, the Office will not

¹³ Newspaper websites typically update their content throughout each day, but as discussed in Section III.A.6, they are not eligible for the group option.

accept digital copies that have been saved onto a flash drive, disc, or other physical storage medium that is delivered to the Office by mail, courier, or hand delivery.

In addition, the Office will have a number of technical requirements for the digital files. Specifically, applicants will be required to submit electronic files in Portable Document Format (“PDF”). Each newspaper issue in the group must be submitted to the Office as one discrete, self-contained collective work (*i.e.*, as one PDF file per issue with the pages in reading order). In each case, the file name must adhere to the file-naming conventions specified on the Office’s website and/or in the *Compendium*. The Office proposes that each file name start with the letters “GRNP,” followed by the International Standard Serial Number (“ISSN”) for that newspaper, and the publication date in a “YYYYMMDD” format. If a newspaper publishes multiple editions on the same date (*e.g.*, morning, evening, and late editions), the publisher will be permitted to combine all of the editions in a single electronic file, assuming the file does not exceed file size requirements (discussed below), the editions are separate, and all pages are in sequential reading order. In addition, the metadata for each file should contain the newspaper’s ISSN in the “dc:identifier” or “xmp: identifier” fields, the publication date in the “dc:date” field, and each file should be viewable and searchable, contain embedded fonts, and be free from any access restrictions (such as those implemented through Digital Rights Management (DRM)). Applicants will be required to assemble the files in an orderly form, and upload them through the electronic registration system. When uploading the files, applicants will not be permitted to upload .zip files to the system, and should instead upload files individually. In all cases, the size of each uploaded file may not

exceed 500 megabytes, although applicants may digitally compress the files to comply with this limitation.

If the applicant's electronic files do not comply with the Office's technical requirements, the Copyright Acquisitions Division ("CAD") will contact the publisher and ask for replacement files. If the publisher does not provide replacement files, CAD will notify the Literary Division of the Registration Program, which will review that publisher's future electronic submissions for similar deficiencies, and may refuse registration if there are similar defects. If an applicant is unable to comply with the application requirements at the time of filing the application, the applicant may request special relief from the deposit requirements under 37 CFR 202.20(d). *See* 82 FR at 29412. The Office seeks public comment on the proposed digital file requirements.

Requiring applicants to upload digital copies to the electronic system will increase the efficiency of the group registration process. The Office does not need physical copies to examine a newspaper for copyrightable authorship, or to determine whether the applicant satisfied the formal and legal requirements for this group option. *See* 17 U.S.C. 410(a) (providing that the Register of Copyrights must determine whether "material deposited [for registration] constitutes copyrightable subject matter"). Indeed, physical copies slow down the examination process. Electronic submissions take less time to process, and are easier to track and handle than physical copies. A registration specialist can examine a digital copy as soon as it has been uploaded to the electronic registration system. By contrast, when an applicant submits an online application and mails a physical deposit to the Office, it may take weeks to connect the application with the

correct deposit. In addition, each copy must be moved multiple times during the examination process.

Requiring digital uploads may also provide newspaper publishers with certain legal benefits. When the Office registers a group of newspapers and issues a certificate of registration, the effective date of registration is the date on which the Office received the application, filing fee, and deposit in proper form. When an applicant uploads a digital copy of the deposit to the electronic system, the Office typically receives the application, filing fee, and deposit on the same date. By contrast, when an applicant sends physical copies to the Office the deposit may arrive long after the date that the application and filing fee were received—thereby establishing a later effective date of registration.

Moreover, if an applicant uploads a complete copy of the newspaper through the electronic registration system, the Office will retain a digital copy of those issues in its repository of electronic deposits. Digital copies are much easier to store and retrieve. This is critical if the copyright owner or other interested parties need to obtain a copy of a particular issue for use in litigation or another legitimate purpose. The current regulation assumes that a complete copy of each issue will be sent to the Library on microfilm, which may be used to identify the work, if necessary. But as discussed above, many applicants do not currently submit their newspapers on microfilm because the Library has not selected them for its collections. Instead, they often submit a small portion of each issue, which is permitted under the interim rule discussed in Section II.

The Office recognizes that some publishers may not have a digital copy of their issues or may find it difficult to create a digital copy for the purpose of seeking a group registration. The Office will address these concerns on a case-by-case basis. If an

applicant is unable to upload a particular newspaper to the electronic system, the applicant may request special relief from the deposit requirements under 37 CFR 202.20(d). *See* 82 FR at 29412.

2. Microfilm Permitted, But Not Required, For an Interim Period

The current regulation states that the applicant must provide the Library with microfilm containing a complete copy of each issue as a condition for using the group registration option. As discussed in more detail below, microfilm will no longer be required when the Final Rule goes into effect—even if the Library has selected that newspaper for its collections. In addition to digital files, newspaper publishers may provide microfilm on a voluntary basis if the microfilm is received by December 31, 2019. After that, the microfilm option will be phased out.

The next few sections discuss the reasons for phasing out the microfilm requirement, as well as the procedure for submitting microfilm to the Office on a voluntary basis.

a. Policy Considerations Supporting the Phasing Out of the Microfilm Requirement

Section 408(c) of the Copyright Act authorizes the Register to create discretionary registration options for groups of related works, including the applicable deposit requirements. In administering the group registration option for newspapers, the Register must balance the Library's need for microfilm deposits against the potential impact on the newspaper publishing industry. On the one hand, the microfilm requirement has benefitted the Library and the public by providing newspapers in a format suitable for long-term preservation, and at no cost to the government. It benefits researchers accessing these copies at the Library or through interlibrary loan. The regulation also

creates a potential supply of microfilm that otherwise might not exist, which may benefit local and regional libraries, assuming they are able to purchase microfilm from publishers for use in their own collections.

On the other hand, the current microfilm requirement does impose a burden on publishers if their newspapers have been selected for the Library's collections. This requirement appears to have been less burdensome when the newspaper group option was adopted in 1990. At that time, newspaper publishers apparently hired microfilm producers to transfer paper newspaper issues onto microfilm for their own archival preservation instead of keeping physical copies. Thus, newspaper publishers were creating microfilm copies in the ordinary course of business. Some publishers offered copies of their microfilm to libraries and other institutions, including the Library of Congress, to offset this cost.

Needless to say, the newspaper publishing industry has since changed dramatically, and the microfilm requirement may have become more burdensome over the past twenty-five years. Representatives of the newspaper industry have informed the Office that most publishers no longer preserve their works on microfilm, and instead make digital copies for archival purposes. *See Hearing on U.S. Copyright Office: Its Functions and Resources, Before the H. Comm. on the Judiciary, 114th Cong., 1st Sess., at 105 (2015) (statement of Keith Kupferschmid).* In addition, representatives of the newspaper industry have stated that only a few companies provide microfilming services in the United States, and there can be significant delays in producing microfilm, which often prevents publishers from seeking registration in a timely manner. To the extent publishers transfer their newspapers onto microfilm, they apparently do so solely for the

purpose of registering their works with the Office (*i.e.*, to comply with the current regulatory requirements for the group newspaper option).

In addition, representatives of the newspaper industry have informed the Office that “many newspapers are no longer registering their works with the Copyright Office because the Library requires that newspaper deposits be in microfilm format.” *Id.* at 5. The Office has found evidence to support this statement. In reviewing its registration records for fiscal years 2010 through the first half of fiscal year 2015, the Office found that nearly 70% of the U.S. newspapers selected for the Library’s collections were not registered during this period. Accordingly, although group registrations are intended to reduce “unnecessary burdens and expenses” that may discourage authors and copyright owners from registering their works with the Office, requiring newspaper publishers to submit their issues on microfilm may well have the opposite effect. *See* H.R. REP. NO. 94-1476, at 154 (1976); S. REP. NO. 94-473, at 136 (1975).

Because newspapers have turned increasingly to online publishing, the Library has been considering how to incorporate online publishing into its collections. As part of that effort, in February 2016, the Library initiated a pilot project with the News Media Alliance known as the “Newspaper ePrint Technical Pilot.” The pilot involved collecting electronic files from six newspapers over two phases, with the goal of “explor[ing] the technical feasibility of accepting electronic copies of newspapers in lieu of physical deposits.” Library of Congress and News Media Alliance (NMA) Technical Pilot project, *Report on ePrints 2* (March 4, 2017). The goals of the pilot were to (i) explore various types of PDFs and metadata generated by newspaper publishers, (ii) test a range of technical methods that newspaper publishers might use to deliver this type of content to

the Library, and (iii) inform future decisions about recommended formats for group registration of newspapers. *Id.* at 3. On March 4, 2017, the Library issued its report, ultimately concluding that “[t]he results give the team confidence that ePrints could be a viable technical alternative to microfilm deposits for newspapers.” *Id.* at 11.

b. Transitional Period For Submitting Microfilm

Based on the results of this pilot and the changes in the newspaper publishing industry, the Office is proposing to eliminate the microfilm requirement. Representatives of the newspaper industry have informed the Office that they generally support this proposal. But some publishers noted that they have entered into long-term contracts with microfilm producers that are still in effect. Others stated that they need time to develop internal procedures and quality assurance testing to ensure that their submissions contain a complete copy of each issue.

To give publishers an opportunity to exhaust their microfilm production contracts, and to ease the transition to the new model, the Proposed Rule will allow newspaper publishers to submit microfilm on a voluntary basis (in addition to the required digital deposits for registration). Specifically, publishers may continue to submit microfilm if the microfilm is received by December 31, 2019.¹⁴ After that, the Office will no longer accept microfilm.

Under the Proposed Rule, if the applicant chooses to submit a microfilm copy in addition to the digital files discussed above in Section III.C.1, the applicant would have to provide positive 35mm silver halide microfilm containing the final edition of each

¹⁴ If the Library receives microfilm for a newspaper that it has not selected for its collections, the microfilm may be offered to another institution through the Library’s Surplus Books program. *See generally* <https://www.loc.gov/acq/surplus.html>.

issue that was published during the month specified in the application.¹⁵ The issues would have to be arranged on the microfilm in chronological order and the microfilm copy should be sent to CAD rather than to the Registration Program.¹⁶ The Registration Program does not need microfilm to determine whether the newspaper issues are copyrightable or whether the formal and legal requirements for this group option have been satisfied. The examiner can make these determinations based on his or her review of the digital copies provided with the application (described in Section III.C.1). Moreover, because the Registration Program does not have a reliable, functioning microfilm reader, examiners may be unable to review the film to determine whether it meets the Library's needs.

The Office requests comment on these proposals. The Office is particularly interested in knowing whether the proposed phase-out period will give publishers a sufficient amount of time to exhaust their current contracts or whether a longer period would be needed.

3. Public Access to Digital Deposits

When the Office established the group registration option for newspapers, it implicitly recognized that publishers could satisfy their obligations under mandatory deposit by registering their issues with the Office and providing the Library with a copy of those issues on microfilm—although this was not explicitly stated in the regulation

¹⁵ The regulation currently states that the microfilm must meet “the Library’s best edition criteria.” 37 CFR 202.3(b)(7)(i)(D). The Proposed Rule eliminates this phrase, because it is redundant of what is stated elsewhere in the regulation. *Compare id.* (requiring “positive, 35mm silver halide microfilm”) with Appendix B to Part 202, VII.B.1-2, X.A.1 (expressing the Library preference for collecting newspapers in “microform” rather than “printed matter,” consisting of “positive rather than negative” film, “silver halide rather than any other emulsion,” and “35 mm rather than 16 mm”).

¹⁶ Packages delivered to CAD by mail or by courier may be irradiated to destroy possible contaminants, such as anthrax. This process may damage microfilm. To avoid this problem, claimants are encouraged to send microfilm in boxes rather than envelopes.

itself. The Proposed Rule codifies this understanding by stating that publishers may comply with mandatory deposit by registering their newspapers using the group registration option.

The Copyright Act provides that all copies deposited with the Office for mandatory deposit and registration purposes under sections 407 and 408 “are the property of the United States Government,” and that, in the case of published works, those copies “are available to the Library of Congress for its collections.” 17 U.S.C. 704(a)–(b). The Office has received digital files submitted by registration applicants under section 408 since it launched its electronic registration system in 2007. Although digital registration deposits submitted for registration are stored on Library-operated servers, the Library has to date not incorporated these digital deposits into its general collections or made them available to its patrons.

In addition, electronic works not published in physical formats are—with one exception—exempt from all mandatory deposit requirements under section 407. *See* 37 CFR 202.19(c)(5). The one exception to the general exemption from mandatory deposit rules for electronic-only works is for electronic serials. Electronic serials that are fixed and published solely online are subject to mandatory deposit if the Office issues a written demand for a particular serial under section 202.24 of the regulations. 37 CFR 202.19(c)(5), 202.24(a). If the Office demands an electronic serial under this provision, the publisher is expected to submit a digital copy of that serial for use in the Library’s collections. Currently, Library staff and members of the general public may access these copies using the Library’s facilities. The Library provides access to these files via a

secure network, and access is currently limited, at any one time, to two authorized users. *See* 75 FR 3863, 3867–68 (Jan. 25, 2010).

With this notice of proposed rulemaking, the Office notes that, for the first time, the Library plans to incorporate digital copies of works submitted for registration under section 408 into the Library’s collections, and provide public access to those digital copies. To regulate such public access, the Proposed Rule borrows and codifies the existing public access practices used for electronic serials obtained under section 407; specifically, the Proposed Rule establishes a new section 201.18, entitled “Access to electronic works.” That provision clarifies that the Library may make these digital files available to “authorized users,” meaning (i) Members, staff, and officers of the U.S. House of Representatives and the U.S. Senate, (ii) Library of Congress staff and its contractors, and (iii) registered researchers who use the Library’s facilities in Washington, DC and Culpeper, Virginia. The limitation permitting access to two authorized users at any one time applies across all Library facilities. It also clarifies that the Library may not make these files available to the public over the internet without the copyright owner’s permission.

To be clear, while the Proposed Rule would permit public access to digital copies only to newspapers received by the Office under the group registration option, over time the Library would like to expand this new provision to address public access to digital registration deposits for other types of digital works. Before expanding such access, however, the Office will issue separate rulemakings to notify the public.

D. The Filing Fee Requirement

Under the Proposed Rule, the applicant will be required to pay the same filing fee currently set forth in the Office's fee schedule, namely \$80 per claim. The Proposed Rule clarifies that this fee must be included with the application or charged to an active deposit account. Once the Proposed Rule has been implemented, the Office will monitor the cost of processing newspapers through the electronic system to determine if future fee adjustments may be warranted, and may use this information in conducting its next fee study.

E. Timeliness Requirements

The current regulation states that newspaper publishers must submit their claims within three months after the publication of the most recent issue in the group. 37 CFR 202.3(b)(7)(i)(F). The Proposed Rule maintains the three-month deadline, but will require applicants to submit their claims within three months after the publication of the *earliest* issue—rather than the *most recent issue*—in the group.¹⁷

Compliance with this requirement may provide newspaper publishers with certain legal benefits. Publishers must register their issues in a timely manner to seek statutory damages and attorney's fees in an infringement action. Specifically, a publisher typically may seek these remedies if a newspaper issue was registered (i) before the infringement commenced or (ii) within three months after the first publication of that work. *See* 17 U.S.C. 412. Requiring applicants to submit their claims within three months after publication of the earliest issue would give publishers the ability to seek statutory

¹⁷ The regulation currently states that registration must be "sought" within three months after publication of the last issue in the group, while the Proposed Rule states that the application, filing fee, and deposit must be "received" in the Office within three months after publication. The Office notes that, under the Proposed Rule, the date that a registration is "sought" and the date that the application, fee, and deposit are "received" are typically the same—particularly when the claim is submitted through the electronic registration system. The change in language is simply intended to clarify this point.

damages and attorney's fees for each issue in the group. For example, if the applicant sought to register issues published between June 1st and June 30th, the applicant would be required to submit the claim on or before September 1st. By doing so, the applicant would preserve the ability to seek statutory damages and attorney's fees for infringement occurring after the effective date of registration (*i.e.*, after September 1st), as well as infringement occurring within three months after the publication of the earliest issue in the group (*i.e.*, between June 1st and September 1st). Moreover, the publisher would be able to seek these remedies for each issue in the group, because all of the issues were first published within that three-month period.

By contrast, the current regulation allows an applicant to submit a claim up to four months after the publication of the earliest issue in the group, which may limit the remedies that a publisher may seek in an infringement action. For instance, in the previous example, the applicant could wait until September 30th to register issues published in the month of June, rather than submitting the claim on September 1st. The publisher would be able to seek statutory damages and attorney's fees for infringement involving the June 30th issue occurring after the effective date of registration (*i.e.*, after September 30th), or within three months after the publication of the most recent issue in the group (*i.e.*, between June 30th and September 30th). But the publisher would *not* be entitled to these remedies for infringement involving the issues published on June 1st through June 29th, because they were received by the Office more than three months after the publication of those issues.

Under the Proposed Rule, the date that optional microfilm copies are received by the Office would be irrelevant. This represents a significant improvement compared to

the current process, in which the Office routinely receives microfilm between four to six months after the publication of the most recent issue in the group. On some occasions the Office has received microfilm one or two years after the deadline has expired.

Representatives of the newspaper industry have informed the Office that these delays are due to the high cost of producing microfilm. Many publishers cannot afford to send their newspapers to a microfilm producer until they have a sufficient number of issues to justify the cost, which delays the production and delivery of the microfilm. Given these obstacles, it is unreasonable to penalize publishers for failing to transfer their newspapers onto microfilm within three months after publication.

F. Technical Amendments

The Proposed Rule will move the regulation governing the newspaper group option from section 202.3 to section 202.4. Going forward, the Office intends to move all regulations governing the various group options implemented under section 408(c) of the Copyright Act to section 202.4. This change is intended to improve the readability of existing regulations and does not represent a substantive change in policy.

In addition, the Proposed Rule incorporates the regulatory definitions from sections 202.3 and 202.20 into section 202.4, to apply to the various group registration options.

The Proposed Rule also confirms that an application for a group of newspaper issues may be submitted by any of the parties listed in section 202.3(c)(1), namely, (i) the author or copyright claimant of those works, (ii) the owner of any of the exclusive rights in those works, or (iii) a duly authorized agent of any author, claimant, or owner of exclusive rights.

Finally, the Proposed Rule contains an unrelated technical amendment, which removes the terms “single application” and “single registration” and replaces them with the terms “application” and “group registration.” 37 CFR 202.3(b)(7)(i). This is intended to avoid potential confusion with the “single application,” a special application that may 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)(i)(B).

IV. Conclusion

The Proposed Rule will encourage broader participation in the registration system, and increase the efficiency of the process for both the Office and copyright owners alike, while providing the Library with a means for adding newspapers to its collections in an archival-quality format. The Office invites public comment on each of these proposed changes, including:

Eligibility Requirements.

1. The proposed definition of “newspaper issues,” including making the group registration option to all newspapers, regardless of whether they have been selected to be received and retained by the Library, and classifying a newspaper as a “periodical.”
2. The clarification that all issues in the group must be published and bear issue dates within the same calendar month.
3. The proposed authorship, ownership, and work made for hire requirements.
4. The proposed requirement that each newspaper issue in the group must be an all-new collective work that has not been previously published.

5. The proposed clarifications for the scope of protection for newspaper issues, versus individual contributions appearing within those issues.
6. The clarification that each newspaper issue in the group must be fixed and distributed as a discrete, self-contained collective work.

Application Requirements

7. The proposed requirement that applicants use the electronic application designated for a group of newspaper issues as a condition for seeking a group registration, and whether the current online filing requirement for supplementary registrations relating to groups of newspaper issues should be retained.

Deposit Requirements

8. The proposed requirement that applicants submit a complete digital copy of the final edition of each issue in the group, regardless of whether the newspaper was selected to be received and retained by the Library, as well as any of the proposed file submission requirements.
9. The proposed phase-out of the practice of accepting microfilm deposits by December 31, 2019.
10. The proposed parameters for public access to digital deposits of newspaper issues, including the Library making digital copies available to two authorized users at a time at the Library's facilities, and considerations related to secure storage of and access to such digital deposits.

Timeliness Requirement

11. The proposed requirement that applicants submit their claims within three months after the publication of the earliest issue in the group.

List of Subjects in 37 CFR Part 201

Copyright, General provisions.

List of Subjects in 37 CFR Part 202

Copyright, Preregistration and registration of claims to copyright.

Proposed Regulation

For the reasons set forth in the preamble, the 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. In § 201.1, revise paragraph (c)(6) to read as follows:

§ 201.1 Communication with the Copyright Office.

* * * * *

(c) * * *

(6) *Copyright Acquisitions.* Deposit copies submitted under section 407 of the Copyright Act should be addressed to: Library of Congress, U.S. Copyright Office, Attn: 407 Deposits, 101 Independence Avenue SE, Washington, DC 20559. Newspaper publishers that submit microfilm under § 202.4(e) of this chapter should mail their submissions to: Library of Congress, U.S. Copyright Office, Attn: 407 Deposits, 101 Independence Avenue SE, Washington, DC 20559.

* * * * *

3. In § 201.3, revise paragraph (c)(6) to read as follows:

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

* * * * *

(c) * * *

(6) Registration of a claim in a group of newspapers or a group of newsletters	80
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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.

5. Amend § 202.3 as follows:

- a. Revise paragraph (a)(2).
- b. Amend paragraph (b)(1)(v) by removing “periodicals; newspapers” and adding in its place “periodicals (including newspapers)”.
- c. Remove and reserve paragraph (b)(7).

The revision reads as follows:

§ 202.3 Registration of copyright.

* * * * *

(a) * * *

(2) For the purposes of this section, the term *author* includes an employer or other person for whom a work is “made for hire” under section 101 of title 17.

* * * * *

6. Amend § 202.4 as follows:
 - a. Revise paragraph (b).
 - b. Add paragraph (e).
 - c. Amend paragraph (g)(4) by removing the second sentence.
 - d. Amend paragraph (m) by adding the first sentence.

The addition and revisions read as follows:

§ 202.4 Group Registration.

* * * * *

(b) *Definitions.* (1) For purposes of this section, unless otherwise specified, the terms used have the meanings set forth in § 202.3 and § 202.20.

(2) For purposes of this section, the term *Library* means the Library of Congress.

(3) For purposes of this section, a *periodical* is a collective work that is issued or intended to be issued on an established schedule in successive issues that are intended to be continued indefinitely. In most cases, each issue will bear the same title, as well as numerical or chronological designations.

* * * * *

(e) *Group registration of newspapers.* Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that a group of newspaper issues may be registered with one application, one filing fee, and the required deposit, and the filing fee required by § 201.3(c) of this chapter, if the following conditions are met:

(1) All the issues in the group must be newspapers. For purposes of this section, a newspaper is a periodical (as defined in paragraph (b)(3) of this section) that is mainly designed to be a primary source of written information on current events, either local,

national, or international in scope. A newspaper contains a broad range of news on all subjects and activities and is not limited to any specific subject matter. Newspapers are intended either for the general public or for a particular ethnic, cultural, or national group.

(2) Each issue in the group must be an all-new collective work that has not been previously published (except where earlier editions of the same newspaper are included in the deposit together with the final edition), each issue must be fixed and distributed as a discrete, self-contained collective work, and the claim in each issue must be limited to the collective work.

(3) Each issue in the group must be a work made for hire, and the author and claimant for each issue must be the same person or organization.

(4) All the issues in the group must be published under the same continuing title, and they must be published within the same calendar month and bear issue dates within that month. The applicant must include the final edition of each issue published within that month, and must identify the earliest and latest date that the issues were published. The applicant may include earlier editions of the same newspaper, provided that they were published on the same date as the final edition. The applicant also may include local editions of the newspaper that were published within the same metropolitan area, but may not include national or regional editions that were distributed outside that metropolitan area.

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

(6) *Deposit.* (i) The applicant must submit one complete copy of the final edition of each issue published in the calendar month designated in the application. Each copy may include earlier editions of the same newspaper, provided that they were published on the same date as the final edition. Each copy may also include local editions of the newspaper that were published within the same metropolitan area, but may not include national or regional editions that were distributed outside that metropolitan area.

(ii)(A) The issues must be submitted in a 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 (DRM)). The file size for each uploaded file must not exceed 500 megabytes, but files may be compressed to comply with this requirement.

(B) The applicant may also submit the issues on positive 35mm silver halide microfilm, provided that the microfilm is received by December 31, 2019. The issues should be arranged on the microfilm in chronological order, and should be sent to: Library of Congress, U.S. Copyright Office, Attn: 407 Deposits, 101 Independence Avenue SE, Washington, DC 20559.

(7) The application, the filing fee, and files specified in paragraph (e)(7)(ii)(A) of this section must be received by the Copyright Office within three months after the date of publication for the earliest issue in the group.

* * * * *

(m) *The scope of a group registration.* When the Office issues a group registration under paragraph (e) of this section, the registration covers each issue in the group and each issue is registered as a separate collective work. * * *

7. Add § 202.18 to read as follows:

§ 202.18 Access to electronic works.

(a) Access to electronic works received under § 202.4(e) will be available only to authorized users at Library of Congress facilities in accordance with the policies listed below. Library staff may access such content off-site as part of their assigned duties via a secure connection.

(b) Access to each individual electronic work received under § 202.4(e) will be limited, at any one time, to two Library of Congress authorized users via a secure server over a secure network that serves Library of Congress facilities.

(c) The Library of Congress will not make electronic works received under § 202.4(e) available to the public over the Internet without rightsholders' permissions.

(d) "Authorized user" means Library of Congress staff, contractors, and registered researchers, and Members, staff and officers of the U.S. House of Representatives and the U.S. Senate for the purposes of this section.

(e) “Library of Congress facilities” means all Library of Congress facilities in Washington, D.C., and the Library of Congress Packard Campus for Audio–Visual Conservation in Culpeper, VA.

8. In § 202.19, add paragraph (d)(2)(ix) to read as follows:

§ 202.19 Deposit of published copies or phonorecords for the Library of Congress.

* * * * *

(d) * * *

(2) * * *

(ix) In the case of published newspapers, a deposit submitted pursuant to and in compliance with the group registration option under § 202.4(e) shall be deemed to satisfy the mandatory deposit obligation under this section.

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Dated: October 30, 2017

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

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