



## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Part 202

[Docket No. 2017-16]

#### Group Registration of Newspapers

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

**ACTION:** Final rule.

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**SUMMARY:** The U.S. Copyright Office is amending its regulation governing the group registration option for newspaper issues. This rule will eliminate the three-month deadline for submitting this type of claim. Based on requests received from several newspaper publishers, the Office has determined that there is a legitimate need to make this change effective immediately.

**DATES:** Effective **February 18, 2019**.

**FOR FURTHER INFORMATION CONTACT:** Regan A. Smith, General Counsel and Associate Register of Copyrights; 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 [regans@copyright.gov](mailto:regans@copyright.gov), [rkas@copyright.gov](mailto:rkas@copyright.gov) and [ebertin@copyright.gov](mailto:ebertin@copyright.gov).

**SUPPLEMENTARY INFORMATION:** In 1992 the Copyright Office established a group registration option that allows newspaper publishers to register an entire month of issues with one application and one filing fee.<sup>1</sup> Initially, applicants were required to submit a paper application and submit microfilm deposit copies, and they had to submit

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<sup>1</sup> 57 FR 39615 (Sept. 1, 1992).

these materials within three months after the publication of the most recent issue in the group.<sup>2</sup> This deadline was intended to benefit the Library of Congress by ensuring that newspaper issues could be added to its collections and made available to its patrons in a timely manner. But newspaper publishers often submitted their claims after the three-month deadline due to the high cost of producing microfilm. Many publishers could not afford to send their newspapers to a microfilm producer until they had a sufficient number of issues to justify the cost, which delayed the production and delivery of the microfilm.<sup>3</sup>

Last year the Office updated its regulation governing this group registration option.<sup>4</sup> Under the current rule, a publisher may register a group of newspapers if the applicant submits the claim using the appropriate electronic application and submits a PDF copy of each issue within three months after the publication of the earliest issue in the group.<sup>5</sup> Unlike the paper application, the electronic registration system contains automated validations that enforce this three-month deadline.

Since the Office implemented these new requirements, several newspaper publishers have reported difficulty and delays in creating PDF copies. Many publishers have not been able to submit their claims before the three-month deadline. And some publishers have attempted to bypass the validations in the electronic system by submitting a paper application and microfilm copies. The Office has refused to register these claims, because they were submitted on a paper form and with the wrong deposit,

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<sup>2</sup> 37 CFR 202.3(b)(6)(F) (1992).

<sup>3</sup> 82 FR 51369, 51378 (Nov. 6, 2017).

<sup>4</sup> 83 FR 4144 (Jan. 30, 2018).

<sup>5</sup> 37 CFR 202.4(e). The new deadline was based on the date of publication for the earliest issue in the group (rather than the most recent) for the reasons stated in the notice of proposed rulemaking dated November 6, 2017. *See* 82 FR at 51377–78.

or because they were received after the deadline. On average, it takes three months or more to process a paper application and a physical deposit,<sup>6</sup> so by the time the Office has issued a refusal, the publisher may not have an opportunity to resubmit their claim on the appropriate form and with an appropriate deposit.

To address these problems and ensure that newspaper publishers can obtain the statutory benefits of registration, the Office has decided to eliminate the three-month filing requirement. This will provide more flexibility for applicants, and allow them to register issues that otherwise would be ineligible for registration. The Office will remove the automated validation that prevents publishers from submitting issues that are more than three months old. Beginning on **February 18, 2019**, publishers will be permitted to submit claims through the electronic registration system, regardless of when their issues were published. Likewise, publishers may electronically resubmit claims that were refused because they were filed on a paper form or without a digital deposit, or because they were received after the three month deadline. To do so, publishers must submit a new application (using the electronic form designated for newspaper issues), a new digital deposit, and a new filing fee.

The Office will monitor this change to the rule to determine whether it succeeds in incentivizing increased registrations and to ensure that it does not have an adverse effect on the Library's collections. In the meantime, the Office has prepared a video tutorial that provides step-by-step instructions on how to complete the electronic application and upload digital copies.<sup>7</sup> The help text that accompanies the application

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<sup>6</sup> See U.S. Copyright Office, *Registration Processing Times*, available at <https://www.copyright.gov/registration/docs/processing-times-faqs.pdf>.

<sup>7</sup> See *Group of Newspaper Issues Tutorial*, U.S. COPYRIGHT OFFICE, <https://www.copyright.gov/eco/newspaper.mp4>.

also provides answers to frequently asked questions.<sup>8</sup> And the Office has published a circular that provides detailed information about the group registration process.<sup>9</sup>

The Office still encourages publishers to submit their claims within three months of publication, because it may provide certain legal benefits. To seek statutory damages and attorney's fees in an infringement action, publishers must register their issues in a timely manner. 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.

The Office finds there is good cause for adopting this amendment without first publishing a notice of proposed rulemaking, because it is a “rule[] of agency organization, procedure, or practice.”<sup>10</sup> It does not adversely “alter the rights or interests of parties”—if anything, it eases the requirements for applicants choosing to exercise this option by removing the time restriction on its availability.<sup>11</sup> It therefore merely “alter[s] the manner in which the parties present themselves . . . to the agency.”<sup>12</sup> *Id.* Thus, notice and comment is not required under the Administrative Procedure Act.

All other provisions in the current regulation on group registration of newspapers remain unaffected.

## **List of Subjects in 37 CFR Part 202**

Copyright.

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<sup>8</sup> *See Help: Group Registration of Newspaper Issues*, U.S. COPYRIGHT OFFICE, <https://www.copyright.gov/eco/help-newspapers.html>.

<sup>9</sup> *See* U.S. Copyright Office, *Circular 62A: Group Registration of Newspapers* (2018), available at <https://www.copyright.gov/circs/circ62a.pdf>.

<sup>10</sup> 5 U.S.C. 553(b)(A).

<sup>11</sup> *JEM Broad. Co. v. FCC*, 22 F.3d 320, 326 (D.C. Cir. 1994); *see also* 5 U.S.C. 553(d)(1) (publication 30 days before effective date of substantive rule not required for rule that “grants or recognizes an exemption or relieves a restriction”).

<sup>12</sup> *JEM Broad. Co.*, 22 F.3d at 326.

For the reasons set forth above, 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.

**§ 202.4 [Amended]**

2. Amend § 202.4 by removing paragraph (e)(7).

Dated: January 31, 2019.

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

Approved by:

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**Carla D. Hayden,**  
*Librarian of Congress.*

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