



U.S. Copyright Office

[Docket No. 2019-03]

Compendium of U.S. Copyright Office Practices

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

ACTION: Update to Compendium of U.S. Copyright Office Practices, Third Edition.

SUMMARY: The U.S. Copyright Office is releasing an update to its administrative manual, the Compendium of U.S. Copyright Office Practices, Third Edition.

DATES: The updated version of the *Compendium of U.S. Copyright Office Practices, Third Edition* is available on the Office’s website as of [INSERT DATE 14 days after publication].

FOR FURTHER INFORMATION CONTACT: Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice, by email at rkas@copyright.gov; Catherine Zaller Rowland, Associate Register of Copyrights and Director of Public Information and Education, by email at crowland@copyright.gov; or Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at regans@copyright.gov. All can be reached by telephone at 202-707-8350.

SUPPLEMENTARY INFORMATION: The *Compendium of U.S. Copyright Office Practices, Third Edition* (“*Compendium*”) is the administrative manual of the U.S. Copyright Office. It “explains many of the practices and procedures concerning the Office’s mandate and statutory duties under title 17 of the United States Code.” 37 CFR 201.2(b)(7). “It is both a technical manual for the Copyright Office’s staff, as well as a guidebook for authors, copyright licensees, practitioners, scholars, the courts, and members of the general public.” *Id.* The Office conducted a comprehensive revision of the *Compendium* beginning in 2011, which it released as the Third Edition in December

2014. 79 FR 78911 (Dec. 31, 2014). The Third Edition was revised in 2017 to ensure that its contents were consistent with case law and Office practices. 82 FR 45625 (Sept. 29, 2017).

The Office released the latest draft revision to the *Compendium* on March 15, 2019 (the “Public Draft”). The Office posted the Public Draft on its public website and invited comments until May 31, 2019. The draft included proposed revisions to the sections discussing useful articles to reflect the Supreme Court’s decision in *Star Athletica v. Varsity Brands*, 137 S. Ct. 1002 (2017), as well as to reflect rulemakings the Office conducted in the intervening months since the last revision. It provided information regarding the new group registration options for unpublished works, unpublished photographs, published photographs, and serial, newspaper, and newsletter issues. It discussed the new deposit requirements for literary monographs, printed music, and photographic databases, as well as the changes to regulations governing use of the Single Application and Standard Application forms and technical upgrades to the electronic registration system. It also clarified certain Office practices, including under what circumstances the Office communicates with applicants, attempts to correct deficiencies in an application, registers claims with annotations, and refuses registration. An archived copy of the Public Draft is available on the Office’s website.¹

The Office received twenty-four comments on the Public Draft.² After carefully reviewing these comments, the Office decided to further revise a number of sections of the Public Draft. The result is a final update (the “Final Version”), which is discussed in detail below. Additionally, the Final Version: reflects the adoption of the Music Modernization Act in October 2018, the Marrakesh Treaty Implementation Act in October 2018, and the National Defense Authorization Act for Fiscal Year 2020; the

¹ See <https://www.copyright.gov/comp3/docs/compendium-draft.pdf>.

² The comments can be found at <https://regulations.gov/document/COLC-2019-0001-0001/comment>.

Supreme Court’s recent decisions in *Georgia v. Public.Resource.Org, Inc.*, 140 S. Ct. 1498 (2020), and *Fourth Estate Public Benefit Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881 (2019); the Second Circuit’s May 2020 decision in *Sohm v. Scholastic Inc.*, 959 F.3d 39 (2d Cir. 2020); as well as rulemaking activity that post-dated the Public Draft, including changes to the fee schedule and to regulations regarding registration of architectural works, the group registration option for short online literary works, group registration options for serials, newspapers, and newsletters, and changes in Office practices regarding the group registration option for unpublished works. A complete list of all sections that have been added, amended, revised, or removed is available on the Office’s website at <https://www.copyright.gov/comp3/revisions.html>, along with redlines that provide a direct comparison between the Final Version and the 2017 version of the Third Edition of the *Compendium*.

Key revisions to the Public Draft reflected in the Final Version are as follows:

1. Correspondence and Refusals

Many of the comments regarding the Public Draft related to changes in language providing examiners with greater discretion to correspond with the applicant regarding deficiencies in an application or to refuse registration.³ Commenters expressed concern that these revisions signaled a change in the Office’s procedures that would provide fewer opportunities for applicants to correct problems in their applications. Some commenters feared that an undue focus on examining applications efficiently could come at the expense of providing adequate customer service to applicants.

³ American Society of Media Photographers Comment at 2–3 (May 31, 2019); Copyright Alliance Comment at 2–5 (May 31, 2019); Digital Media Licensing Association Comment at 2–3 (May 31, 2019); Graphic Artists Guild Comment at 2–3 (May 31, 2019); Kernochan Center Comment at 1–2 (May 30, 2019); National Music Publishers’ Association Comment at 2 (May 31, 2019); National Press Photographers Association Comment at 3–6 (May 31, 2019); North American Nature Photography Association Comment at 2–3 (May 31, 2019); Shaftel & Schmelzer Comment at 2–3 (May 30, 2019).

The Office has demonstrated a commitment to providing assistance to applicants as they navigate the registration process, including by publishing the *Compendium* and Circulars, providing a variety of other guidance documents on the Office’s website, and through the Office of Public Information and Education. Examiners have always had discretion to correspond with applicants or refuse registration in appropriate cases. In the vast majority of cases, where the issues in an application can be fixed, Examiners have corresponded—and will continue to correspond—with the applicant to request a clarification or to correct information on the application.

However, correspondence is not always the preferred way to address issues. Correspondence can require a great deal of resources in certain situations and may not be productive. For example, if an applicant submits the incorrect form, transferring the application onto the correct form may require collecting additional fees or a different deposit, which cannot be done simply through correspondence. Other times, an applicant may make the same mistake repeatedly, despite guidance from the Office. In these situations, examiners need discretion to cease or forego correspondence and refuse registration. As explained in sections 608, 1702, and 1703 of the *Compendium*, if an application is refused, the applicant will be informed in writing of the refusal, will receive an explanation of the basis for the refusal, and will have the option to appeal the refusal.

To explain how the Office handles correspondence and refusals, and to address the concerns described above expressed by commenters, the Office has revised numerous sections of the *Compendium*. First, the Office further revised several sections in Chapter 600 to clarify how an examiner will respond to a variance in an application. The Office uses the term “variance” to refer to any instance in which registration materials submitted by an applicant provide conflicting information. Section 603 explains that there are four types of variances: immaterial; material but resolvable by reviewing the registration materials; material but potentially resolvable through correspondence; and material and

not resolvable. The Office added definitions of the terms “variance,” “material,” and “immaterial” to the Glossary and added links to the sections in which those terms are used throughout Chapter 600. The Office removed the term “deficiencies” from sections 603.2(C) and 605.3(D) and replaced it with the term “variances.” Similarly, the term “substantial variance” was replaced with “material variance” in sections 610.6(B), 610.6(D)(1), 610.6(D)(4), 613.10(B), 613.10(E)(1)(b), and 618.8(E).

Second, the Office revised sections 603 and 603.2(C) to explain that only in “exceptional cases” will the examiner refuse registration based on material variances. Sections 618.1, 618.4(A), 618.8(A)(1), 618.8(A)(7), 618.8(D), 619.13(K), 621.8(C)(2), 621.9(F), and 621.9(H)(2) have been updated to identify specific situations in which the Office will typically correspond with an applicant.

Third, the Office provided representative examples of exceptional circumstances in which an examiner will refuse registration without providing the applicant an opportunity to correct or clarify information in the application. Section 603.2(C) provides examples of an applicant who repeatedly omits required information despite multiple reminders from the Office that the information is required, and an applicant who submits the wrong form and filing fee. Other examples of instances in which an examiner will refuse registration appear in sections 618.8(C), 618.8(C)(6), 618.8(D), 618.8(D)(4), 621.9(E)(6), 621.9(F), and 621.9(F)(4), which clarify that the Office will refuse registration if the claim appears to be limited to uncopyrightable or *de minimis* material or if there appears to be no basis for asserting a valid claim in the work.

Fourth, in response to the public comments discussed above, the Office revised several sections 204.3 and 609.1 of the *Compendium* to state that an examiner “may,” instead of “will,” refuse registration if the applicant has not satisfied the formal and legal requirements for registration or if the applicant selects the wrong version of the Standard Application.

Fifth, some revisions addressed important group registration issues. It can be particularly important for examiners to have the discretion to refuse registration when applicants fail to comply with the requirements for group registrations. The Copyright Office imposes requirements for group registration options to streamline the examination of multiple works within one application. Group registration options are not practicable unless applicants comply with the basic requirements for those options. Nevertheless, the Office has revised the *Compendium* to allow examiners discretion to correspond with applicants in appropriate circumstances. In response to comments from the North American Nature Photography Association,⁴ the Office revised section 1105.3 to clarify that examiners may refuse registration if the applicant failed to satisfy the eligibility requirements for a particular option or may correspond if they determine the problem can easily be addressed. Similarly, changes to section 1114.1 clarify that if a photographer submits more than 750 photographs in connection with an application for group registration of photographs, the Office may register the first 750 photographs listed in the application and remove the rest of the photos from the claim, or may refuse registration.

Finally, the Office carefully considered a proposal relating to proper deposits but determined that the proposal would not be beneficial to the copyright system. The National Music Publishers' Association expressed concern about an examiner's discretion to refuse to register a work if the deposit was submitted in the wrong format, as discussed in section 625.2(B).⁵ The Office cannot register a work unless a proper deposit has been submitted. *See* section 204.3. Nor can the Office examine a work unless it is submitted in a form that can be opened and displayed by the Office's system. The Office added new technology to the electronic system in December 2017 that prevents the submission of deposits in an incorrect format except in cases where the applicant uploads

⁴ North American Nature Photography Association Comment at 2–3.

⁵ National Music Publishers' Association Comment at 2.

the deposit on a zip file or submits an electronic application and mails a physical copy that contains unacceptable file formats.⁶ The Office also updated the automated emails sent in response to applicants when they submit applications and the instructions on the deposit submission screen to indicate that deposits must be submitted in an acceptable file format, with a link to the list of acceptable formats.⁷ In light of these improvements, the Office believes it is appropriate to refuse registration if an applicant submits a deposit in an incorrect format.

2. New Topics Reflecting Court Decisions

The Public Draft has been updated in light of the Supreme Court’s decision in *Fourth Estate Public Benefit Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881 (2019), which held that the owner of a copyright for a U.S. work must have received a registration decision from the Office prior to instituting a claim for infringement in a U.S. court. Prior to this decision, the Office had maintained in the *Compendium* that this was the correct reading of the Copyright Act rather than the “application rule,” which would have required only the submission of an application to register the copyright. The Court confirmed that the Office’s interpretation was correct. The *Compendium* was revised in several places to delete references to courts that applied the “application rule.” Several sections in Chapter 1600 were also revised to reflect the Supreme Court’s discussion of preregistration in the *Fourth Estate* decision.

The Public Draft has also been revised to account for the Supreme Court’s decision in *Georgia v. Public.Resource.Org, Inc.*, 140 S. Ct. 1498 (2020), regarding the government edicts doctrine. Section 313.6(C)(2) was revised in light of the Court’s holding that any “work that [a] judge or legislator produces in the course of his [or her] judicial or legislative duties is not copyrightable.” *Id.* at 1506. This section has also been

⁶ See <https://www.copyright.gov/eco/updates/eco-updates.pdf>.

⁷ See <https://www.copyright.gov/eco/help-file-types.html>.

revised to include several quotations from the decision that explain the Court’s reasoning. Section 717 was also revised in light of the Court’s decision to clarify that annotated codes or compilations of legal documents may be copyrightable if they contain sufficient original authorship and were prepared by a private party or non-lawmaking official not acting under the control of a legislative or judicial body.

The Office also revised the Public Draft to account for the Second Circuit’s May 2020 decision in *Sohm v. Scholastic Inc.*, 959 F.3d 39 (2d Cir. 2020), holding that a registration for a collective work may cover the component works in certain circumstances even if the authors and titles of those works are not listed in the application. The Office added a citation to this case in section 613.10(F) and removed the citation to *Muench v. Houghton Mifflin*, a decision from the Southern District of New York that was abrogated by the decision in *Sohm*.

3. THREAD-ID

When an examiner sends an email concerning an application, the Office assigns a “THREAD ID” to that communication. Several commenters objected to the sections in the Public Draft that indicated that a claim would be closed if an applicant did not include the THEAD-ID in the body of an email replying to email correspondence from the examiner. Commenters suggested that it should be sufficient if the THREAD-ID or case number is included either in the subject line of a response email or the body of the response message.⁸ While the Office understands this concern, the current system requires the inclusion of the THREAD-ID in the body of an email reply for the Office to be able to connect correspondence received from applicants with the relevant claims. As mentioned in a recent Statement of Policy and Notification of Inquiry regarding

⁸ Copyright Alliance Comment at 7; Digital Media Licensing Association Comment at 4; Graphic Artists Guild, Inc. Comment at 3; National Press Photographers Association Comment at 5; Shaftel & Schmelzer Comment at 2.

registration modernization, the Office intends to simplify the system for claims and correspondence when designing the next system.⁹

In response to public comments, the Office updated sections 605.3(A), 605.4, and 605.6(B) in the Final Version to clarify that the THREAD-ID must be included in the body, not the subject line, of any email reply from an applicant in order to connect the reply with the appropriate record. In November 2019, the Office also amended its correspondence templates so that all outgoing emails contain a clear warning at the beginning of the message instructing applicants that the THREAD-ID must be included in the body of any reply and explaining that the examiner will not receive the reply if the applicant does not comply with these instructions. The amended text found in all outgoing emails can be found in section 605.4 of the Final Version. The Office believes the revised text in the *Compendium* and in outgoing correspondence provide clear notice to applicants about the requirement to include the THREAD-ID in all email correspondence with examiners.

4. No Replies

One commenter urged the Office to reconsider its practice of closing a claim if there has been no response to written correspondence from the Office within forty-five days. The commenter noted that the original message could have been caught in a spam filter or overlooked by the applicant due to a variety of circumstances. The commenter requested that the Office call and send a second email to each applicant who has not responded to written correspondence within thirty days.¹⁰

It would be burdensome for the Office to call and send an email to every applicant who has not responded to written correspondence and technical constraints do not allow for that process to be automated within the current system. The Office will consider

⁹ 85 FR 12704, 12711 (Mar. 3, 2020).

¹⁰ Shaftel & Schmelzer Comment at 2–3.

whether to include that functionality in the next system. Applicants bear the responsibility of providing the Office with accurate contact information and monitoring their email inboxes for correspondence. In the event that an applicant's failure to reply to written correspondence was caused by extraordinary circumstances outside the applicant's control, the applicant may use the process outlined in section 605.8 of the *Compendium* to request that a claim be reopened.

5. Publication

Several commenters requested additional guidance in the *Compendium* regarding the distinction between published and unpublished works.¹¹ The Office issued a Notification of Inquiry in December 2019 seeking comments from the public about possible strategies through which the Office can provide additional guidance regarding the determination as to whether a work has been published, particularly in the online context.¹² The Office is in the process of reviewing the 71 comments and reply comments it received in response to that Notification to determine the appropriate next steps. In the meantime, as suggested by commenters,¹³ the Office has provided additional examples of published and unpublished works in various sections of the *Compendium*. Specifically, the Office added several examples to sections 1114.1, 1114.5, and 1114.6(G) to clarify that both the distribution of photographs and the offering of one or more copies of a photograph to someone for the purpose of further distribution or public display constitute publication. These new examples should also assist applicants in determining the date of first publication of their photographs. One of the examples explicitly discusses the scenario raised by the National Press Photographers Association ("NPPA") in which a photographer posts photographs in a password-protected site with authorization for

¹¹ Graphic Artists Guild, Inc. Comment at 3–4; National Press Photographers Association Comment at 10–11; North American Nature Photography Association Comment at 4.

¹² 84 FR 66328 (Dec. 4, 2019).

¹³ National Press Photographers Association Comment at 7–9; American Society of Media Photographers Comment at 3.

clients to download and distribute the photographs, and clarifies that this constitutes publication. The Office also revised section 1906.1, as requested by NPPA, to clarify that sending an image to *any* client, as opposed to only newspapers, magazines or websites, with a license authorizing further distribution constitutes publication.¹⁴ The Office revised the definition of “copies” and “phonorecords” in the Glossary to clarify that they include the singulars “copy” and “phonorecord,” so that distributing a single copy or phonorecord of a work can constitute publication. The Office made a similar revision to sections 1905 and 1905.1, which discuss distribution to the public. The Office also revised section 1008.3 to clarify that streaming is a performance, which may not constitute publication of the streamed work absent the distribution or offering of copies of the work, including for purposes of furthering the performance or enjoyment of the work.¹⁵

The Office declined the request of one commenter to revise language in section 1906.1 that “[o]ffering a work directly to the public constitutes publication where the offeror has completed all the steps necessary for distribution to the public, such that the only further action required is an offeree’s action in obtaining a copy or phonorecord.”¹⁶ This sentence in section 1906.1 and the examples that follow focus on defining what constitutes an offer. The definition of publication in the statute and the language in the surrounding paragraphs of this section of the *Compendium* make it sufficiently clear that an offer to distribute copies of a work only constitutes publication if the purpose is for the copies to be further distributed, publicly performed, or publicly displayed.

6. Duplicate Submissions

Two commenters raised a concern regarding perceived inconsistent implementation of the Office’s policy to not knowingly issue multiple registrations for

¹⁴ National Press Photographers Association Comment at 8.

¹⁵ 17 U.S.C. 115.

¹⁶ Daniel Ballard Comment at 1 (June 3, 2019).

the same claim, described in section 602.4(E) of the *Compendium*. Because the system does not allow the public to access information about pending applications, more than one music publisher may attempt to register the same composition without knowing that another application was filed previously. The commenters claimed that, in this situation, the Office has refused some applications and directed applicants to seek a supplementary registration that identifies additional authors and claimants, while the Office has instructed other applicants to remove the co-author/co-claimant identified on the first application from the second application, which results in the same work being registered twice.¹⁷ The commenters requested that applicants in this situation be permitted to file applications for supplementary registrations at no cost.¹⁸

The Office is aware that multiple registrations for the same work can be issued if the examiner is not aware of the prior registration at the time of the examination. There are also adverse claims, in which a second applicant claims to be the true author or owner of the copyright rather than the first applicant. If the examiner is aware of the prior registration and the applicant claims to be a co-claimant, the examiner should generally advise the applicant to seek a supplementary registration to identify additional authors and claimants, which would require payment of an additional fee. Additionally, recordation can be used to establish the filer's co-ownership in the previously registered work. To the extent the application is filed by a new owner after a transfer from a previous owner, that is established in the public catalog by recording the transfer rather than amending the registration.

7. Copyright Protection and Other Forms of Legal Protection

¹⁷ The Office is not aware of any instances in which it has instructed an applicant seeking to register a work that has already been registered to remove the name of a co-author or co-claimant from an application, but it would be happy to discuss any such instances with applicants.

¹⁸ National Music Publishers' Association Comment at 2–3; Copyright Alliance Comment at 7.

As suggested by the Kernochan Center,¹⁹ the Office revised sections 310.11, 905, and 924.5 to clarify that a work may be eligible for copyright protection, regardless of whether it may or may not be protected by other forms of legal protection.

8. Useful Articles and Works of Artistic Craftsmanship

Chapter 900 of the *Compendium* has been updated to reflect the Supreme Court's decision in *Star Athletica v. Varsity Brands*, 137 S. Ct. 1002 (2017). In providing new guidance for claims involving useful articles, the chapter also addresses claims concerning works of artistic craftsmanship. In light of our new guidance, the Kernochan Center and attorney Daan Erikson requested additional guidance on how to determine whether a work is a useful article.²⁰

In reviewing Chapter 900, the Kernochan Center noted that “there are no examples of useful articles that in their entirety might be perceived as [pictorial, graphic, or sculptural] works.”²¹ It advised the Office “to say up front that separability analysis doesn’t apply to the entire shape of the article.”²² In consideration of this comment, the Office revised several sections, including sections 924, 924.2, 924.3(B), 924.3(E), 924.3(F), and 925.3, to confirm that copyright does not protect the overall shape of a useful article. Rather, copyright protects the design features that can be conceptually separated from a useful article.

In addition, the Office revised the draft to provide guidance on how to determine whether an item has an intrinsic utilitarian function and thus should be treated as a “useful article.” The *Compendium* makes clear that the Office does not consider the intended use of articles in industry when deciding whether a design is copyrightable. The Kernochan Center probed, however, “[d]oesn’t ‘intended use’ bear on whether the article

¹⁹ Kernochan Center Comment at 2.

²⁰ *Id.* at 2–3; Daan Erikson Comment at 1–2 (May 31, 2019).

²¹ Kernochan Center Comment at 2.

²² *Id.*

has an ‘intrinsic utilitarian purpose’?”²³ In response, the Office revised sections 924.1 and 924.3(D) to confirm that when determining whether an article has an intrinsic utilitarian function, the Office focuses on the inherent, observable characteristics of the article, but will not consider the subjective intent or subjective reaction of any person in relation to that article. The Office also expanded sections 911, 920.2, 924.1, and 924.3(A) to list additional examples of two- and three-dimensional useful articles and confirmed that templates, stencils, and many costume designs are useful articles.²⁴

Even if an article has an intrinsic utilitarian function, it will not necessarily be considered a useful article. Copyright law defines a useful article as “an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information.”²⁵ In response to a comment,²⁶ the Office revised several sections to explain that certain articles, including maps, x-rays, and technical drawings, are not useful articles because their only utilitarian function is to convey information.

The Office has made other revisions to clarify the two-step test to determine whether the design of a useful article may be eligible for copyright protection.²⁷ Regarding the first prong, the *Compendium* further explains that the artistic feature that is extracted must “qualify as a nonuseful pictorial, graphic, or sculptural work on its own.” *Star Athletica*, 137 S. Ct. at 1013. Because prior to the imaginary removal of the feature the work was a useful article and the removed feature must not be a useful article, at least some portion of the useful article must remain in the viewer’s mind after the artistic feature has been imaginatively removed from the article. The Kernochan Center asked the Office to confirm whether “‘some portion’ needs to remain physically or imaginatively,” and, “if the latter,” whether the Office is adopting the test proposed in

²³ *Id.* at 3.

²⁴ Daan Erikson Comment at 2.

²⁵ 17 U.S.C. 101 (defining “useful article”).

²⁶ Daan Erikson Comment at 1–2.

²⁷ *See id.* at 2.

Kieselstein Cord v. Accessories by Pearl.²⁸ 632 F.2d 989 (2d Cir. 1980). The Office revised the *Compendium* to specify that the Supreme Court explicitly declined to adopt alternate tests that had previously been applied by lower courts, and therefore the Office only applies the separability test set forth in *Star Athletica*, 137 S. Ct. at 1010–12. The Kernochan Center also suggested revisions to sections 924.3(A) and (B), which the Office adopted for clarity.²⁹

In addition to revising chapter 900 to provide additional guidance on useful articles, the Office also revised several sections addressing works of artistic craftsmanship. The Kernochan Center requested clarification on how the Office distinguished a useful article from a work of artistic craftsmanship.³⁰ In response, the Office revised sections 925.1, 925.2, and 925.3 to modify the definition of works of artistic craftsmanship, add context from legislative history and examples of works with mechanical or utilitarian aspects, and provide additional information about the test the Office uses to determine if a work of artistic craftsmanship is copyrightable. The Office also clarified in section 908.1 that jewelry may be registered as works of artistic craftsmanship in certain circumstances (such as earrings, necklaces, rings), but jewelry designs affixed to useful articles are subject to the separability test.

9. Puppets

Shaftel & Schmelzer suggested that the *Compendium* explicitly address how puppets are examined and whether applicants should classify them as works of artistic craftsmanship or sculptures.³¹ The Office edited several sections of the *Compendium*, including sections 503.1(B), 618.4(C), 808.11(D), 904, 910, to clarify that toys, dolls, stuffed animals, and puppets are typically treated as three-dimensional sculptural works.

²⁸ Kernochan Center Comment at 3.

²⁹ *Id.* at 2.

³⁰ *Id.* at 3–4.

³¹ Shaftel & Schmelzer Comment at 4.

10. Short Online Literary Work

The Final Version includes several sections that discuss the short online literary work group registration option, which was announced in the Federal Register on June 22, 2020.³² Sections 1111.1 through 1111.7(R) discuss the eligibility requirements for this group registration option, as well as the filing fee and deposit requirements, and provide guidance on completing the application. The Office revised sections 1407 and 1802 to add the new procedure for correcting or amending the information in a registration for short online literary works. This group registration option is also now listed as one of the available group registration options in numerous sections of the *Compendium*.

11. Architectural Works

The Final Version reflects the new requirements for registering architectural works, as described in the final rule published on April 23, 2019.³³ Section 503.1(B) includes updated examples of what constitutes an architectural work. Sections 609.2, 618.4(B), 619.13(E) and 1509.3(D) have been updated to reflect the requirement to submit an online application and provide a digital deposit when applying to register an architectural work. Sections 1404 and 1411 clarify that paper applications may not generally be used to register architectural works and describe the procedure for requesting a waiver to permit a paper application.

12. Group Newspapers

The Office amended several parts of section 1108 to reflect the changes to the regulations for the group registration option for newspapers that were finalized in November 2019.³⁴ The Office revised sections 1108.5 and 1116 to reflect the requirement to upload digital deposits and the phase-out of the option to submit microfilm as a

³² See 85 FR 37341 (June 22, 2020).

³³ See 84 FR 16784 (Apr. 23, 2019).

³⁴ See 84 FR 60917 (Nov. 12, 2019).

deposit. The Office also updated section 1108.5(B) to explain the new procedure for requesting special relief from the digital deposit requirement.

13. Group Newsletters

The Final Version reflects the changes to the group registration option for newsletters, as described in the final rule published in May 2020.³⁵ The Office revised sections 1109 and 1116 and the Glossary to remove the requirement that newsletters be published at least two days per week to qualify for this registration option. Section 1109.5(B) was edited to clarify that special characters should not be included in the file name for the deposits. Section 1109.5(D) was updated to reflect the new procedure for requesting special relief from the digital deposit requirement.

14. Group Serials

The Office amended the Public Draft to reflect the changes to regulations for the group registration option for serials that were finalized in November 2019.³⁶ The Office revised several parts of sections 1107.5, 1107.6, 1116 and the Glossary to reflect the requirement to upload digital deposits and the phase-out of paper applications and physical deposits. The Office also updated section 1107.5(B) to explain the new procedure for requesting special relief from the digital deposit requirement.

15. Group Photographs

The NPPA requested clarification regarding a few points relating to group registration options for photographs. First, with respect to registration of a group of published photographs, the NPPA requested that the *Compendium* state more clearly that each photograph in the group must have been *first* published in the same calendar year, and that the applicant must specify the date each photograph was *first* published.³⁷ The Office revised section 1114.1 of the *Compendium* to make that point more clearly.

³⁵ See 85 FR 31981 (May 28, 2020).

³⁶ See 84 FR 60918 (Nov. 12, 2019).

³⁷ National Press Photographers Association Comment at 5–6.

NPPA also requested clarification on the title and file names for specific photographs.³⁸ The Office revised section 1114.6(A) to specify that the title and file name for a particular photograph can be the same or different and that the file names provided with the list of titles must correspond to the file names included in the deposit. It is essential that the applicant provide title and file names and that each file name correspond to the file name of a photograph included in the deposit. If there is a discrepancy between the file names listed in the application and/or title list and those included in the deposit, section 1114.6 provides that the examiner may ask the applicant to exclude certain photographs from the claim or may refuse registration for the entire group, depending on the scope of the discrepancy.

16. Unpublished Works

The Office recently created a new group registration option for Unpublished Works. Since it issued the Public Draft, the Office developed new practices relating to the most common problems it has observed relating to these applications. The new practices are reflected in sections 1106, 1106.2, 1106.4, 1106.5, 1106.5(B), and 1106.5(E).

Specifically, sections 1106.4 and 1106.5(B) explain that, if the titles provided in the application do not match the file names shown in the deposit, the examiner may remove the mismatched titles and files from the record. These sections also include new examples that illustrate this practice. Section 1106.5(B) explains that if the applicant fails to provide titles of the works, the examiner may correspond with the applicant or may refuse registration. It also indicates that if an applicant provides a “collection” title (in addition to providing separate titles for each work), the collection title will be removed.

Section 1106 has been revised to specify that if any of the works are uncopyrightable, the examiner will refuse to register those works and issue a registration for any remaining works in the group, rather than requesting permission to remove the

³⁸ *Id.* at 7.

uncopyrightable works. This section also provides that applicants may appeal the examiner's decision.

Section 1106.2 explains that an application for a group registration for unpublished works must be filed using the online application designated for a "Group of Unpublished Works." This section has been revised to clarify that if an applicant attempts to use the Standard Application or a paper application to register a group of unpublished works, the examiner may register the first copyrightable work listed in the application or the first copyrightable work uploaded to the electronic registration system. The examiner may notify the applicant that the registration extends only to the title listed in the certificate and explain how the remaining works may be registered. The examiner may also add an annotation stating that the registration only extends to the title listed in the certificate and remove the titles and deposits for the remaining works from the record.

The Office removed the language in section 1106.4 that encouraged applicants to submit their files in a zip folder. The Office has determined that PA/SR claims account for the majority of GRUW submissions, and it is difficult to examine these claims if they are submitted in a zip folder.

Sections 1802.4 and 1802.7(C) were revised to clarify that a supplementary registration may not be used to transform a registration for a group of unpublished works into a registration for a single published work. This is similar to the rule that applies to a registration for an unpublished collection.

In addition to these changes in the *Compendium*, the Office plans to create a new landing page with links to a new circular, a set of FAQs, video tutorials, and help text for this new group registration option. The Office believes these new practices and updated materials will clarify the application procedures for this group registration option, making it easier for applicants to comply with the requirements.

17. Unpublished Collections

Chapter 1100 of the *Compendium* notes in several places that the unpublished collections registration option was eliminated as of March 15, 2019. Graphic Artists Guild commented that visual artists used that registration option frequently in the past and requested that the note regarding its elimination appear as a separate section for ease of reference.³⁹ The Office added section 1106.6, which discusses the elimination of the unpublished collections registration option in detail.

The Office also added cross-references in section 901 to the sections in the *Compendium* discussing the group registration option for unpublished works, as well as all other available registration options for visual art works.⁴⁰

18. Collective Works

The Copyright Alliance criticized the description of the originality requirement for compilations in section 312.2 of the *Compendium*, which states that the Office “generally will not register a compilation containing only two or three elements, because the selection is necessarily de minimis.” The Copyright Alliance claims the Office relies on this language to refuse to register compilations containing fewer than four works.⁴¹

The Office has not revised this section of the *Compendium*. Section 312.2 clearly states that a compilation is registrable if there is “some minimal degree of creativity” in the selection, coordination, or arrangement of the component materials. The Office believes it is helpful to inform the public that, in general, the selection of fewer than four elements will not satisfy the originality requirement. However, the Office does not have a bright line rule, either in the *Compendium* or in practice, regarding the number of works that must be included in a compilation to be registrable. Each application is examined individually to determine if the work displays the requisite originality.

19. Sound Recording/Recorded Work

³⁹ Graphic Artists Guild Comment at 4.

⁴⁰ Shaftel & Schmelzer Comment at 4.

⁴¹ Copyright Alliance Comment at 6.

Section 1104 discusses the option to register a sound recording and a musical work embodied in that recording in one application with one filing fee. It explains that if the Office determines the works are eligible to be registered in one application, it will issue one certificate of registration for both works with a registration number beginning with the prefix SR or SRu, depending on whether the works are published or unpublished. NMPA expressed concern that the policy of registering a sound recording and a musical work with only an SR registration number may confuse those seeking to locate a musical work copyright owner and suggested that the Office grant two separate registration numbers in this situation, one for the sound recording and one for the musical work.⁴² The Office appreciates this concern, but longstanding regulations only permit the Office to issue one registration based on one application. Applicants who want to have separate registration numbers for a sound recording and the musical work may submit separate applications on Form PA and Form SR.

20. Musical Works

The Final Version includes changes to the sections discussing the deposit requirements for musical works, which were updated in January 2018.⁴³ The Office revised Circular 50 (Musical Compositions) to reflect this change prior to releasing the Public Draft, but it inadvertently failed to make similar edits to the *Compendium*. Several parts of section 1509.2 were updated to explain that “best edition” copies are required if a musical work is published in printed form, but are not required if the work is published solely on phonorecords or in a motion picture.

21. Artificial Intelligence

Engine Advocacy and the Cyberlaw Clinic offered suggestions for evaluating the registrability of works created using artificial intelligence.⁴⁴ The Office recognizes that the increasing use of artificial intelligence in developing creative works raises important

⁴² National Music Publishers’ Association Comment at 4.

⁴³ See 83 FR 2371 (Jan. 17, 2018).

⁴⁴ Engine Advocacy Comment at 8–11 (May 14, 2019); Cyberlaw Clinic Comment at 1–8 (May 31, 2019).

copyright issues. This is an evolving area of copyright law, and the Office is participating in and monitoring discussions on these issues. For example, the Office held a symposium with the World Intellectual Property Organization (WIPO) entitled Copyright in the Age of Artificial Intelligence in February 2020. The Office has no plans to amend the relevant sections of the *Compendium* at this time.

22. Statutory Developments

The Copyright Alliance noted that the Public Draft did not mention many new procedures the Office has established under the Music Modernization Act, including procedures for filing schedules for pre-1972 sound recordings, notices of noncommercial use, or opt-outs, and that references to pre-1972 sound recordings are inaccurate or out of date.⁴⁵ The Office is considering updating the *Compendium* to reflect all changes made in response to the passage of the Music Modernization Act, including new procedures adopted by the Office in connection with pre-1972 sound recordings and other procedures noted by the Copyright Alliance. Those changes would be made in a future revision of the *Compendium*. In the meantime, the Office added the Music Modernization Act to the list of major copyright legislation, explained that it provides remedies for unauthorized use of pre-1972 sound recordings if certain schedules are filed, revised its discussion of preemption, and provided a link to the Copyright Office’s webpage discussing pre-1972 sound recordings. Sections 102.5, 102.7, 202.1, 313.5, 608, 803.5(D), 1702.

The Final Version adds the Marrakesh Treaty to the list of copyright treaties the United States has ratified in sections 102.7 and 2004.1. And section 313.6(C)(1) indicates that certain literary works created by civilian faculty members of U.S. military academies and institutions are not “U.S. Government Works,” based on the National Defense Authorization Act for Fiscal Year 2020.

23. Other Issues

⁴⁵ Copyright Alliance Comment at 8.

The Office revised various sections of the Public Draft to reflect new fees or new terminology added to the fee schedule adopted on February 19, 2020.⁴⁶ The Office made a number of additional changes in the Final Version to ensure that the contents are consistent with regulatory requirements and that the *Compendium* is internally consistent. These changes include revisions to:

- section 611.2(B) to use language that matches language used in the eCo application;
- section 617.3 to clarify that an organization need not provide its country of citizenship if it has completed the domicile space;
- section 618.4 to remove language suggesting that “direction” is an acceptable authorship statement for a dramatic work;
- section 609 to clarify that Form SE may not be used to register an unpublished serial and to clarify which administrative classes the Office has established for registration purposes;
- sections 607, 1509.1(F) and 1509.1(F)(4)(b) to clarify that a computer program containing trade secrets may be registered with object code, but the applicant must include at least ten pages of source code in the deposit;
- sections 1010.3 and 1010.4 to clarify that, although digital uploads are preferred, physical deposits for claims involving online works may be sent to the Office by a commercial carrier, such as FedEx or UPS;
- section 1509.2(B)(4) to summarize the deposit requirements for sound recordings first published in a foreign country;
- sections 624.3, 1802.8(B)(6) and 1802.9(F) to explain that a typed or printed signature will be accepted on a paper application;

⁴⁶ See 85 FR 9374 (Feb. 19, 2020).

- section 625.3 to clarify that if there is a “short fee,” the effective date of registration will be the date the full fee is received;
- section 1807.4(B) to clarify that if the payment for a registration application “bounces,” the Office will cancel the registration and notify the applicant, as required by regulation;
- sections 618.4(A), 1010.4, and 1508.1 to reflect technical upgrades that have been made to the eCO system; and
- various sections to reflect a new format used for annotating registration certificates and to include commonly-used annotations.

The Final Version also corrects typographical errors and errors in citations or cross-references, replaces outdated terminology, and makes formatting changes. The Table of Authorities has been updated to reflect new citations used in or removed from the *Compendium*. Finally, the Office has added references to additional court decisions that have cited the *Compendium* since the 2017 version was released.

Dated: January 8, 2021.

Shira Perlmutter,
Register of Copyrights and
Director of the U.S. Copyright Office.

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