



## U.S. Copyright Office

### 37 CFR Parts 201 and 202

[Docket No. 2019-4]

#### Group Registration of Works on an Album of Music

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

**ACTION:** Final rule.

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**SUMMARY:** The U.S. Copyright Office is creating a new group registration option for musical works, sound recordings, and certain other works contained on an album. This option will permit the registration of a group of musical works or a group of sound recordings distributed together, regardless of whether such distribution occurs via physical or digital media. The final rule generally adopts the provisions set forth in the May 2019 notice of proposed rulemaking in this proceeding, with certain updates to reflect the planned implementation of new online applications for this option.

**DATES:** Effective March 26, 2021.

**FOR FURTHER INFORMATION CONTACT:** Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at [regans@copyright.gov](mailto:regans@copyright.gov); Robert Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice, by email at [rkas@copyright.gov](mailto:rkas@copyright.gov); or John R. Riley, Assistant General Counsel, by email at [jril@copyright.gov](mailto:jril@copyright.gov). Each can be contacted by telephone at 202-707-8350.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The Copyright Act authorizes the Register of Copyrights to specify by regulation the administrative classes of works available for the purpose of seeking a registration and the nature of the deposits required for each class. In addition, Congress gave the Register

the discretion to allow registration of groups of related works with one application and one filing fee, a procedure known as “group registration.”<sup>1</sup> Pursuant to this authority, the Register has issued regulations permitting the Office to issue group registrations for certain types of works, including for groups of newspapers, unpublished works, newsletters and serials, unpublished and published photographs, contributions to periodicals, secure test items, and short online literary works.<sup>2</sup>

On May 20, 2019, the Office published a Notice of Proposed Rulemaking (“NPRM”) proposing to create a new group registration option for musical works, sound recordings, and associated literary, pictorial, and graphic works contained on an album. This option is referred to as “Group Registration of Works on an Album of Music,” or “GRAM.”<sup>3</sup> The proposed rule would allow an applicant to register up to twenty musical works and twenty sound recordings, *i.e.*, forty total works, if the works were fixed in the same phonorecord, if the works were created by the same author or had at least one common author, and if the claimant for each work in the group was the same. The proposed rule also would permit the registration of associated literary, pictorial, and graphic works in the album, such as cover art, liner notes, or posters. To exercise this option, the Office proposed that applicants would be required to submit their claims through the online copyright registration system using the Standard Application.

The Office received thirteen comments in response to the NPRM, eleven from individuals, one from the National Music Publishers Association (“NMPA”), and a joint comment by the American Association of Independent Music (“A2IM”) and the Recording Industry Association of America (“RIAA”). Each commenter supported the Office’s proposal to create the new group registration option, though some suggested

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<sup>1</sup> 37 CFR 202.4; *see* 17 U.S.C. 408(c)(1).

<sup>2</sup> 37 CFR 202.4(c)–(k).

<sup>3</sup> 84 FR 22762 (May 20, 2019).

various amendments to the proposed rule, including removing the proposed limit on the number of works that may be included in each claim and clarifying who could be listed as a claimant of a work in a GRAM registration.

Having reviewed and carefully considered the submitted comments, the Office now issues a final rule that generally follows the proposed rule, with some modifications. First, the rule requires claims under this option to be submitted using a new online application specifically created for GRAM filings, rather than on the Standard Application. Second, to avoid inefficiencies in the examination process and ambiguities in the public record, the final rule requires groups of musical works and groups of sound recordings to be registered using separate applications.

## **II. The Final Rule**

### *A. Eligibility Requirements*

#### 1. Definition of an “Album”; Number of Works

The NPRM proposed limiting this group registration option to musical works, sound recordings, and any associated literary, pictorial, or graphic works on an album of music, such as liner notes and cover artwork. It defined an “album” as “a single physical or electronic unit of distribution containing at least two musical works and/or sound recordings embodied in phonorecords, including any associated literary, pictorial, or graphic works distributed with the unit.”<sup>4</sup> Three commenters requested clarification to ensure that the rule is sufficiently flexible to accommodate streaming services and other distribution models that do not involve the purchasing of copies. A2IM and RIAA argued that the term “album” should be eliminated, as it “appear[s] to be tied to physical distribution and to an ownership model” of music.<sup>5</sup> They proposed instead using the term “release,” which would be defined as “a collection of two or more sound recordings or

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<sup>4</sup> 84 FR at 22764, 22768.

<sup>5</sup> A2IM & RIAA Comments at 4.

other media that are grouped together as those terms are used in the Copyright Act.”<sup>6</sup> In their view, this approach would have the advantage of “avoid[ing] the single unit of distribution concept” and would be “generic enough to embrace new release formats, such as a playlist that contains all new recordings released by a single artist and grouped together for commerce.”<sup>7</sup> NMPA did not propose a change to the regulatory text but urged the Office to consider adding language to the *Compendium of U.S. Copyright Office Practices* or a circular to clarify that “the GRAM option extends to albums that are not offered for digital purchase.”<sup>8</sup>

The proposed definition of “album” is not intended to be limited to albums distributed under a model in which copies are acquired and retained by a purchaser—*e.g.*, downloads or physical media. A collection of musical recordings presented and offered to the public under authority of the copyright owner as a self-contained, fixed group would qualify as “a single physical or electronic unit of distribution” for purposes of the rule, regardless of whether the works are accessed via download, stream, or other mechanism. The key consideration is whether there is some indication of the copyright owner’s intention to release the works together as a single collection, as distinguished from, for example, releasing them over time as additions to an evolving playlist.<sup>9</sup> Thus, a group of songs presented together on a streaming service may qualify as an album, provided the other eligibility requirements are met.

It is partly for this reason that the final rule defines “album” as a “unit of distribution.” As discussed in the NPRM, the Office’s existing “unit of publication” option has long provided a vehicle for registering albums released in physical formats,

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 5.

<sup>8</sup> NMPA Comments at 3 (citing 84 FR at 22764).

<sup>9</sup> See *Album*, DICTIONARY.COM (2021 ed.), <https://www.dictionary.com/browse/album> (“a collection of audio recordings released together as a collected work”).

such as a “CD packaged with cover art and a leaflet containing lyrics” or a “box set of music CDs.”<sup>10</sup> While the Office has declined to extend the unit of publication option to digital products, the GRAM option is intended to provide an analogous mechanism for digital music albums, in part to ensure that albums “released first (or only) in digital formats” are eligible for similar registration options.<sup>11</sup> The final rule accordingly retains the proposed definition, and the Office intends this further guidance to address comments regarding the scope of eligibility for the GRAM option.

Some commenters expressed concern with the proposed requirement that an applicant “submit documentation . . . confirming that the musical works and/or sound recordings were included on the album.”<sup>12</sup> A2IM and RIAA and an individual commenter, Jesse Morris, argued that it should be sufficient for an applicant to submit a sworn statement to that effect.<sup>13</sup> The Office agrees with this recommendation. As part of the application, the applicant will be required to certify that the works being registered satisfy the requirements for this group registration option, including that the works in the group were all published on the same album. The language regarding documentation accordingly has been removed from the final rule.

The NPRM also proposed to allow applicants to register up to twenty musical works or twenty sound recordings contained in an album. Some commenters requested that the Office remove or at least raise the twenty-work cap. In addition to noting that some albums contain more than twenty tracks,<sup>14</sup> commenters pointed out that the

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<sup>10</sup> 84 FR at 22764 (quoting U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices, Third Edition* (“*Compendium (Third)*”) sec. 1107.1).

<sup>11</sup> 84 FR at 22764.

<sup>12</sup> 84 FR at 22768.

<sup>13</sup> A2IM & RIAA Comments at 7–8; Jesse Morris Comments at 2.

<sup>14</sup> See A2IM & RIAA Comments at 5; NMPA Comments at 3; Anonymous Anonymous Comments at 2 (“20 seems low” but “25 to 30 would cover most albums and a handful of soundtracks”). Other commenters appeared satisfied with this number. See Anonymous Artist Comments at 2 (“As a musician most of my albums contain 10 to 15 songs.”); Brian Smith

Standard Application does not contain a title cap and voiced concern that applicants could include more than twenty tracks in error.<sup>15</sup> NMPA suggested that such mistakes could result in a refusal to register or delays due to required correspondence.<sup>16</sup> As discussed further below, however, the Office will not be using the Standard Application for this registration option, and therefore believes that such errors are less likely. The new application for claims registered under this option will include a system validation that should prevent applicants from listing more than twenty musical works or sound recordings in the application.

More generally, the Office has concluded that a twenty-work cap is appropriate to balance the needs of applicants with the administrative capabilities of the Office. As noted in the NPRM, the Office believes that this limit will make this group option available to the majority of albums actually distributed in the market, and in any event, albums with more than twenty works would still benefit from this group option because applicants may be able to register additional works with a separate GRAM application.<sup>17</sup> Removing or raising the cap would likely increase the average processing time for these applications and thereby undermine the efficiency of this group option. Indeed, there is a potential that even the twenty-work cap may prove inefficient if the average number of works on each application approaches twenty. The Office remains open to revisiting this issue based on data that become available after implementation, including with respect to fees, staffing, and processing times.<sup>18</sup>

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Comments at 2 (detailing desire to register “20 songs including music recordings and artwork”); Rich Turgeon Comments at 2 (noting that it “[w]ould be nice to just keep [the GRAM registration option] straightforward and be able to register up to 12–13 songs at a time”).

<sup>15</sup> A2IM & RIAA Comments at 5; NMPA Comments at 3.

<sup>16</sup> NMPA Comments at 3.

<sup>17</sup> 84 FR at 22764–65 & n.30.

<sup>18</sup> *Id.* at 22765.

## 2. Custom Application; Works that May Be Included

Under the proposed rule, an applicant could register up to twenty musical works and twenty sound recordings, *i.e.*, forty total works, using the Standard Application if the works were fixed in the same phonorecord and the other regulatory requirements were met.<sup>19</sup> A2IM and RIAA expressed concern over the requirement to use the Standard Application, urging the Office to instead “create a dedicated GRAM application that runs on the existing system.”<sup>20</sup> They observed that this approach would “[n]ot only . . . encourage use of GRAM by smaller, less sophisticated, less frequent users,” but also would “lead to fewer telephone inquiries from copyright owners and [would] require less correspondence from registration specialists, both of which will save the Office time and money.”<sup>21</sup> The Office agrees that decoupling GRAM applications from the Standard Application would greatly simplify the registration process for both applicants and Office staff, and therefore it has worked with the Library’s Office of the Chief Information Officer to develop new applications specifically for GRAM that can be accessed and submitted through the electronic registration system (“eCO”). The final rule has been updated to reflect this change.

In the course of developing this functionality, the Office also determined that permitting the registration of both musical works and sound recordings using one application may give rise to complexities in the examination process that could hinder the Office’s efficient administration of the group option. For example, in cases where the musical works and sound recordings on an album have different authors, an applicant would be required to list all the authors of both the music and sound recordings, to list the titles of the works created by each author, and to provide an appropriate authorship

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<sup>19</sup> *Id.* at 22764.

<sup>20</sup> A2IM & RIAA Comments at 8.

<sup>21</sup> *Id.*

statement to describe each author's contribution(s) to each work. In the Registration Program's experience, challenges or inaccuracies are likely to arise where the nature of the applicant's authorship differs with respect to the musical work and the sound recording for multiple album tracks. For example, if an author created twenty sound recordings on an album, but wrote only ten of the musical works embodied in those recordings, she would be required to provide titles for all twenty works and exclude from the musical work claim the ten compositions she did not author by listing their titles in the Material Excluded field. Given the number of possible permutations, such requirements would likely lead to ambiguities requiring correspondence with the applicant, as well as potential inaccuracies in the public record, particularly where the applicant is unfamiliar with the distinction between musical works and sound recordings for copyright purposes. Because such correspondence would likely result in additional refusals or a higher fee for this group registration option to accommodate the additional Office resources needed, the Office has determined that it is preferable to create a bifurcated group option.

The final rule accordingly provides for two separate types of applications. An applicant may register up to twenty musical works on an album using the application designated for "musical works from an album." An applicant may register up to twenty sound recordings, as well as any associated literary, pictorial, or graphic works first published with the same album, using the application designated for "sound recordings from an album." The initial version of the application for "musical works from an album" will not include an option for registration of these ancillary materials because the Office understands that typically these works are not authored or owned by the party that authored or owns the musical works. To the extent there is a need in the marketplace, however, the Office is open to considering a future update that would permit registration



of such materials on the application for “musical works from an album.” The Office welcomes public input on whether copyright owners would benefit from such an option.

### 3. Title Information

The NPRM proposed that an applicant be required to provide a title for the album, a title for each musical work and/or sound recording, titles for any associated literary, pictorial, or graphic works that are included in the group, and a title that identifies the group as a whole, starting with the word “GRAM.”<sup>22</sup> Some commenters objected to the requirement to provide a separate title for the group. Among other concerns, they noted that the registration certificate would start with “GRAM,” while the album offered for sale would not, causing potential confusion in the public record and in litigation.<sup>23</sup>

In light of these concerns, and because the group-title requirement was necessitated by the limitations of the Standard Application,<sup>24</sup> the Office has eliminated this requirement. Instead, the GRAM applications will include a mandatory field for the title of the album, which will appear on the registration certificate and in the public record. The album title will be used to automatically generate a group title (*e.g.*, “Works published on the album [ALBUM TITLE]”). The group title and the album title will both appear in the registration certificate and the public record. For applications that include literary, pictorial, or graphic works, the system will automatically generate titles for those works (*e.g.*, “Liner notes, photograph(s), and/or artwork first published on the album [ALBUM TITLE]”), although the applicant may provide a more specific title for those works by following the instructions given in the help text. The Office will add those titles to the public record when it examines the claim.

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<sup>22</sup> 84 FR at 22766.

<sup>23</sup> A2IM & RIAA Comments at 6; Jesse Morris Comments at 1.

<sup>24</sup> *See* Jesse Morris Comments at 1; A2IM & RIAA Comments at 6.

#### 4. Collective Work Registration

RIAA and A2IM requested that the Office allow applicants to include the full album as a collective work as one of the works that can be registered on the GRAM application.<sup>25</sup> They noted that some existing group registration options permit registration of both a collective work and the individual component works, citing the unit of publication and group serial options as examples.<sup>26</sup> But these commenters did not explain why they believe there is a need for such an option in the GRAM application given that applicants already have the ability to register both a collective work and the individual works comprising it by filing a collective work claim using the Standard Application. As discussed in the NPRM, a collective work registration will extend to the individual component works if the copyright in those works is held by the owner of the collective work copyright, provided the component works contain sufficient original authorship and have not been previously published or registered.<sup>27</sup> Thus, where a party seeks to register an album as a collective work in addition to registering the individual sound recordings and/or musical works, it may do so under the existing collective work option. The GRAM option will complement this option by facilitating registration of multiple works in cases where parties own copyrights in multiple individual works on an album but are ineligible for collective work registration—for example, because they are not the owner of the collective work copyright or because the particular selection and arrangement of tracks does not qualify as a collective work. Based on the record at this time, the final rule accordingly does not include this option.

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<sup>25</sup> A2IM & RIAA Comments at 3.

<sup>26</sup> *Id.* at 3–4.

<sup>27</sup> 84 FR at 22763 & n.16 (citing *Compendium (Third)* sec. 509.2; U.S. Copyright Office, *Circular 34: Multiple Works* 2–3).

## 5. Author and Claimant

Under the proposed rule, “all of the works claimed in the group must have a common author,” and “the copyright claimant(s) for each work must be the same person(s) or organization.”<sup>28</sup> The NPRM explained that “the claimant may either be (1) the author or co-author of all of the works, or (2) the party that owns all of the exclusive rights that initially belonged to the author or co-authors.”<sup>29</sup>

NMPA asked the Office to clarify the definition of “claimant” for GRAM registration eligibility. Specifically, it expressed concern over the NPRM’s statement that “if the works were created by two or more co-authors, the claimant or co-claimant must own or co-own all of the rights that initially belonged to the co-authors. If a party owns or co-owns the rights that initially belonged to some, but not all, of the co-authors, that party cannot be named as a copyright claimant.”<sup>30</sup> In NMPA’s view, this statement could “suggest that a claimant who has been assigned rights by a co-author of a work (for example, a music publisher to whom a songwriter who is a co-author of a song has assigned their rights) must have obtained *all* of the rights from *all* of the co-authors of a song.”<sup>31</sup>

To clarify, the definition of “claimant” for purposes of the GRAM option is not intended to differ from the generally applicable definition of that term. Under the Office’s regulations, a copyright claimant is either “(i) [t]he author of a work” or “(ii) [a] person or organization that has obtained ownership of all rights under the copyright initially belonging to the author.”<sup>32</sup> Thus, a publisher that is the transferee of all of the exclusive rights of a joint author of eligible works may be listed as a claimant for purposes of a

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<sup>28</sup> *Id.* at 22765.

<sup>29</sup> *Id.*

<sup>30</sup> NMPA Comments at 4 (quoting 84 FR at 22765–66).

<sup>31</sup> *Id.*

<sup>32</sup> 37 CFR 202.3(a)(3); *see also Compendium (Third)* sec. 405.1.

GRAM application, even if the publisher has not received rights from other joint authors. If, however, only a subset of a joint author’s exclusive rights have been transferred to it, the publisher would not qualify as a claimant. While the Office cannot advise as to how this standard may apply to specific types of assignments, whether a given transaction constitutes a transfer of copyright ownership—as distinguished from merely a nonexclusive license—will be governed by the statutory definition of that term.<sup>33</sup>

To the extent NMPA’s comment is raising concerns regarding the “claimant” definition more generally, the Office notes that any changes to that provision would have implications for a broader range of stakeholders than those affected by the GRAM option. The Office therefore does not believe that this proceeding is the appropriate forum for consideration of such changes, although it is open to considering this question more broadly.<sup>34</sup> As the Office continues development of its next-generation registration system, however, it will continue to explore ways to better accommodate registrations involving jointly owned works, and welcomes input from NMPA and other interested parties. The Office also notes that a third party who is assigned a copyright interest but does not qualify as a claimant for GRAM registration purposes may record its ownership information in the Office’s public record.<sup>35</sup> Moreover, as noted above, an author of the work may always be listed as a claimant.

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<sup>33</sup> See 17 U.S.C. 101 (“A ‘transfer of copyright ownership’ is an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license.”).

<sup>34</sup> The Office has an open rulemaking proceeding on this provision. See *Registration of Copyright: Definition of Claimant*, 77 FR 29257 (May 17, 2012).

<sup>35</sup> 37 CFR 201.4; see also *Document Recordation: Completing and Submitting Declarations of Ownership in Musical Works*, U.S. Copyright Office, <https://www.copyright.gov/recordation/domw/>.

## 6. Publication Information

Commenting parties did not object to the requirement that a GRAM application must “specify the date and nation of publication for the album.”<sup>36</sup> NMPA, however, expressed concern over the requirement that all eligible works in the group be published on the album on the same date, noting that it is common for a song to be published as a single before it is published as part of an album.<sup>37</sup> It suggested that the Office allow previously published works that are later included on an album to be included in a GRAM registration “to maximize the [GRAM option’s] usefulness” and “to encourage an accurate public record.”<sup>38</sup> The Office has amended the final rule to allow for the registration of a musical work or sound recording that was previously published as an individual work only (*e.g.*, as a single), provided that the application includes the statutorily-required date of first publication for each of the works.<sup>39</sup> Applicants should provide this information in the “Note to Copyright Office” field in the relevant GRAM application. The certificate of registration will be annotated to reflect the additional publication dates.

In addition, A2IM and RIAA and Jesse Morris separately asked for a clarification in the final rule that previously published or registered works that were later contained on an album may be excluded from the GRAM application claim.<sup>40</sup> These parties were concerned that the inclusion of a previously published single would disqualify the entire album from the GRAM registration option. This was not the intent of the proposed rule.

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<sup>36</sup> 84 FR at 22766.

<sup>37</sup> NMPA Comments at 5.

<sup>38</sup> *Id.*

<sup>39</sup> Because the statutory deposit requirements differ based on whether a work is first published within or outside the United States, *see* 17 U.S.C. 408(b), the final rule requires that the nation of publication be the same for all works in the group.

<sup>40</sup> A2IM & RIAA Comments at 7; Jesse Morris Comments at 2.

Applicants should disclaim ineligible works by listing the titles of those works in the Material Excluded field.

### *B. Application Requirements*

As discussed, the Office is developing two new online applications specifically for this group option—one application for musical works, and another application for sound recordings and any associated literary, pictorial, or graphic works included with the same album. These applications are currently expected to be implemented into the eCO system this spring by the OCIO. Nevertheless, the availability of the GRAM applications is ultimately dependent on the completion of system development and may be affected by unanticipated delays in that process. The Office will issue a public announcement when implementation is complete and this option is available to applicants.

The Office will provide detailed information on group eligibility requirements and instructions on completing the applications on its website, including a video and webinar.

### *C. Filing Fee*

The NPRM provided that the filing fee for the GRAM option would be \$55, the fee applicable to claims submitted on the Standard Application. It further noted that the Office had recently proposed to increase the Standard Application fee to \$75 and that if that proposal were adopted, the new fee would apply to GRAM claims.<sup>41</sup> Subsequently, the Office submitted a final proposed schedule and analysis of fees to Congress in which it reduced the proposed increase to \$65.<sup>42</sup> Based on the comments received in the fee study proceeding, and in light of the Office's inability under the current registration system to charge different prices for different types of works submitted on the Standard

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<sup>41</sup> 84 FR at 22766.

<sup>42</sup> U.S. Copyright Office, *Proposed Schedule and Analysis of Copyright Fees to Go into Effect in Spring 2020* at 20 (2019), <https://www.copyright.gov/rulemaking/feestudy2018/proposed-fee-schedule.pdf>.

Application, at the time its fee study was submitted to Congress, the Office reiterated its recommendation that the GRAM fee be the same as the Standard Application fee.<sup>43</sup>

Following the 120-day statutory period for congressional review,<sup>44</sup> the Office promulgated a final rule implementing the proposed fee schedule.<sup>45</sup> The rule noted the Office’s expectation that GRAM registrations would “require a workflow similar to claims submitted on the Standard Application” and that commenters in the fee study proceeding generally supported linking the two fees.<sup>46</sup> To avoid potential confusion, the Office did not adopt the GRAM fee as part of that rule, noting that it instead would adopt the fee when it issued a final rule implementing the GRAM option.<sup>47</sup>

Although the Office is now providing standalone applications for GRAM submissions, it continues to believe it is appropriate to charge the same fee as is charged for Standard Application filings. The Office believes that it is reasonable to set the GRAM fee, at least initially, at the same level as previously noted, given the similarities in expected workflow associated with examining these claims and the lack of additional data to support an alternate level. The final rule therefore establishes a \$65 fee. Given, however, that the Office now has greater flexibility to adjust fees specifically for this option, it will gather additional data to determine if this amount should be adjusted once this option is implemented.<sup>48</sup> The Office also is open to considering differential price options following implementation of its next-generation registration system.<sup>49</sup>

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<sup>43</sup> *Id.* at 29.

<sup>44</sup> *See* 17 U.S.C. 708(b)(5).

<sup>45</sup> Copyright Office Fees, 85 FR 9374 (Feb. 19, 2020).

<sup>46</sup> *Id.* at 9380–81.

<sup>47</sup> *Id.*

<sup>48</sup> *See* A2IM & RIAA Comments at 6 (“[W]e would be open to a fee structure whereby some baseline number of tracks (e.g., 20) can be included as part of the basic group registration fee and additional tracks can be included in the same GRAM application for an additional surcharge (e.g., \$1–\$2 per track for each additional track).”).

<sup>49</sup> *See* Registration Modernization, 85 FR 12704, 12706 (Mar. 3, 2020).

#### *D. Deposit Requirements*

The NPRM noted that “[t]he deposit requirements for this group registration option will be the same as the requirements that normally apply to claims involving musical works, sound recordings, and associated album material.”<sup>50</sup> The Office proposed that for GRAM claims that include sound recordings, “the applicant should submit two physical phonorecords, along with two physical copies of any related album material,” if the album was published in physical form or in both physical and digital form.<sup>51</sup> “If the album was published solely in digital form, the applicant may upload a digital phonorecord along with a digital copy of any related album material.”<sup>52</sup> For GRAM claims that do not include sound recordings, the Office proposed that “the applicant should submit a complete phonorecord of each musical work being registered” and a complete copy of any associated literary, pictorial, or graphic works associated with the claim.<sup>53</sup>

A2IM and RIAA requested that “when the works are available in both physical and digital form the applicant be permitted to select whether to submit a physical or digital deposit,” reasoning that “digital copies are much easier and less expensive for record labels to provide than physical ones.”<sup>54</sup> These deposit requirements, however, are designed to conform to the best edition requirements applicable to these types of works generally.<sup>55</sup> Because musical works published solely on phonorecords are not subject to

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<sup>50</sup> 84 FR at 22767.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> A2IM & RIAA Comments at 7.

<sup>55</sup> The Copyright Act authorizes the Register of Copyrights to specify by regulation “the nature of the copies or phonorecords to be deposited” with respect to particular administrative classes established for purposes of registration. 17 U.S.C. 408(c)(1); *see also id.* at 408(b) (establishing deposit requirements, “[e]xcept as provided by sub-section (c)”). For purposes of this group option, the Office has adopted the same deposit requirements applicable to the relevant categories of works under individual applications, in order to avoid affecting the Library’s collections policies.



the best edition requirement, the authors and owners of these works may submit digital phonorecords regardless of how the album was published.<sup>56</sup> Conversely, sound recordings are subject to the best edition requirement, and therefore authors and owners of those works must submit copies in either physical or digital form, depending on how the work was published.<sup>57</sup> It is beyond the scope of this proceeding to consider potential changes to those requirements. The final rule therefore generally retains the NPRM's deposit provisions, with updates to reflect the two new GRAM-specific applications.<sup>58</sup>

As noted in the NPRM, for digital deposits, each work must be contained in a separate electronic file, assembled in an orderly form in one of the acceptable file formats listed on the Office's website, and uploaded as individual electronic files (not .zip files) to the electronic submission system.<sup>59</sup> The NPRM provided that a submission will be considered "orderly" if the file name for each work can reasonably be matched with the corresponding title entered on the application so that the examiner can verify that the correct works were uploaded.<sup>60</sup> No party commented on this requirement. The final rule incorporates this requirement into the regulatory text, providing that "[t]he file name for each work must match the title as submitted on the application." This provisions tracks language in the recently issued final rule for group registration of short online literary works,<sup>61</sup> and is intended to avoid potential confusion resulting from inconsistent designations.

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<sup>56</sup> *Id.*

<sup>57</sup> The Copyright Act provides that, in the case of a work first published outside the United States, only one copy or phonorecord is required for deposit. 17 U.S.C. 408(b)(3). The final rule has been updated to reflect this distinction.

<sup>58</sup> As noted, the application for "musical works from an album" will not initially permit the registration of ancillary materials. The final rule has been revised to reflect this limitation.

<sup>59</sup> 84 FR at 22767.

<sup>60</sup> *Id.*

<sup>61</sup> *See* 37 CFR 202.4(j)(7).

### *E. Supplementary Registrations*

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.”<sup>62</sup> The Office has created multiple versions of a form that may be used to correct or amplify information in registrations made under specified group registration options, but the Office has not yet created a version for a registration of a group of works on an album of music. Therefore, the final rule clarifies that applicants should contact the Office of Registration Policy & Practice to obtain instructions before seeking a supplementary registration involving these types of claims.

This update constitutes a change to a “rule[] of agency . . . procedure[] or practice.”<sup>63</sup> It does not “alter the rights or interests of parties,” but merely “alter[s] the manner in which the parties present themselves or their viewpoints to the agency.”<sup>64</sup> It therefore is not subject to the notice and comment requirements of the Administrative Procedure Act.

#### **List of Subjects**

37 CFR Part 201

Copyright, General provisions.

37 CFR Part 202

Copyright, Preregistration and registration of claims to copyright.

#### **Final Regulations**

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR parts 201 and 202 as follows:

#### **PART 201—GENERAL PROVISIONS**

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<sup>62</sup> 17 U.S.C. 408(d).

<sup>63</sup> 5 U.S.C. 553(b)(A).

<sup>64</sup> *JEM Broad. Co. v. F.C.C.*, 22 F.3d 320, 326 (D.C. Cir. 1994) (internal citation omitted).

1. The authority citation for part 201 continues to read as follows:

**Authority:** 17 U.S.C. 702.

2. Amend §201.3 by:

a. Redesignating paragraphs (c)(9) through (c)(28) as paragraphs (c)(10) through (c)(29), respectively.

b. Adding new paragraph (c)(9).

The addition reads as follows:

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

\* \* \* \* \*

(c) \* \* \*

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(9) Registration of a group of works on an album	65
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**PART 202— PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT**

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

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

4. Amend § 202.4 by:

a. Redesignating paragraphs (k) through (n) as paragraphs (o) through (r), respectively.

b. Adding new paragraph (k).

c. Adding and reserving new paragraphs (l), (m), and (n).

d. Amend the newly redesignated paragraph (r), by removing the words “or (k)” and adding in its place the words “(k), or (o)”.

The addition reads as follows:

**§202.4 Group registration.**

\* \* \* \* \*

(k) *Group registration of works on an album.* Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that a group of two or more musical works, or two or more sound recordings and any associated literary, pictorial, or graphic works, may be registered with one application, the required deposit, and the filing fee required by § 201.3 of this chapter, if the following conditions are met:

(1) *Eligible works.* (i) All of the works in the group must be contained on the same *album*. For the purposes of this section, an *album* is a single physical or electronic unit of distribution containing at least two musical works and/or sound recordings embodied in a phonorecord, including any associated literary, pictorial, or graphic works distributed with the unit.

(ii) The group may include:

(A) Up to twenty musical works; or

(B) Up to twenty sound recordings and any associated literary, pictorial, or graphic works included with the same album.

(iii) The applicant must provide a title for the album and a title for each musical work or sound recording claimed in the group.

(iv) All of the works in the group must be created by the same author or the works must have a common joint author, and the copyright claimant or co-claimants for each work must all be the same person(s) or organization. The works may be registered as works made for hire if they are identified in the application as such.

(v) As a general rule, all of the works must be first published on the same album, the date and nation of publication for each work must be specified in the application, and the nation of publication for each work must be the same. A

musical work or sound recording that was previously published as an individual work only (*e.g.*, as a single) may be included in the claim if the date of first publication for that work is listed separately in the application.

(2) *Application.* If the group consists of sound recordings and, as applicable, any associated literary, pictorial, or graphic works, the applicant must complete and submit the application designated for “sound recordings from an album.” If the group consists of musical works, the applicant must complete and submit the application designated for “musical works from an album.” The application may be submitted by any of the parties listed in § 202.3(c)(1).

(3) *Deposit.* (i) For claims in works first published in the United States submitted with the application for “sound recordings from an album,” the applicant must submit two complete phonorecords containing the best edition of each recording, and two complete copies of any associated literary, pictorial, or graphic works that are included in the group. For claims in works first published outside the United States submitted with this application, the applicant must submit one complete phonorecord of the work either as first published or of the best edition. A phonorecord will be considered complete if it satisfies the requirements set forth in §202.19(b)(2). The deposit may be submitted in a digital form if the album has been distributed solely in a digital format, and if the requirements set forth in paragraph (k)(3)(iii) of this section have been met.

(ii) For claims submitted with the application for “musical works from an album,” the applicant must submit one complete phonorecord of each musical work that is included in the group.

(iii) The deposit may be submitted in a digital form if the following requirements have been met. Each work must be contained in a separate electronic file. The

files must be assembled in an orderly form, they must be submitted in one of the electronic formats approved by the Office, and they must be uploaded to the electronic registration system as individual electronic files (not .zip files). The file size for each uploaded file must not exceed 500 megabytes; the files may be compressed to comply with this requirement. The file name for each work must match the title as submitted on the application.

(4) *Special relief.* In an exceptional case, the Copyright Office may waive the online filing requirement set forth in paragraph (k)(2) of this section or may grant special relief from the deposit requirement under § 202.20(d), subject to such conditions as the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose on the applicant.

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**§ 202.6 [Amended]**

5. Amend § 202.6(e)(2) by:

a. Removing “or for” after and adding “,” in its place and adding “, or a group of works published on the same album registered under §202.4(k),” after “§202.4(j)”.

Dated: February 11, 2021.

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

Approved by:

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

**[BILLING CODE 1410-30-P]**

[FR Doc. 2021-03533 Filed: 2/22/2021 8:45 am; Publication Date: 2/23/2021]