

**Before the
COPYRIGHT OFFICE,
LIBRARY OF CONGRESS
Washington, DC**

Notice of Proposed)	COMMENTS AND RENEWED
Rulemaking: Group)	PETITION FOR RULEMAKING OF THE
Registration of Unpublished)	NATIONAL WRITERS UNION (NWU),
Works (FR Doc. 2017-)	TEXTBOOK & ACADEMIC AUTHORS
21722; Copyright Office)	ASSOCIATION (TAA), SCIENCE
Docket Number 2017-15))	FICTION AND FANTASY WRITERS OF
)	AMERICA, INC. (SFWA), AND
)	AMERICAN SOCIETY OF
)	JOURNALISTS AND AUTHORS (ASJA)

November 13, 2017

The National Writers Union (NWU), Textbook & Academic Authors Association (TAA), Science Fiction and Fantasy Writers of America, Inc. (SFWA), and American Society of Journalists and Authors (ASJA) submit these comments and renewed petition for rulemaking in response to the Notice of Proposed Rulemaking (NPRM) by the U.S. Copyright Office, “Group Registration of Unpublished Works”, FR Doc. 2017–21722, Copyright Office Docket Number 2017-15, published at 82 *Federal Register* 47415-47421 (October 12, 2017).¹

The National Writers Union (NWU) is a national labor union that advocates for freelance and contract writers. The NWU includes local chapters as well as at-large members nationwide and abroad. The NWU works to advance the economic conditions of writers in all genres, media, and formats. NWU membership includes, among others, fiction and nonfiction book authors, journalists, business and technical writers, website and e-mail newsletter content providers, bloggers, poets, novelists, playwrights, editors, and academic writers. The NWU is a national amalgamated union, Local 1981, of the United Auto Workers, AFL-CIO.

The Textbook & Academic Authors Association (TAA) is a national, nonprofit membership association. TAA’s mission is to support textbook and academic authors in the creation of top-quality educational and scholarly works that stimulate the love of learning and foster the pursuit of knowledge.

Science Fiction and Fantasy Writers of America, Inc., (SFWA) is the national organization for professional authors of science fiction, fantasy, and related genres. Founded in 1965, SFWA is a California 501(c)(3) not for profit member organization. SFWA has

1 These joint comments and renewed petition for rulemaking are submitted on behalf of, and reflect the views of, all of the signatory organizations. SFWA, NWU, and ASJA are also submitting concurrent joint comments on additional aspects of the proposed rules.

nearly 2,000 members, the majority of whom are professional freelance authors of novels and/or short fiction. SFWA members publish works of prose, dramatic scripts for film and television, and games related to science fiction and fantasy. Of particular note, SFWA's membership includes writers publishing with traditional book and magazine publishers and writers who self-publish their works in print and electronic form. SFWA is not a subsidiary of any other entity, and is entirely owned by its membership. SFWA has no subsidiaries or other ownership interest in any other organization that may be affected by this submission. SFWA members run their own small businesses, whose product is the written word.

Founded in 1948 as the "Society of Magazine Writers," today's American Society of Journalists and Authors (ASJA) is the nation's professional organization of independent nonfiction writers: "freelancers." Membership standards are rigorous. To qualify, a writer must have written two books, six full-length articles in a publication with audited national circulation, or an equivalent combination. Members earn their livings from magazine articles, online content, trade books, research papers and many other forms of non-fiction writing.

On January 30, 2017, four national organizations of writers in a variety of genres, media, and formats including the NWU, SFWA, and ASJA petitioned the Register of Copyright, "to exercise her discretion, pursuant to Section 408(c)(1) of the Copyright Act, to initiate a rulemaking to create group registration procedures for (a) multiple written works first distributed in electronic format on multiple dates, regardless of whether they constitute contributions to 'periodicals' or a 'database' or might be determined to have been, as of the date of application for registration, 'published' or 'unpublished,' and (b) multiple written works by the same creator first published on multiple dates, regardless of whether they were published as contributions to

periodicals.” (Comments and Petition For Rulemaking of the National Writers Union, American Society Of Journalists And Authors, Science Fiction and Fantasy Writers of America, and Horror Writers Association, Copyright Office Docket Number 2016-8, available at <<https://www.regulations.gov/document?D=COLC-2016-0013-0003>>)

Our Petition For Rulemaking was combined with our comments on the NPRM for revisions to the regulations for group registration of contributions to periodicals.

In issuing its Final Rule amending the regulations for group registration of contributions to periodicals, the Copyright Office acknowledged our Petition for Rulemaking and indicated that it would be “taken into account” at an unspecified future date:

NWU submitted a petition urging the Office to create additional group registration options for the following categories of works: “(a) Multiple works first distributed electronically on multiple dates, regardless of whether they constitute contributions to periodicals or a database and regardless of whether they might be deemed to have been, at the time of registration, published or unpublished, and (b) multiple works that would otherwise be eligible for group registration except that they were not first published as contributions to periodicals.” NWU Comments at 4, 11–12. The Office is considering the NWU’s requests and will take them into account when developing its priorities for future upgrades to the electronic registration system.

(U.S. Copyright Office, Final Rule, Group Registration of Contributions to Periodicals, 82 *Federal Register* 29410 at 29412, June 29, 2017)

Through the current NPRM, the Copyright Office is proposing to create “a new group registration option for a limited number of unpublished works.”

This NPRM does not mention our Petition For Rulemaking, and it is unclear whether it might be intended to be responsive to our petition. We do not believe that this NPRM is responsive to our Petition For Rulemaking. So far as we know, our Petition For Rulemaking remains pending and has neither been acted on, granted, nor denied by the Copyright Office.

In an abundance of caution, and because it remains prohibitively costly and time-consuming to register or enforce copyright in most written work distributed online, we are submitting these comments to note for the record that this NPRM is not in any way responsive to our Petition For Rulemaking and that the new group registration option proposed in this NPRM would not address the situations and types of work that prompted our Petition for Rulemaking.

Specifically:

1. The new registration category would be limited to five works per registration, while a dynamic website or a social media feed may contain hundreds of content elements or updates per month that each constitute a distinct “work” for copyright purposes. We see no reason why the number of written works included in a single group registration should be limited, when an unlimited number of either published or unpublished photographs can be registered through a single application with a single form for a single fee.
2. The new group registration category would be limited to “unpublished” works. It would thus continue to require writers to guess, and to gamble our later ability to enforce our copyrights on successfully guessing, at the time of registration, whether a court would later determine our works to have been, as of that time, “published” or “unpublished” as those terms are defined in the Copyright Act. We doubt that even the foremost experts in copyright law would be willing to bet on such a gamble with respect to works distributed online, much less to risk the entire value of their life’s creative work on such a gamble.
3. Web content – which is an important although not the only format of work which prompted our Petition For Rulemaking – is explicitly excluded from the new group registration option: “The Office will not accept an application that includes ... a database,

or a Web site, because they often contain individual works of authorship.” (NPRM, Group Registration of Unpublished Works, 82 *Federal Register* 47415 at 47417, note 6)

We renew and urge the Copyright Office to act promptly on our Petition For Rulemaking.

Respectfully submitted,

_____/s/_____

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