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### **Comments Concerning Group Registration of Unpublished Works**

TO: Robert J. Kasunic,  
Associate Register of Copyrights and  
Director of Registration Policy and Practice

*via electronic submission to*  
<https://www.regulations.gov/comment?D=COLC-2017-0009-0002>

RE: Notice of Proposed Rulemaking,  
Group Registration of Unpublished Works  
Copyright Office Docket No. 2017-15  
82 *Federal Register* 47415-47421 (Oct. 12, 2017)

Science Fiction and Fantasy Writers of America, American Society of Journalists and Authors, and The National Writers Union respectfully submit the following comments concerning the Copyright Office's Notice of Proposed Rulemaking.

### **Statements of Interest**

**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) member organization. SFWA has 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.

### **American Society of Journalists and Authors (ASJA)**

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.

### **The National Writers Union (NWU)**

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.

### **Petition of Writers' Organizations in January 2017**

On January 30, 2017, SFWA, ASJA, NWU and Horror Writers Association representing writers in a variety of genres, media, and formats 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>>)

### **Response to Proposed Rulemaking, October 2017**

With this recently issued Notice of Proposed Rulemaking, there is no indication that the Copyright Office has thought through how Group Registration can be

most effectively restructured to meet the needs of authors. In fact, there's no indication that our petition has been considered at all. For this reason, SFWA, ASJA, and NWU object to the proposed Rule on the basis that it does not appear to have fulfilled or acknowledged the previous undertaking to consider comments, either in the text of the Rule or in the comments in the Federal Register, in addition to specific substantive concerns.

This proposed rulemaking actually harms our members who want to register a group of unpublished documents with one registration fee by limiting the number to an arbitrary five works. We question the particular limit of five items per group registration for textual works, and do not see adequate justification for that choice of a limit in the Federal Register announcement of this rulemaking. The announcement only provides evidence and a reasoned interpretation regarding a single application with "several thousand" independent works, see 82 Fed. Reg. 47415, 47416 (*citing Palladium Music, Inc. v. EatSleepMusic, Inc.*, 398 F.3d 1193, 1195 (10th Cir. 2005)). The announcement, however, states no evidence in support of, or a nonarbitrary reason for, narrowing group registrations from the extreme of "several thousand" to the woefully useless "five." While few professional authors register their copyrights for works before they are published, those who do would be hit hard by this limitation. Authors of poetry, short fiction, and essays would be hit especially hard.

A limitation on the number of items per group registration also functions as an undisclosed revenue-enhancing device for the Copyright Office — especially considering the present backlog of unacted-upon applications, with a mean delay of well over a year between application and issuance of a certificate. The backlog would, in fact, counsel that for efficiency the Copyright Office should encourage *more* items per application, not *fewer*, so as to limit potential growth of that backlog. Instead, however, the limitation suggests that the incremental cost of hiring more staff to process more applications is less than the "user fee" of registration — that is, that there is *not* a reasonable relationship between actual cost to the Copyright Office and the fee charged for registration. Our writers' organizations have long advocated that the Copyright Office should keep fees low in order to encourage registration; this proposed rulemaking would make it harder and more expensive for even moderately prolific authors to register unpublished works, which is counter-productive.

In addition, a limit of five is inconsistent with the present fee structure applicable to recordation at the Copyright Office, which operates on groups of ten copyrightable works. (See <<https://www.copyright.gov/docs/fees.html>> for current fee schedule for recordation of documents.)

We therefore request that the Copyright Office completely reconsider the number of works that may be included in a single group registration. We strongly suggest that the Copyright Office should disclose the evidence and

reasoning for any specific limit placed on the number of works in a group registration to ensure consistency with the principles of the Administrative Procedures Act, 5 U.S.C. § 551 *et seq.* (if only to avoid foreseeable challenges to an arbitrary-appearing limit with no apparent relation to other aspects of copyright registration or recordation).

Finally, SFWA and ASJA fully support and endorse the comments and renewed petition for rulemaking concurrently submitted by the National Writers Union, et. al., which expand on the problems this rulemaking would create for websites and other evolving forms of copyrightable works. We renew and urge the Copyright Office to act promptly on our Petition For Rulemaking.

**Respectfully submitted for SFWA,**

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SFWA Legal Affairs Committee,  
Author, Past Director, SFWA

Michael Capobianco, Co-Chairman,  
SFWA Legal Affairs Committee  
Author, Past President, SFWA

**Respectfully submitted for ASJA,**

Sherry Beck Paprocki, President  
American Society of Journalists and Authors (ASJA)

**Respectfully submitted for NWU,**

Larry Goldbetter, President  
Susan E. Davis,  
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Edward Hasbrouck, Co-Chair, Book Division