

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

Notice of Proposed
Rulemaking: Group
Registration of Short Online
Literary Works (FR Doc.
2018-27453; Copyright Office
Docket Number 2018-12)

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) **COMMENTS OF THE**
) **NATIONAL WRITERS UNION**
) **(UAW LOCAL 1981, AFL-CIO)**
) **AND THE**
) **NATIONAL PRESS PHOTOGRAPHERS**
) **ASSOCIATION (NPPA)**

February 19, 2019

The undersigned national organizations of writers and photographers submit these comments in response to the Notice of Proposed Rulemaking (NPRM) by the U.S. Copyright Office, “Group Registration of Short Online Literary Works,” FR Doc. 2018-27453, Copyright Office Docket Number 2018-2, 83 *Federal Register* 65612-65617 (December 21, 2018).

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 National Press Photographers Association (NPPA) is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its creation, editing and distribution. NPPA’s members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism community. Since its founding in 1946, the NPPA has been the Voice of Visual Journalists, vigorously promoting the constitutional and intellectual property rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism. Many of NPPA’s members write and publish blogs, articles, and books and create other written content.¹

1. One of the burdensome aspects of copyright registration, especially for multimedia journalists and others who create both written and visual works, is the requirement to jump through different hoops to register written and visual works separately, even when they were created by the same author and first published as part of the same article or story. Bloggers often publish both images and written work, and both staff and freelance journalists are increasingly expected to submit both photographic and written reporting from the same assignment.

As organizations including one of the petitioners in this proceeding, we thank the Copyright Office for acting on a portion of our petition for rulemaking and for finding that, “there is a legitimate need for a new group registration option for ‘short online literary works,’ to be known as ‘GRTX.’”

The proposed rule would reduce the time, form-filling, and fees required for registration enough to make it feasible for authors of a few of the most remunerative blogs, dynamic websites, social media feeds, and other online publications to register copyright in their work and thus, for the first time, to be able to recover attorneys’ fees and statutory damages and begin to have a chance to enforce their copyrights in these works in court.

We recognize that the Copyright Office may not itself have the authority, without action by Congress, to eliminate registration formalities as a condition for copyright remedies or cure the violation of the Berne Convention and the WIPO Copyright Treaty which they represent.

In this light, we welcome any effort by the Copyright Office to mitigate their burdens. We are especially pleased that the proposed rule is being proposed before the Copyright Office finalizes any increase in fees or develops its next-generation registration system, so that works of this type can be planned for and more efficiently accommodated in that system.

We also welcome the mention in the NPRM that, “the Office intends to address publication with respect to the internet, for purposes of registration, in a separate proceeding.” We urge the Copyright Office to begin this proceeding as soon as possible, and to work with us and other representatives of authors to understand the diversity of websites, Web content, and Web content management systems and tools, in order to minimize the burdens of registration.

We also particularly welcome and thank the Copyright Office for its official guidance and clarification in the NPRM, with respect to the publication status of works distributed on the Internet, that, “A work will be considered an ‘online’ literary work if it was first published on the internet. This requirement may be satisfied, for example, if copies of the work were first distributed to the public as part of a website or online platform.”

Minor changes, as discussed below, could significantly expand the relief from the burden of registration formalities afforded to authors by the proposed rule, and could also respond to the portion of our petition for rulemaking which has not yet been acted on.

First, we request that the number of works eligible for registration with a single application, form, and fee in the proposed category GRTX be increased from the proposed 50 works to an absolute minimum of at least 100 works (to accommodate daily posts or updates or updates for three months on a single website, blog, or online platform), and preferably to 500 works to accommodate authors who publish work on more than one such platform. (By comparison, photographers can register up to 750 works with a single application for group registration.)

Raising the number of works from 50 to at least 100 will have minimum impact on the Copyright Office, while halving the burden on authors to register works of this type.

The burden of registering works, even as part of an application for group registration, will remain far from *de minimus*. An author will need to commit to this process on a regular schedule, interrupting her creative work, to comply with requirements for timely registration within three months. She will need to extract each work from the blog, website, content management system, or social media platform on which it has been posted; title each work; save it as a separate file;

rename the file to correspond to the assigned title; assemble the list of works and files; complete the registration form; upload the form and all the files; and pay the fee.

It's difficult to assess the burden on authors until the new procedures can be tested, but our first guess is that compiling, completing, and submitting a GRTX registration application will require at least one, more likely two or more, hours of an author's time.

The statutory requirement for timely registration to be made within three months requires any sort of group registration to be carried out at least four times a year. But the Copyright Office should not, and need not, require more frequent or numerous registrations that that.

For a single website, blog, or other online platform with daily updates or postings, the proposed rule with its limit of 50 works per application would require eight GRTX applications per year, for fees of \$55 each and a total of \$440 per year. If the proposed fee increase to \$75 per application is approved, this would increase to \$600 per year.

That's a huge improvement from the current fees of \$20,075 per year for 365 daily applications. But increasing the allowable number of works per application from 50 to 100 would cut the burden from eight to four applications per year per website, blog, or online platform. It would reduce the fees for each platform to \$220 per year, proposed to be increased to \$300. And at two hours per application, it might get the time burden on each author down to as "little" as one full working day a year – per website, blog, or online platform – diverted from creative work to copyright self-defense through the completion of registration formalities.

Second, according to the NPRM, "a work would not be eligible for GRTX if copies have been distributed solely in a physical form, or if copies were first published in a physical form and then subsequently published online." In practice, when a publisher makes a work available both

online and in print form, as is common, print and online publication are nearly (but of course almost never exactly) simultaneous. An author may not be able to control, and may not even be able to determine after the fact, whether the first publication of such a work was in print or online.

Consider, for example, a work published in both the print and online editions of a daily newspaper. Is it considered “published” when it came off the printing press, or when the first copy was delivered to a home, or when it was first made available for sale from a newsrack or a store? An article might be printed at 10 p.m., made available online at midnight, and delivered in print form to subscribers and stores at 5 a.m. Was it first “published” online, or in print?

Excluding such works significantly and unnecessarily limits the scope and the extent of mitigation of the burdens of registration formalities afforded to authors by the proposed rule. We request that the Copyright Office remove the prohibition of GRTX registration of works that have also been distributed in print formats, whether before or after online distribution. This could be done by removing the word “first” from the references to online distribution.

Finally, our petition for rulemaking requested 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.”

Only the first of these two requests has been acted on. There is no explicit mention of the second half of our petition in the NPRM. So far as we can tell, it remains pending.

We respectfully request the Copyright Office to act on the second half of our petition by creating a category for group registration of multiple works first published in print formats.

We see no reason why the ability to register copyright in a work should depend on whether it is published in print, online, or in both (or if so, in which sequence).

Finally, in addition to these comments, we note our endorsement of the comments regarding additional aspects of the proposed rules being submitted by the Authors Guild, Inc., and the Science Fiction and Fantasy Writers of America, Inc. (SFWA).

We again thank the Copyright Office for its action on our petition for rulemaking and its consideration of these comments. We are available to consult with the Copyright Office or to answer any questions as to how to craft registration procedures that make registration an economically justifiable business choice for a larger subset of authors and works than at present.

Respectfully submitted,

_____/s/____

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