

agency's need for timely and robust input and to satisfy the stakeholder's request. Accordingly, the comment period for this RFI is being extended and will now conclude on May 13, 2024.

**Brent Parton,**

*Principal Deputy Assistant Secretary for Employment and Training, Labor.*

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## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Parts 201, 202

[Docket No. 2024-2]

#### Group Registration of Two-Dimensional Artwork

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The U.S. Copyright Office is proposing to create a new group registration option for two-dimensional artwork. This option will allow applicants to register up to ten works published within a thirty-day time period by submitting a single online application with a digital deposit copy of each work. The Office will examine each work to determine if it contains a sufficient amount of creative pictorial or graphic authorship. If the Office registers the claim, the registration will cover each artwork as a separate work of authorship. The Office invites comment on this proposal.

**DATES:** Comments on the proposed rule must be made in writing and must be received by the U.S. Copyright Office no later than April 1, 2024.

**ADDRESSES:** For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov*. Specific instructions for submitting comments are available on the Copyright Office website at <http://copyright.gov/rulemaking/gr2d>. If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

**FOR FURTHER INFORMATION CONTACT:**

Rhea Efthimiadis, Assistant to the General Counsel, by email at [mefth@copyright.gov](mailto:mefth@copyright.gov), or by telephone at 202-707-8350.

## SUPPLEMENTARY INFORMATION:

### I. Background

The U.S. Copyright Office (“Office”) is proposing to create a new group registration option for works of two-dimensional art. When Congress enacted the Copyright Act of 1976 (“Copyright Act” or “Act”), it authorized the Register of Copyrights (“Register”) to specify by regulation the administrative classes of works for the purpose of seeking registration, and the nature of the deposit required for each such class. Congress afforded the Register discretion to permit registration of groups of related works with one application and one filing fee, known as “group registration.”<sup>1</sup> Pursuant to this authority, the Register has established regulations permitting the Office to issue group registrations for certain limited categories of works, provided certain conditions have been met.<sup>2</sup>

As the legislative history explains, allowing “a number of related works to be registered together as a group represent[ed] a needed and important liberalization of the law.”<sup>3</sup> Congress recognized that requiring applicants to submit separate applications where related works are separately published may be so burdensome that authors and copyright owners may forgo registration altogether, since registration is not a prerequisite to copyright protection.<sup>4</sup> If copyright owners do not submit their works for registration, the public record will not contain any information concerning these works.

At the same time, when published works are bundled together in one application, it can be difficult to capture adequate information about each work, particularly within the technological constraints of the current electronic registration system (known as “eCO”). The Office also must consider the potential effect of a group registration option on its overall administration of the registration system, including the processing times for other types of works. Group registration options require balancing the copyright owner's desire for more liberal registration options, the importance of an accurate public record, and the Office's need for an efficient method of examining, indexing, and cataloging each work.

<sup>1</sup> 17 U.S.C. 408(c)(1).

<sup>2</sup> See generally 37 CFR 202.3(b)(5), 202.4(c)–(k), (o).

<sup>3</sup> H.R. Rep. No. 94-1476, at 154 (1976), reprinted in 1976 U.S.C.C.A.N. 5659, 5770; S. Rep. No. 94-473, at 136 (1975).

<sup>4</sup> H.R. Rep. No. 94-1476 at 154; S. Rep. No. 94-473 at 136.

### A. Calls for a New Registration Option for Two-Dimensional Artwork<sup>5</sup>

On numerous occasions, groups representing artists have asked the Office to establish a new group registration option for two-dimensional artwork.<sup>6</sup> They assert that such an option is needed because visual artists are often prolific creators who produce a significant number of works each year.<sup>7</sup> These works can be particularly susceptible to infringement, because in most cases they are fixed in a digital file that can easily be copied, even if the file includes copyright management information or technical protection measures.<sup>8</sup> Once a file has been sent to

<sup>5</sup> This document references a number of prior rulemakings in which commenters have requested group registration, including: 60 FR 18742 (Mar. 28, 2021) (“2014 Fee Study NPRM”); 80 FR 23054 (Apr. 24, 2015) (“Visual Works NOI”); 81 FR 86643 (Dec. 1, 2016) (“Group Photographs NPRM”); 82 FR 47415 (Oct. 12, 2017) (“GRUW NPRM”); 83 FR 24054 (May 24, 2018) (“2019 Fee Study NPRM”); 83 FR 52336 (Oct. 17, 2018) (“Registration Modernization NOI”); 84 FR 66328 (Dec. 4, 2019) (“Online Publication NOI”); and 86 FR 70540 (Dec. 10, 2021) (“Deferred Registration Examination Study NOI”).

<sup>6</sup> Copyright Alliance Comment in response to Deferred Registration Examination NOI, at 31 (Jan. 24, 2022) (urging the Office to create “a group registration option for illustrations”); Coalition of Visual Artists (“Coalition”) Comment in response to 2019 Fee Study NPRM, at 35 (May 24, 2018) (“We believe that the current GRPPH [“Group Registration of Published Photographs”] and GRUPH [“Group Registration of Unpublished Photographs”] group registrations should be expanded to include all such two-dimensional visual works, including without limitation, illustrations, graphic art, video clips, textile arts or visual art in any medium.”); Coalition Comment in response to Group Photographs NPRM, at 60 (Jan. 30, 2017) (asking the Office to “[a]llow group registration for all two-dimensional artworks (visual works)”); Graphic Artists Guild Comment in response to Visual Works NOI, at 9 (July 20, 2015) (requesting “a new ruling to allow Group registration for illustration and graphic design; for all visual works, not just photographs”); Association of Medical Illustrators (“AMI”) Comment in response to Registration Modernization NOI, at 9 (Jan. 15, 2019) (“The AMI wishes to emphasize that the option of group registration for multiple published images for a single, reasonable fee should be available for works of visual art . . . .”); Shaftel & Schmelzer Comment in response to Registration Modernization NOI, at 30–31 (Jan. 11, 2019) (“The Graphic Artists Guild has been on record to the Copyright Office asking to include illustration and graphic art in the Group registration category since 1999; at every Roundtable discussion, annual meeting, and nearly every NOI comment letter for the last 20 years.” (footnote omitted)).

<sup>7</sup> Coalition Comment in response to Deferred Registration Examination Study NOI, at 3 (Jan. 24, 2022); Graphic Artists Guild Reply Comment in response to Online Publication NOI, at 2 (June 15, 2020); Graphic Artists Guild Comment in response to Registration Modernization NOI, at 6 (Jan. 15, 2019); Shaftel & Schmelzer Comment in response to Registration Modernization NOI, at 30 (Jan. 11, 2019); Coalition Comment in response to 2019 Fee Study NPRM, at 35 (May 24, 2018).

<sup>8</sup> Coalition Comment in response to Online Publication NOI, App. B, at 16 n.27 (Mar. 19, 2020);

another party it is impossible to know if the recipient deleted the file, kept it, or shared it with others.<sup>9</sup> In some cases, recipients may mistakenly assume they own everything received from the artist, and use the artist's work for other projects without obtaining an appropriate license.<sup>10</sup>

These stakeholder groups have reported that most visual artists do not register their works, despite this risk of infringement.<sup>11</sup> In surveys conducted by the Graphic Artists Guild and the Coalition of Visual Artists ("Coalition"), between 50 and 60% of the participants said they have not registered any of their works with the Office.<sup>12</sup> These groups have cited several reasons why so many visual artists do not participate in the registration system. First and foremost is the cost of registration.<sup>13</sup>

Graphic Artists Guild Comment in response to Registration Modernization NOI, at 6 (Jan. 15, 2019); Coalition Comment in response to Registration Modernization NOI, at 16 n.27 (Jan. 15, 2019); Shaftel & Schmelzer Comment in response to Registration Modernization NOI, at 41 (Jan. 11, 2019); Graphic Artists Guild Comment in response to Deferred Registration Examination Study NOI, at 2 (Jan. 24, 2022). Visual artists who produce works in a physical format may face similar risks. For example, when textile designs are displayed in showrooms or other public places, they can easily be photographed and converted into an unauthorized digital file. Coalition Comment in response to Group Photographs NPRM, at 47 (Jan. 30, 2017).

<sup>9</sup> Coalition Comment in response to 2019 Fee Study NPRM, at 35 (May 24, 2018); Coalition Comment in response to Group Photographs NPRM, at 5 (Jan. 30, 2017); Graphic Artists Guild, American Photographic Artists, and American Society for Collective Rights Licensing Comment in response to 2019 Fee Study NPRM, at 2 (Sept. 21, 2018).

<sup>10</sup> Coalition Comment in response to 2019 Fee Study NPRM, at 35 (May 24, 2018); Graphic Artists Guild, American Photographic Artists, and American Society for Collective Rights Licensing Comment in response to 2019 Fee Study NPRM, at 2 (Sept. 21, 2018); Coalition Comment in response to Group Photographs NPRM, at 5 (Jan. 30, 2017); Graphic Artists Guild Comment in response to 2014 Fee Study NPRM, at 3–4 (May 14, 2012).

<sup>11</sup> AMI Comment in response to 2019 Fee Study NPRM, at 3 (Sept. 18, 2018).

<sup>12</sup> Graphic Artists Guild Comment in response to Visual Works NOI, at 8 (July 20, 2015); Coalition Comment in response to 2019 Fee Study NPRM, App. B, at 14 (Oct. 11, 2018).

<sup>13</sup> Copyright Alliance Comment in response to Deferred Registration Examination Study NOI, at 2 (Jan. 24, 2022); Shaftel & Schmelzer Comment in response to Deferred Registration Examination Study NOI, at 2 (Jan. 22, 2022); Coalition Comment in response to Online Publication NOI, App. B, at 16 n.27 (Mar. 19, 2020); AMI Comment in response to Online Publication NOI, at 8 (Mar. 19, 2020); Shaftel & Schmelzer Comment in response to Registration Modernization NOI, at 6 (Jan. 11, 2019); Coalition Comment in response to Registration Modernization NOI, at 16 n.27 (Jan. 15, 2019); Shaftel & Schmelzer Comment in response to 2019 Fee Study NPRM, at 18 (Sept. 20, 2018); Coalition Comment in response to Group Photographs NPRM, at 51 (Jan. 30, 2017); Copyright Alliance Comment in response to 2014 Fee Study NPRM, at 4 (May 14, 2012); Letter from Mica Duran, AMI, to Shira Perlmutter, Register of Copyrights, at

Visual artists may be prolific creators, but the economic value of each work they produce tends to be quite low.<sup>14</sup> They typically cannot charge a premium for individual works; instead, their income is dependent on the volume of material they produce for their clients.<sup>15</sup> To register a published work with the Office, visual artists generally must submit a separate application and pay a \$45 or \$65 filing fee for each work.<sup>16</sup> The stakeholder groups assert this is cost-prohibitive for individual creators and small businesses,<sup>17</sup> because in some cases, the fee for registering a single published work would exceed the revenue that the artist can reasonably expect to receive for certain types of licensed uses.<sup>18</sup> According to visual artists, these fees cannot be passed onto their clients.<sup>19</sup> As the consulting firm Shaftel & Schmelzer explained, "the marketplace does not pay fees high enough to cover the costs."<sup>20</sup>

Second, the groups contend that individual artists and small businesses

1 (July 10, 2023) (on file with Copyright Office); Graphic Artists Guild Comment in response to Deferred Registration Examination Study NOI, at 1 (Jan. 24, 2022).

<sup>14</sup> Coalition Comment in response to Deferred Registration Examination Study NOI, at 3 (Jan. 24, 2022); Shaftel & Schmelzer Comment in response to Deferred Registration Examination Study NOI, at 28 (Jan. 22, 2022); Shaftel & Schmelzer Comment in response to Registration Modernization NOI, at 30 (Jan. 11, 2019); Copyright Alliance Comment in response to Visual Artists NOI, at 1 (undated); Graphic Artists Guild Comment in response to Visual Works NOI, at 6 (July 20, 2015).

<sup>15</sup> AMI Comment in response to 2019 Fee Study NPRM, at 3 (Sept. 18, 2018); AMI Comment in response to Visual Works NOI, at 13 (undated).

<sup>16</sup> See 37 CFR 201.3(c)(1)(i)(A), (B) (\$45 fee for registering one work by one author with the Single Application; \$65 fee for registering a work with the Standard Application).

<sup>17</sup> Shaftel & Schmelzer Comment in response to Online Publication NOI, at 18 (Mar. 17, 2020); Shaftel & Schmelzer Comment in response to 2019 Fee Study NPRM, at 8 (Sept. 20, 2018).

<sup>18</sup> Graphic Artists Guild Comment in response to Visual Works NOI, at 14 (July 20, 2015) ("In some instances, the cost of registration is higher than what the works are licensed for."); Graphic Artists Guild Comment in response to 2014 Fee Study NPRM, at 2 (May 14, 2012) ("Licenses to use visual works for small and one-time uses to individual and small business users are often below the proposed fee increase."); Shaftel & Schmelzer Comment in response to Registration Modernization NOI, at 6–7 (Jan. 11, 2019) ("Licenses for visual works for small and one-time uses to individual and small business users would in some cases not even cover the cost of registration.");

<sup>19</sup> See Shaftel & Schmelzer Comment in response to 2019 Fee Study NPRM, at 18 (Sept. 20, 2018). For example, AMI estimated that if an artist created twenty-six illustrations for a project they could bill their client \$4,500, but they would have to pay \$1,690 to register these works with the Standard Application, which would account for 37% of the artist's license fee. Letter from Mica Duran, AMI, to Shira Perlmutter, Register of Copyrights, Ex. 1 (July 10, 2023) (on file with Copyright Office).

<sup>20</sup> Shaftel & Schmelzer Comment in response to 2019 Fee Study NPRM, at 42 (Sept. 20, 2018)

do not have the time or resources required to register each work individually.<sup>21</sup> Many visual artists are self-employed, meaning they are personally responsible for handling every aspect of their business. In addition to creating and delivering works to their clients, they must order supplies, update their marketing materials, pay their bills, manage their accounts, organize their records, and perform countless other tasks on a daily basis.<sup>22</sup> According to the Association of Medical Illustrators ("AMI"), "[t]here are not enough hours in the day" and the added burden of registering one work at a time "is simply too much" for many visual artists.<sup>23</sup> They also assert that the registration process is too complicated and that many visual artists do not know how to use it.<sup>24</sup>

## II. The Proposed Rule

The Office recognizes the challenges facing individual visual artists and small businesses in registering two-dimensional artwork one work at a time. These challenges may result in many artists not submitting their works for registration. At the same time, registration is a necessary step to enforce their copyrights. Thus, the Office finds there is a legitimate need for a new group registration option for published two-dimensional artwork.

The Office proposes a new option, to be known as "GR2D." This option is intended to benefit individual creators and small businesses that otherwise might not use the Standard Application or the Single Application to register their published works. Under the proposed rule, an applicant will be able

<sup>21</sup> AMI Comment in response to Deferred Registration Examination Study NOI, at 1 (Jan. 24, 2022); Shaftel & Schmelzer Comment in response to Deferred Registration Examination Study NOI, at 3 (Jan. 22, 2022); Coalition Comment in response to Group Photographs NPRM, at 51 (Jan. 30, 2017); Copyright Alliance Comment in response to Visual Works NOI, at 8 (undated); Graphic Artists Guild Comment in response to Visual Works NOI, at 13 (July 20, 2015).

<sup>22</sup> Coalition Comment in response to Deferred Registration Examination Study NOI, at 3 (Jan. 24, 2022); Shaftel & Schmelzer Comment in response to Registration Modernization NOI, at 6 (Jan. 11, 2019); AMI Comment in response to Visual Works NOI, at 13 (undated).

<sup>23</sup> AMI Comment in response to Visual Works NOI, at 13 (undated); see also Coalition Comment in response to Deferred Registration Examination Study NOI, at 3 (Jan. 24, 2022); Shaftel & Schmelzer Comment in response to Registration Modernization NOI, at 6, 36 (Jan. 11, 2019).

<sup>24</sup> See, e.g., Shaftel & Schmelzer Comment in response to 2019 Fee Study NPRM, at 12 (Sept. 20, 2018). In response to a survey conducted by the Graphic Artists Guild, 41% of the participants said they do not register their works because "I don't understand how" and another 18% said they do not register because "[t]he form . . . is too difficult." Graphic Artists Guild Comment in response to Visual Works NOI, at 12–13 (July 15, 2015).

to register up to ten published two-dimensional artworks with one filing fee by submitting an online application and uploading a digital deposit copy of each work. Each work must be a single two-dimensional pictorial or graphic work. Three-dimensional works and works containing multiple images will not be eligible for this option.

In all cases, the works must be created by the same author and that author must be the copyright claimant for each work in the group. The works must have been published within a 30-day period, and the applicant must identify the title and publication date for each work. Each of these requirements is discussed below.

In proposing this new option, the Office acknowledges that visual artists have expressed interest in other accommodations, such as registering published and unpublished works with the same application, and providing flexible methods of paying for registration services, such as tiered pricing, subscription plans, and bulk payment options.<sup>25</sup> As explained in this document, the Office will take these interests into consideration as part of the ongoing development of the new Enterprise Copyright System (“ECS”).

#### A. Eligibility Requirements

This section discusses the eligibility requirements for this new group registration option.

##### 1. Types of Works That May Be Included

To qualify for this option, a work must be a pictorial or graphic work that has been fixed in a two-dimensional form. Representative examples of works that would be eligible for GR2D include paintings, illustrations, sketches, collages, cartoons,<sup>26</sup> character artwork, logos, commercial art,<sup>27</sup> textile

<sup>25</sup> See Coalition Comment in response to Deferred Registration Examination Study NOI, at 21 (Jan. 24, 2022) (advocating for registration option to combine published and unpublished works); Copyright Alliance Comment in response to Deferred Registration Examination Study NOI, at 32 (Jan. 24, 2022) (same); Shaftel & Schmelzer Comment in response to Deferred Registration Examination Study NOI, at 16–17 (Jan. 22, 2022) (same); AMI Comment in response to Online Publication NOI, at 8 (Mar. 19, 2020) (same); see also Coalition Comment in response to Deferred Registration Examination Study NOI, at 20, 21 (Jan. 24, 2022) (advocating for alternative pricing schemes); Copyright Alliance Comment in response to Deferred Registration Examination Study NOI, at 3, 32 (Jan. 24, 2022) (same); Shaftel & Schmelzer Comment in response to Deferred Registration Examination Study NOI, at 21–22, 27 (Jan. 22, 2022) (same).

<sup>26</sup> This category includes comic strips that are published as one work.

<sup>27</sup> Commercial art includes many different types of works that are intended to advertise, market, or promote a product, service, or event. Representative examples of works that fit within this category

designs,<sup>28</sup> as well as representational or abstract artwork.<sup>29</sup>

Each work in the group must consist of no more than a single pictorial or graphic work, such as one drawing, one illustration, one comic strip, or one fabric design, and the work must be deposited in one uploaded file. Works comprised of multiple pictorial or graphic works, such as catalogs, coloring books, children’s picture books, comic books, calendars, or style guides will not be eligible for this option. Likewise, the Office will not accept GR2D claims including a compilation, a collective work, a database, or a website, as such works contain or are comprised of multiple works of authorship.

The Office does not see an equivalent need to include three-dimensional pictorial, graphic, or sculptural works under this option. A work that is fixed in a three-dimensional form necessarily requires more time to design than a work that is fixed in two dimensions, and is less likely to be manufactured, packaged, and distributed with a short turn-around time or a rapid publication schedule. During the Office’s most recent fee study, the Coalition conducted a survey that supports this conclusion. Artists who typically create three-dimensional works were asked “[o]n the average . . . [h]ow many finished works of art/design do you produce in a year?”<sup>30</sup> More than 63% of the participants said they produce between one and fifty works per year, which suggests that even the most prolific sculptor may produce less than five finished works per month.<sup>31</sup> Moreover, registering a three-dimensional work usually requires multiple deposits showing each side of the work. When an applicant uploads multiple files to the registration system, they are ingested into the registration system in random order, making it difficult to match the files for each work with the corresponding title listed in the application.

Similarly, this group registration option may not be used to register

include proposals and pitch documents, advertisements, billboards, posters, brochures, postcards, mailers, and flyers. This category also includes two-dimensional commercial products, such as stickers, stationery, greeting cards, and the like.

<sup>28</sup> This category includes two-dimensional designs that are woven into or applied to cloth or fabric.

<sup>29</sup> This category includes works created in a variety of media, such as paint, ink, pencil, as well as digital artwork.

<sup>30</sup> Coalition Comment in response to 2019 Fee Study NPRM, App. B, at 44 (Oct. 11, 2018). The participants who completed this part of the survey include fine artists, sculptors, jewelry designers, and architects. *Id.* at 42.

<sup>31</sup> *Id.* at 44.

architectural works or technical drawings, even though these works may be fixed in a two-dimensional form. Current regulations state that “[m]ultiple architectural works may not be registered using one application.”<sup>32</sup> Additionally, claims involving architectural works and technical drawings tend to be complex, so grouping them would impose a significant examination burden on the Office’s Visual Arts Division.

Likewise, this option may not be used to register multiple works of applied art, such as the design of a useful article or a work of artistic craftsmanship.<sup>33</sup> These types of works take more time to examine because the Office must determine if the object shown in the deposit is a work of art that might also serve a useful purpose, or if it contains pictorial or graphic features that can be identified separately from and are capable of existing independently of the object’s utilitarian aspects.<sup>34</sup> The application of such a complex analysis to multiple works submitted at the same time on one application would be cost prohibitive.

If an applicant submits a work that is not eligible for this group registration option, the examiner may remove the title and deposit for that work from the registration record and send a post-registration email to the applicant explaining why the change was made. In cases where an applicant submits two-dimensional identifying material depicting a three-dimensional work of authorship (such as a drawing of a toy or a piece of jewelry), the examiner may register the two-dimensional pictorial or graphic expression and add an annotation confirming that the registration does not cover any three-dimensional authorship that is shown in the deposit. If the applicant wants to subsequently pursue a separate registration for a work that is not eligible for GR2D, it may submit a Single or Standard Application, which will require an additional filing fee and result in a later effective date of registration.

##### 2. Number of Works That May Be Included

Under the proposed rule, applicants will be able to submit up to ten published pictorial or graphic works with each application. The examiner will review each work for copyrightable

<sup>32</sup> 37 CFR 202.11(c)(3).

<sup>33</sup> Works of applied art are usually fixed in a three-dimensional form, which would also make them ineligible for this option.

<sup>34</sup> See U.S. Copyright Office, Compendium of U.S. Copyright Office Practices secs. 924, 925 (3d ed. 2021) (“Compendium (Third)”).

authorship, and if the claim is approved, the registration will cover each work on a separate basis. If an applicant submits more than ten works, the examiner may accept the first ten titles listed in the application, remove the additional titles from the registration record, and send a post-registration email notifying the applicant that those works were not included in the registration.

The Office considered a number of factors in setting a proposed limit for this group registration option.

#### i. Technical, Financial, and Implementation Considerations

As discussed above, the proposed rule is intended to improve the registration process for visual artists as soon as possible by providing a means for registering multiple published works through the current registration system. To minimize development costs and time, the Office intends to create a new application using the technical specifications for the group registration option for unpublished works (“GRUW”) application, an existing application option which can be used to register up to ten unpublished works. The GRUW application contains ten spaces for providing the titles of the works being registered, and technical validations that discourage applicants from entering more than ten titles in the form. Because the GR2D application will be cloned from this application, the same limitation will be incorporated into the technical specifications for the new form.

The proposed new application for GR2D will reduce the amount of time needed to design, build, and test this application, and limit the diversion of resources from ECS development. It would be cost prohibitive to build an entirely new application solely for the purpose of accepting more than ten published works, particularly given that eCO is a legacy system that will be decommissioned in the near future. More importantly, building a new application from scratch would delay the implementation of this proposal, and divert the limited resources being used to develop the Office’s next generation registration system.<sup>35</sup>

<sup>35</sup> By way of example, it took twenty-two months to develop and release a brand-new application for registering a group of short online literary works and a group of works published on the same album. Compare 83 FR 65612 (Dec. 21, 2018) and 84 FR 22762 (May 20, 2019) with *eCO Updates* at 2, 3, U.S. Copyright Office (Oct. 29, 2020; Mar. 26, 2021), <https://www.copyright.gov/eco/updates/eco-updates.pdf>.

#### ii. Data From Visual Artists

In proposing a limit on the number of works permitted under this option, the Office also considered the data it received from groups that represent visual artists. In 2018, the Coalition conducted a survey that posed the following question: “On the average, how many works would you like to register each year but don’t?”<sup>36</sup> In response, 35% said they would like to register fewer than twenty-five works per year, 36% said they would like to register between twenty-five and 100 works, and 15% said they would like to register between 100 and 500 works.<sup>37</sup> In other words, a majority of the people surveyed (71%) expressed interest in registering no more than 100 works each year, which comes to roughly eight works per month.

The Office also considered the number of works that visual artists actually produce each year. In 2012, the Graphic Artists Guild conducted a survey indicating that, on average, illustrators and graphic designers produce 57.16 “finished pieces of art/design in a year.”<sup>38</sup> The Coalition’s more recent 2018 survey posed a similar question.<sup>39</sup> In response, 55% said they produce between one to fifty finished works each year, while almost 42% said they produce between fifty-one to 500 finished works.<sup>40</sup>

The Graphic Artists Guild explained that “finished pieces” are published works, presumably because the artists distributed an authorized copy of the work to one or more of their clients,<sup>41</sup> or offered to distribute them to a group of persons for the purpose of further distribution or display.<sup>42</sup> If an artist

<sup>36</sup> Coalition Comment in response to 2019 Fee Study NPRM, App. B, at 19 (Oct. 11, 2018).

<sup>37</sup> *Id.* The survey participants included illustrators, graphic artists, graphic designers, surface or textile designers, package designers, signage and wayfinding designers, exhibit and display designers, muralists, animators, storyboard artists, cartoonists, as well as graphic novelists, web designers, typographers, and calligraphers. *Id.* at 9–10.

<sup>38</sup> Graphic Artists Guild Comment in response to 2014 Fee Study NPRM, at 3 (May 14, 2012).

<sup>39</sup> Coalition Comment in response to 2019 Fee Study NPRM, App. B, at 12 (Oct. 11, 2018) (asking “On the average . . . [h]ow many finished works of art/design do you produce in a year?”).

<sup>40</sup> *Id.* These results are in line with the number of people (71%) who said they would like to register between one and 100 works each year. *See id.* at 19.

<sup>41</sup> Graphic Artists Guild Comment in response to 2014 Fee Study NPRM, at 3–4 (May 14, 2012). *See* 17 U.S.C. 101 (stating that publication occurs when copies of a work are distributed “to the public by sale or other transfer of ownership, or by rental, lease, or lending”).

<sup>42</sup> Graphic Artists Guild Comment in response to 2014 Fee Study NPRM, at 5 (May 14, 2012); *see also* 17 U.S.C. 101 (defining “publication”); Letter from

produced up to fifty published works each year, then under the proposed rule, all of them could be registered with five GR2D applications.<sup>43</sup> This would accommodate most of those artists who responded to the Coalition’s survey and the earlier survey conducted by the Graphic Artists Guild.

The Office recognizes that some visual artists are more prolific than others. The surveys do not identify the total number of artists who produce between fifty-one and 100 or between 100 and 500 finished pieces per year. But as mentioned above, 35% of those surveyed by the Coalition said they would like to register fewer than twenty-five works each year, while 36% said they would like to register between twenty-five and 100 works.<sup>44</sup> Only 15% said they would like to register between 100 and 500 works per year.<sup>45</sup> These numbers suggest that more than a third of the artists surveyed (35%) may be able to register all of their published works with three GR2D applications, while another 36% may be able to register all of their published works with ten or fewer GR2D applications.

Finally, many stakeholders have noted that photographers are able to register up to 750 works using the group registration option for published photographs (known as “GRPPH”). They have requested that the Office create a similar option for visual artists or allow them to register their works using the GRPPH application.<sup>46</sup>

Stakeholders offer two justifications for this request. First, they argue that visual artists should be treated the same as photographers, and that it is unfair to

Mica Duran, AMI, to Shira Perlmutter, Register of Copyrights, at 1 (July 10, 2023) (on file with Copyright Office) (noting that medical illustrators often distribute multiple sketch concepts to clients to be considered for further distribution).

<sup>43</sup> As discussed below, the proposed filing fee for GR2D would be \$85. Thus, the cost of registering up to fifty works would be \$425 per year or roughly \$106 per quarter. That comes to \$8.50 for each work, which would be an 87% discount on the normal fee for registering one published work for \$65 with the Standard Application.

<sup>44</sup> Coalition Comment in response to 2019 Fee Study NPRM, App. B, at 19 (Oct. 11, 2018).

<sup>45</sup> *Id.*

<sup>46</sup> Coalition Comment in response to Registration Modernization NOI, at 14–15, (Jan. 15, 2019); Shaffel & Schmelzer Comment in response to Deferred Registration Examination Study NOI, at 30 (Jan. 22, 2022); Graphic Artists Guild Comment in response to Online Publication NOI, at 6 (Mar. 19, 2020); AMI Comment in response to Online Publication NOI, at 2 (Mar. 19, 2020); Graphic Artists Guild Comment in response to Registration Modernization NOI, at 6 (Jan. 15, 2019); Graphic Artists Guild, American Photographic Artists, and American Society for Collective Rights Licensing Comment in response to 2019 Fee Study NPRM, at 3 (Sept. 21, 2018); Copyright Alliance Comment in response to Group Photographs NPRM, at 2 (Jan. 31, 2017); Coalition Comment in response to Group Photographs NPRM, at 5 (Jan. 30, 2017).

let photographers register many more works with one application.<sup>47</sup> Second, they argue that the deposit requirements for photographs and other visual art works are the same, so the amount of time needed to examine these works should also be the same.<sup>48</sup> After considering these arguments the Office has determined that there are legitimate reasons for differentiating between the number of works that should be permitted under GR2D and GRPPH.

First, photographers are exceptionally prolific creators. As the Office noted during the GRPPH rulemaking, “[a] photographer may take dozens or even hundreds of copyrightable images in a single session and thousands of images over the course of a week, a month, or a year.”<sup>49</sup> While visual artists may produce significant numbers of published works, it is unlikely that even the most prolific would be able to produce as many works as the average photographer. The Coalition’s survey supports this hypothesis. Only 14% of the visual artists surveyed said they create between 501 to 1,000 works in a single year,<sup>50</sup> while a majority of the photographers surveyed said they produce a comparable number of photos in a single day.<sup>51</sup>

Second, GRPPH may only be used to register one specific type of work. All of the works in the group must be photographs, all of them must contain photographic authorship, and when the claim is submitted the system automatically adds the term “photographs” to the “author created” field.<sup>52</sup> Works that contain any other form of authorship are not eligible. As the Office noted when it established the group registration option for unpublished works, “[a]n examiner can more easily review a large set of photographs for copyrightable authorship than a large quantity of . . . other visual works.”<sup>53</sup> When examiners

review a GRPPH claim, they look for creative photographic authorship; they do not consider the subject matter of the photo or any other type of authorship that may be shown in the image, such as text or artwork. This review often occurs relatively quickly as photographs submitted for registration generally include some selection, coordination, or arrangement sufficient to meet the minimum level of creativity for copyright described in the Supreme Court’s *Feist Publications v. Rural Telephone Service Company*.<sup>54</sup>

By contrast, GR2D may be used to register a wide range of pictorial and graphic works. The issues presented and the time needed to complete this examination may vary dramatically depending on whether the applicant is registering a group of logos, a batch of commercial artwork, or a collection of fabric designs. For example, when examining fabric, examiners will look for repeating patterns in the design, and when reviewing a logo, they will evaluate the textual and artistic elements that make up the design as well as the interrelationship between those elements. In some cases, applicants could include different types of pictorial or graphic works within the same GR2D application—such as a group that includes logos, advertisements, and character art—which would further complicate the examination process. As the Coalition acknowledged, a “[o]ne-size-fits-all” approach may not be the most effective means for registering multiple works “if [the] deposits of particular types of visual works require more examination time to determine copyrightability than others.”<sup>55</sup> Moreover, the Office has learned from its experience with GRUW that works of visual art often contain borderline or *de minimis* amounts of expression. Examining these works requires careful review, and determinations must be made on a case-by-case basis. It would require a prohibitive amount of time to conduct this level of analysis if dozens of works were included within the same submission for one filing fee.

Third, GRPPH may only be used to register photographs that are entirely new; it cannot be used to register derivative works. The Office has explained that it will not accept group registration claims involving “digital editing” or any other form of authorship “other than photographs.”<sup>56</sup> For this reason, the GRPPH application does not

have a limitation of claim screen where applicants may identify the new material that the author contributed to each photograph or exclude any preexisting material that appears in the images.

By comparison, GR2D may be used to register works that are entirely new, as well as derivative works that are based on one or more preexisting works, and the application will include a limitation of claim screen that may be used for this purpose. Indeed, the Office is creating this option in part based on its understanding that many visual artists want to register multiple iterations of the same work. When multiple versions are submitted with the same application or when an applicant submits works that contain overlapping authorship, the examiner must review each work for copyrightable authorship; and if they are published on different dates, the examiner must determine if there are copyrightable differences between each version. This is a time-consuming process that requires significantly more analysis than a claim involving a single work or a group of photographs that are entirely new.

Finally, the Office must consider the impact this option will have on the registration system. Allowing more than ten works of visual art to be submitted with one application and one filing fee would burden the Office’s limited resources and may affect pendency times within the Visual Arts Division. Based on its experience with GRUW, the Office has determined that claims involving up to ten visual artworks require more time to examine than claims involving up to 750 photographs. The correspondence rates for GRUW are higher than the correspondence rates for group photographs,<sup>57</sup> and the average processing times for registering a group of unpublished visual art works is nearly double the processing times for a group of photographs—even though the group registration option for unpublished photographs (known as “GRUPH”) and GRPPH applications may be used to register a significantly larger number of works.<sup>58</sup>

Nonetheless, the Office is committed to creating the best public record possible for a group registration, including pertinent information and an appropriate assessment of copyrightability for each work within

<sup>47</sup> Shaftel & Schmelzer Comment in response to Registration Modernization NOI, at 31 (Jan. 11, 2019); Coalition Comment in response to Registration Modernization NOI, at 14 (Jan. 15, 2019); Coalition Comment in response to 2019 Fee Study NPRM, at 35 (Oct. 11, 2018); Shaftel & Schmelzer Comment in response to 2019 Fee Study NPRM, at 20 (Sept. 20, 2018); Letter from Mica Duran, AMI, to Shira Perlmutter, Register of Copyrights, at 3–4 (July 10, 2023) (on file with Copyright Office).

<sup>48</sup> Shaftel & Schmelzer Comment in response to Registration Modernization NOI, at 31 (Jan. 11, 2019); Shaftel & Schmelzer Comment in response to 2019 Fee Study NPRM, at 31–32 (Sept. 20, 2018).

<sup>49</sup> 81 FR 86643, 86649.

<sup>50</sup> Coalition Comment in response to 2019 Fee Study NPRM, App. B, at 13 (Oct. 11, 2018).

<sup>51</sup> *Id.* at 32–33.

<sup>52</sup> 37 CFR 202.4(h)(1), (i)(1); Compendium (Third) sec. 1114.6(j).

<sup>53</sup> 84 FR 3693, 3695 (Feb. 13, 2019).

<sup>54</sup> 499 U.S. 340 (1991).

<sup>55</sup> Coalition Comment in response to Group Photographs NPRM, at 57 (Jan. 30, 2017).

<sup>56</sup> 81 FR 86643, 86650.

<sup>57</sup> In the Visual Arts Division, the correspondence rate for GRUW claims is 27%, while the correspondence rate for group photograph claims is 19%.

<sup>58</sup> On average, it takes the Office 2.4 months to process a GRUW claim involving a group of unpublished visual art works, and 1.5 months to process a claim involving a group of photographs.

the group. To achieve these goals, the Office must limit the number of works submitted, given current staffing levels, the modest filing fee proposed, and the amount of examination time needed. A limit of ten published works would allow the Office to examine each work for copyrightable authorship and confirm that the legal and formal requirements for registration have been met. Establishing this number within the eCO system will also allow the Office to conduct a targeted study to determine whether the allowable number could be higher in the ECS system, or whether the fee would need to be increased due to the average examination times for this group option.

### 3. Title Requirements

Applicants will be required to provide a title for each work that is included in the group. The title may consist of words, letters, and/or numbers, as long as it is entered in the application with Arabic numerals and/or Roman letters. However, the Office discourages applicants from stating “untitled,” “no title,” “working title,” or the like, because interested parties typically search for works by title, and it may be difficult to locate a specific pictorial or graphic work unless a recognizable title has been provided.

As discussed below, applicants will be required to upload an electronic deposit copy of each work. The file name assigned to each work must include the corresponding title that was entered in the application. If the titles and file names do not match, the examiner may remove the mismatched titles and files from the registration record and send a post-registration email to the applicant explaining why the change was made. Establishing efficient titling procedures will prove beneficial in the new ECS system where applicants will have the option of using the file name as the default title for the works they upload, thereby reducing the time it takes to complete a group registration application.<sup>59</sup>

A title for the group as a whole will be added automatically by the electronic registration system, consisting of the title of the first work listed in the application followed by the phrase “and [NUMBER] other published works” (depending on how many titles are entered in the application).<sup>60</sup> In this

<sup>59</sup> Mandatory file naming conventions are already required for the group registration options for serials, newspapers, newsletters, short online literary works, as well as musical works and sound recordings published on the same album. 37 CFR 202.4(d)(3), (e)(6), (f)(3), (j)(7), (k)(3)(iii).

<sup>60</sup> If the applicant provides a “collection” title in the application (instead of or in addition to

respect, the group title will be similar to the format of the group title for a GRUW registration.<sup>61</sup> The Office will use this title to identify the registration in its online public record.

### 4. Publication Requirements

An applicant will be allowed to register a group of two-dimensional artwork only if the works were all first published within a thirty-day period, regardless of whether they were published in a physical or electronic form. The works need not be published within the same calendar month or the same calendar year. For example, a visual artist would be able to register works published anytime between December 15, 2023, and January 14, 2024.

The Office is proposing a thirty-day period for two reasons. First, a tighter limit protects the quality and utility of the public record. For ease of use, the Office will require applicants to provide only the earliest and most recent publication dates for the works submitted in the group, rather than the exact publication date for each individual work. If the Office extended the period, it would likely require applicants to provide the exact date of publication for each individual work. An indication of only the earliest and most recent publication dates for multiple works published over the course of several months would make it difficult for those who rely on the public record to determine whether the work is eligible for certain remedies for infringement.<sup>62</sup>

Second, providing a thirty-day time period for eligible works expedites the creation of an effective GR2D application. The current online registration system is equipped to compare the number of days between two dates, which would validate an application’s compliance with the thirty-day requirement. If the Office extended the period to span several months, thus necessitating precise dates of publication for each individual work, the eCo system would not be able to validate for multiple dates of publication. Further, because the eCo system cannot currently accept multiple dates of publication within registration applications, applicants would likely have to submit a separate spreadsheet that includes the title and publication information for each work in the group. Without validations to ensure

providing titles for the individual works) the examiner will remove that term from the registration record before the claim is approved.

<sup>61</sup> 82 FR 47415, 47417–18.

<sup>62</sup> See 17 U.S.C. 412.

compliance and a streamlined method for ingesting multiple publication dates, the application process would be less efficient, increasing correspondence and, as a result, processing times.

*Subject of Inquiry:* The Office acknowledges that a thirty-day limit may be less desirable for certain applicants. Therefore, the Office seeks public comment on whether the thirty-day time period strikes the right balance between the public interest in creating a meaningful record (*i.e.*, collecting precise publication information for works published over the course of several months) and the relative burden on applicants. Commenters proposing a different time period should address the concerns identified in this document with regard to creating additional burdens on the Office.

The GR2D group registration option may only be used to register published works. It cannot be used to register a group of published and unpublished works in the same claim. The applicant will be responsible for determining if the works have been published, and for identifying the earliest and most recent publication date for the works submitted in the group, along with the country where the works were first published. Applicants are only required to identify the date that the work was published for the first time, generally when the artist first distributes an authorized copy of the work to a member of the public. In particular, the Office will generally accept that a work has been published when a visual artist distributes a copy to a client or other entity and authorizes them to retain, reproduce, redistribute, or display that copy (subject to any licenses or other restrictions that the artist may impose).<sup>63</sup> The fact that the client may subsequently share the work with its own customers or republish it in some other form is irrelevant. In other words, it is the visual artist who decides if, when, where, and how their work is published (rather than the client or the client’s customers or any other party).<sup>64</sup>

<sup>63</sup> For detailed examples that illustrate these principles, see Chapter 1100, Sections 1114.5 and 1114.6(G) of the *Compendium of U.S. Copyright Office Practices*. See also Response of the Register of Copyrights to Request Pursuant to 17 U.S.C. 411(b)(2), *Lisa Brunson v. David Cook dba Integrity Music, Capitol CMG, Inc., No. 3:20-cv-01056 (M.D. Tenn. Jan. 29, 2024)* (discussing the publication status of a work that was distributed to various social media platforms), <https://www.copyright.gov/rulings-filings/411/Lisa-Brunson-v-David-Cook-dba-Integrity-Music-Capitol-CMG-Inc-No-320-cv-01056-MD-Tenn.pdf>.

<sup>64</sup> To obtain the optimal statutory protection, the Office encourages visual artists to register their works before they are published. Stakeholders have stated that visual artists often produce preliminary concepts, drafts, sketches, and layouts as part of

As a general rule, the Office will accept the applicant's determinations, unless they are contradicted by the information contained within the registration materials.

The Office recognizes that many visual artists would like to register all the works they create for the same client or the same project and would prefer to submit all of their works with the same application, regardless of whether they are published or unpublished.<sup>65</sup> Unfortunately, this is not possible given the technical constraints of the current registration system.

The statute states that a registration application must identify, "if the work has been published, the date and nation of its first publication."<sup>66</sup> These requirements are embedded in both the eCO system and the Office's internal processes. For example, when the Office issues a group registration, the prefix assigned to the registration number begins with the letters VA if the work is published or the letters VAU if the work is unpublished. When the Office registers a group of published works, the certificate and the public record include the date and nation of publication that was provided in the application. When the Office registers a group of unpublished works, this information does not appear in the record. If applicants were allowed to combine published and unpublished works in the same application, the registration number would be misleading. And at the present time, the Office does not have the ability to issue a certificate or a public record that would clearly delineate the published works from the works that have not been published yet. However, the Office will take these interests into account when it begins to develop the requirements for the group registration features of its next-generation registration system, and will consider the feasibility of allowing published and unpublished works to be registered with the same application

their iterative creative process, and may send multiple drafts to their clients for review and approval. While the client may receive a license to use the finished design, the artist generally retains the copyright in their initial drafts. In some cases, the client may use these drafts without obtaining an appropriate license for this material. Visual artists can protect against this risk by timely registering their drafts with the GRUW application (*i.e.*, as a group of unpublished works) before sending an authorized copy of the works to the client or any other party.

<sup>65</sup> AMI Comment in response to Online Publication NOI, at 8 (Mar. 19, 2020); Shaftel & Schmelzer Comment in response to Registration Modernization NOI, at 28 (Jan. 11, 2019); Letter from Mica Duran, AMI, to Shira Perlmutter, Register of Copyrights, at 4 (July 10, 2023) (on file with Copyright Office).

<sup>66</sup> 17 U.S.C. 409(8).

when the group applications are migrated into this system.<sup>67</sup>

#### 5. Author and Claimant Requirements

Under the proposed rule, all the works must be created by the same author. Applicants will not be allowed to submit groups of works created by different authors. Likewise, the Office will not accept applications claiming that two or more authors jointly created each work in the group. The Office conducted an analysis of the claims submitted on the Standard and GRUW applications that were approved for registration with a claim in "2D artwork" and found that in the vast majority of cases just one author is named in the application. The Office therefore does not see a compelling need to allow joint authorship claims within this group registration option. The Office welcomes comment on this proposed limitation.

In all cases, the claim will be limited to "2D artwork" and that term will be added automatically to the application by the electronic registration system. Applicants will not be allowed to assert claims in other forms of authorship, such as "text," "sculpture," "jewelry design," "3D artwork," or "audiovisual material." Likewise, applicants will not be able to add other forms of authorship to the claim during the examination process or with a supplementary registration.<sup>68</sup>

The author must also be named as the copyright claimant, even if a transfer of ownership for the copyright in each work has occurred.<sup>69</sup> For instance, if Mary Watson created ten medical illustrations and transferred all of her rights to the publisher of a medical textbook, Mary would have to be named as the claimant for each illustration, even though the publisher owns the

<sup>67</sup> The Copyright Alliance, the Coalition, and AMI have acknowledged that applicants would still be required to separately identify each published and unpublished work and provide a month, day, and year of publication for each published work. 83 FR 2542, 2545 (Jan. 18, 2018); Letter from Mica Duran, AMI, to Shira Perlmutter, Register of Copyrights, at 4 (July 10, 2023) (on file with Copyright Office).

<sup>68</sup> For example, if an applicant submits an animated image, the registration will cover the "two-dimensional artwork" shown in the moving image. In this situation, the examiner may add an annotation explaining that the Office did not examine the audiovisual elements of the work.

<sup>69</sup> If the author transferred the copyright to another person or entity, the copyright owner may add that information to the public record by recording the assignment, exclusive license, bill of sale, or other document that identifies the current owner(s) of each work. This may be done quickly and efficiently through the Office's new electronic recordation system. See *Recordation System*, U.S. Copyright Office, <https://copyright.gov/recordation/pilot/>.

copyrights.<sup>70</sup> This is consistent with the basic principle that an author may always be named as the copyright claimant, even if they do not own any of the exclusive rights when the claim is submitted.<sup>71</sup> It also accounts for the majority of claims approved by the Visual Arts Division within the past five years. The Office found that fewer than 12% of the claims approved by the Visual Arts Division during this period contained a statement indicating that the author had transferred the copyright to another party.

The Office has taken a similar approach with the group registration option for unpublished works.<sup>72</sup> Based on this experience, the Office expects this same approach will simplify the examination process by allowing examiners to focus on the copyrightability of each work. If an applicant erroneously names a third party as the author/claimant on a GR2D application—instead of naming the apparent author of the work—the Office may accept that assertion at face value and approve the claim as is. In such cases, the examiner may send a post-registration email notifying the applicant that the author/claimant information seems questionable and explaining that if the wrong party was named as the author/claimant, the applicant may correct the mistake with a supplementary registration (which will require a separate application and an additional filing fee).

#### 6. Works Made for Hire

As discussed above, this group registration option is intended for visual artists who routinely create and publish a large volume of works, who do not have the time or resources to register their works with the Office. Corporate entities that employ in-house designers, or entities that hire independent contractors to produce works on their behalf, do not face the same challenges as small creators. In most cases, these entities can afford to pay the normal filing fee and do not need special incentives to participate in the registration process. For this reason, the Office considered limiting the proposed option to works created by individual authors.

<sup>70</sup> The proposed rule explains that the claim may be submitted by any of the parties listed in sec. 202.3(c)(1) of regulations, including the author of the works (such as Mary Watson), the owner of one or more of the exclusive rights in the works (such as the publisher of the textbook), or a duly authorized agent of one or more of these parties (such as the agents who represent Mary and/or the publisher).

<sup>71</sup> See 37 CFR 202.3(a)(3)(i); Compendium (Third) sec. 619.7.

<sup>72</sup> See 37 CFR 202.4(c)(5).

However, stakeholders have informed the Office that many authors are small business owners who face similar economic challenges and resource limitations.<sup>73</sup> While the Office may be able to offer different tiers of services for different types of creators as part of its next-generation registration system, it does not have a means of distinguishing a small business from a large corporate entity within the context of the eCO system.

Accordingly, for the time being, the proposed rule will allow two-dimensional pictorial or graphic works to be registered by any applicant as works made for hire. To do so, all of the works in the group must be identified as works made for hire, and the employer or the party that ordered or commissioned the works, must be named as the author/claimant. Applicants will not be able to register as a group works created by an individual author together with works created pursuant to a work made for hire agreement. For example, if a small business commissioned a set of fabric designs through a work made for hire agreement and acquired another set of designs through an assignment of copyright from an individual author, the applicant would need to divide those designs into two groups and submit a separate GR2D application for each group—one with the small business named as the author/claimant and the work made for hire question answered “yes,” and the other with the individual author named as the author/claimant with the question answered “no.”

### B. Application Requirements

As explained above, the proposed rule would rely on an existing group registration application form using the current registration system to avoid delaying the creation of a new group option for visual artists. The Office will revise the onscreen instructions so that the modified GR2D application may be used for claims involving published two-dimensional artwork. Specific instructions on how to complete the new application will be provided within the application itself and through the Office’s traditional channels, including its website, Circulars, and/or Chapter 1100 of the *Compendium of U.S. Copyright Office Practices*.

<sup>73</sup> AMI Comment in response to Deferred Registration Examination Study NOI, at 6 (Jan. 24, 2022); Shaftel & Schmelzer Comment in response to Deferred Registration Examination Study NOI, at 22–23 (Jan. 22, 2022); Coalition Comment in response to Group Photographs NPRM, at 17 (Jan. 30, 2017); Copyright Alliance Comment in response to Visual Works NOI, at 2 (undated); Graphic Artists Guild Comment in response to Visual Works NOI, at 22 (July 20, 2015).

Under the proposed rule, GR2D claims may not be submitted on a paper application.<sup>74</sup> When the Office has established new group registration options or updated its regulations governing existing options, it has consistently required these claims to be filed electronically,<sup>75</sup> and the rationale provided in those proceedings applies equally here.<sup>76</sup> As is the case with other group registration options, the proposed rule will allow the Office to waive this online filing requirement in exceptional cases.<sup>77</sup>

### C. Deposit Requirements

Under the proposed rule, applicants will be required to submit one complete copy of each work in the group. A digital copy of each work must be uploaded to the electronic registration system, regardless of whether the work was published in a digital or physical form. Because the vast majority of claims received by the Visual Arts Division are submitted with electronic deposits, this requirement should not have an adverse impact on most applicants.<sup>78</sup>

The Office will accept a copy that shows each work on its own, disassociated from the context where it was first published. For example, if the author created five graphic designs and published those designs on her website, the applicant may upload five files that each contain a complete copy of each work, appearing entirely on its own (instead of submitting a screenshot

<sup>74</sup> Likewise, the online-filing requirement will apply to the supplementary registration procedure, which may be used to correct or amplify the information in an existing registration. The Office has consistently stated that if it moves “registrations for other classes of works into the electronic registration system,” the procedure for correcting or amplifying those registrations will “be subject to this same [online filing] requirement.”<sup>81</sup> 81 FR 86656, 86658 (Dec. 1, 2016). Thus, if an applicant needs to amend a registration for a group of two-dimensional artwork, that request will need to be submitted through the electronic registration system. See 37 CFR 202.6(e)(1). To minimize development costs, the Office does not plan to create a separate application form for this purpose. Instead, applicants will use the existing form for seeking a supplementary registration, and they will need to contact the Office of Registration Policy & Practice to obtain instructions on how to complete this form.

<sup>75</sup> 37 CFR 202.4(c)(8), (d)(2), (e)(5), (f)(2), (g)(6), (h)(8), (i)(8), (j)(8), (k)(2).

<sup>76</sup> 81 FR 86643; 82 FR 47415, 47419; 82 FR 52224, 52227 (Nov. 13, 2017); 83 FR 65612, 65615; 84 FR 22762, 22766.

<sup>77</sup> 37 CFR 202.4(c)(10), (d)(4), (f)(4), (g)(9), (h)(11), (i)(11), (j)(9), (k)(4).

<sup>78</sup> As a general rule, the Office will not accept physical copies, even if the works were published in a physical form. As is the case with other group registration options, the proposed rule will allow the Office to grant special relief from the deposit requirement in exceptional cases. See 37 CFR 202.20(d)(1)(iii), (iv).

showing how each design appeared on the website where it was first published). Likewise, if the works were published in a physical form, applicants will not be expected to submit a copy of the best edition of each work. For instance, if the author created ten medical illustrations that were first published in a textbook, the applicant should upload a complete copy of each illustration but should not submit a physical copy of the book itself.

To qualify for this group registration option, applicants will need to comply with certain technical requirements. First, each work must be contained in a separate electronic file, each file must be uploaded to the electronic registration system in one of the acceptable file formats listed on the Office’s website, and the size of each file must not exceed 500 megabytes.<sup>79</sup> If necessary, applicants may save the files in a .zip folder and upload it to the system, provided that all of the files within the folder are acceptable file types.

Second, each file must be submitted in an orderly manner. A submission file will be considered “orderly” if it contains no more than one pictorial or graphic work, if the title of that work is included in the file name, and if the file name can be matched to the corresponding title that is listed in the application. If an applicant submits a file that contains multiple pieces of artwork or if the titles and file names do not match each other, the examiner may remove that file from the record and send the applicant a post-registration email explaining that those works were not included in the registration.

### D. Filing Fee

The filing fee for registering a group of two-dimensional artworks will be \$85, the amount the Office currently charges for registering a group of unpublished works.<sup>80</sup> The Office believes it is reasonable to charge the same fee based on the similarity in the number of works that may be registered and the expected workflow for examining, indexing, and cataloging these claims. Once the proposed rule has been implemented, the Office will monitor both the cost and the demand for this service to determine if future fee adjustments are warranted. This represents a substantial cost saving for visual artists. For example, if an artist created twenty-six illustrations and billed her client \$4500 for this project,

<sup>79</sup> See *eCO Acceptable File Types*, U.S. Copyright Office, <https://www.copyright.gov/eco/help-file-types.html>.

<sup>80</sup> 37 CFR 201.3(c)(10).



she would be able to register all of her works for \$255—significantly less than the \$1170 to \$1690 she normally would pay to register each individual work with the Single or Standard Applications.<sup>81</sup>

The Office recognizes that visual artists are interested in tiered fee structures, subscription plans, and bulk registration options.<sup>82</sup> Under a tiered-fee approach, the Office could charge a base fee for registering an individual work, and an incrementally higher fee for each additional work added to the application. Alternatively, it could charge a flat rate that would let visual artists register a specific number of works over a designated period of time. The Office previously sought public comment on these issues,<sup>83</sup> but as explained above, it will not be able to offer alternate fee structures for high volume creators until after the ECS system is fully operational and has been released to the public.<sup>84</sup>

*E. The Scope of a Group Registration*

The Office will review each work in the group to determine if it contains a sufficient amount of original pictorial or graphic authorship. If the legal and formal requirements have been met, the examiner will register the claim, and the certificate and public record will contain an annotation indicating that the works were registered in accordance with those requirements.

Consistent with the regulations governing other group registration options,<sup>85</sup> the proposed rule will cover each pictorial or graphic work in the group, and each piece of artwork will be considered to be registered as a separate work. Thus, if any of the works are subsequently infringed, the copyright owner should be entitled to seek a separate award of statutory damages for each individual work, and the group as a whole should not be considered a

compilation or a collective work for purposes of sections 101, 103(b), or 504(c)(1) of the Copyright Act.<sup>86</sup> To that end, the proposed rule confirms that the group itself is merely an administrative classification created solely for the purpose of registering multiple pictorial or graphic works with a single application and filing fee.

**III. Conclusion**

The proposed rule is intended to facilitate broader participation in the registration system by establishing a new group registration option for individual artists and small businesses that publish two-dimensional pictorial or graphic works. The Office invites comment on this proposal.

**List of Subjects**

*37 CFR Part 201*

Copyright, General provisions.

*37 CFR Part 202*

Copyright, Copyright claims, preregistration and registration.

**Proposed Regulations**

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

**PART 201—GENERAL PROVISIONS**

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

**Authority:** 17 U.S.C. 702.  
Section 201.10 also issued under 17 U.S.C. 304.

■ 2. In § 201.3:

- a. Revise paragraph (c)(10);
- b. Redesignate paragraphs (c)(12) through (29) as (c)(13) through (30), respectively; and
- c. Add a reserved paragraph (c)(12).

The revision reads as follows:

**§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Section and the Copyright Claims Board.**

\* \* \* \* \*  
(c) \* \* \*

<sup>86</sup> Several stakeholders have expressed support for this approach. ShafteI & Schmelzer Comment in response to Deferred Registration Examination Study NOI, at 28 (Jan. 22, 2022); AMI Comment in response to Registration Modernization NOI, at 4 (Jan. 15, 2019); ShafteI & Schmelzer Comment in response to Registration Modernization NOI, at 30 (Jan. 11, 2019); AMI Comment in response to 2019 Fee Study NPRM, at 3–4 (Sept. 18, 2018); Graphic Artists Guild Comment in response to Visual Works NOI, at 13–14 (July 20, 2015).

<sup>81</sup> See Letter from Mica Duran, AMI, to Shira Perlmutter, Register of Copyrights, Ex. 1 (July 10, 2023) (on file with Copyright Office). 1 Coalition Comment in response to 2019 Fee Study NPRM, App. B, at 11 (Oct. 11, 2018).

<sup>82</sup> Coalition Comment in response to Deferred Registration Examination Study NOI, at 21 (Jan. 24, 2022); ShafteI & Schmelzer Comment in response to Deferred Registration Examination Study NOI, at 21–22 (Jan. 22, 2022); ShafteI & Schmelzer Comment in response to Registration Modernization NOI, at 8 (Jan. 11, 2019); Coalition Comment in response to Group Photographs NPRM, at 17 (Jan. 30, 2017); Graphic Artists Guild Comment in response to Visual Works NOI, at 9 (July 20, 2015); Graphic Artists Guild Comment in response to 2014 Fee Study NPRM, at 5 (May 14, 2012).

<sup>83</sup> 83 FR 52336, 52339.

<sup>84</sup> 83 FR 2542, 2545.

<sup>85</sup> See 37 CFR 202.4(r) (specifying the scope of a registration for a group of unpublished works, contributions to periodicals, photographs, or works published on the same album).

TABLE 1 TO PARAGRAPH (C)

Registration, recordation, and related services	Fees (\$)
* * * * *	*
(10) Registration of a claim in a group of unpublished works or a claim in a group of two-dimensional artwork .....	85
* * * * *	*
* * * * *	*

**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. Adding paragraph (l).
  - b. In paragraph (r), by removing “(k), or” and adding in its place “(k), (l), or”.
- The addition and revision read as follows:

**§ 202.4 Group registration.**

\* \* \* \* \*

(l) *Group registration of two-dimensional artwork.* Pursuant to the authority granted by 17 U.S.C. 408(c)(2), the Register of Copyrights has determined that a group of two-dimensional artwork may be registered in Class VA with one application, the required deposit, and the filing fee required by § 201.3(c) if the following conditions are met:

(1) All the works in the group must be two-dimensional pictorial or graphic works, and each work must be comprised of no more than one pictorial or graphic work. The group may include up to ten works, and the application must specify the total number of works that are included in the group. The group may not include any three-dimensional pictorial, graphic, or sculptural works, any architectural works, technical drawings, or works of applied art, any works comprised of multiple pictorial or graphic works, including compilations, collective works, databases, or websites. Claims in any form of authorship other than “2D artwork” or claims in the selection, coordination, or arrangement of the group as a whole will not be permitted on the application.

(2) The applicant must provide a title for each work in the group.

(3) All the works must be created by the same author, and the author must be named as the copyright claimant for each work in the group. The group may not include any works created by more

than one author. The works may be registered as works made for hire if they are identified in the application as such.

(4) All the works must be published within a thirty-day period, and the application must identify the date of publication for each work.

(5) The applicant must complete and submit the online application designated for a group of two-dimensional artwork. The application may be submitted by any of the parties listed in § 202.3(c)(1).

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

(7) In an exceptional case, the Copyright Office may waive the online filing requirement set forth in paragraph (l)(5) of this section or may grant special relief from the deposit requirement under § 202.20(d) of this chapter, 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.

\* \* \* \* \*

#### § 202.6 [Amended]

■ 5. In § 202.6, amend paragraph (e)(2) by removing “or a group of works published on the same album registered under § 202.4(k),” and adding in its place “a group of works published on the same album registered under § 202.4(k), or a group of two-dimensional artwork under § 202.4(l),”.

Dated: February 9, 2024.

**Suzanne Wilson,**

*General Counsel and Associate Register of Copyrights.*

[FR Doc. 2024-03063 Filed 2-14-24; 8:45 am]

BILLING CODE 1410-30-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### 45 CFR Part 1336

[Assistance Listing Numbers: 93.581, 93.587, 93.612]

#### Notice for Public Comment on Administration for Native Americans' Program Policies and Procedures

**AGENCY:** Administration for Native Americans, Administration for Children and Families, Department of Health and Human Services.

**ACTION:** Request for public comment.

**SUMMARY:** Pursuant to section 814 of the Native American Programs Act of 1974 (NAPA), as amended, the Administration for Native Americans (ANA) is required to provide members of the public an opportunity to comment on proposed changes in interpretive rules and general statements of policy and to give notice of the proposed changes no less than 30 days before such changes become effective. In accordance with notice requirements of NAPA, ANA herein describes proposed interpretive rules and general statements of policy that relate to ANA's Notices of Funding Opportunities (NOFOs) in fiscal year (FY) 2024. Changes to FY NOFOs will be based on the previously published programs: Environmental Regulatory Enhancement (ERE), HHS-2021-ACF-ANA-NR-1907; Native American Language Preservation and Maintenance-Esther Martinez Immersion (EMI), HHS-2021-ACF-ANA-NB-1958; Native American Language Preservation and Maintenance (P&M), HHS-2021-ACF-ANA-NL-1924; Social and Economic Development Strategies (SEDS), HHS-2021-ACF-ANA-NA-1906; Social and Economic Development Strategies-Alaska (SEDS-AK), HHS-2021-ACF-ANA-NK-1902.

**DATES:** Comments are due by March 18, 2024. If ANA does not receive any significant comments within the 30-day comment period, ANA will proceed with the proposed changes in the respective published NOFOs. The NOFOs will serve as the final notice of these proposed changes.

**ADDRESSES:** Comments may be submitted to: Carmelia Strickland, Director of Program Operations, Administration for Native Americans, 330 C Street, SW, Washington, DC 20201 or via email to: [ANAComments@acf.hhs.gov](mailto:ANAComments@acf.hhs.gov).

#### FOR FURTHER INFORMATION CONTACT:

Carmelia Strickland, Director, Division of Program Operations, Administration for Native Americans, 330 C Street SW, Washington, DC 20201; Telephone: (877) 922-9262; Email: [ANAComments@acf.hhs.gov](mailto:ANAComments@acf.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Section 814 of NAPA, as amended (42 U.S.C. 2992b-1), incorporates provisions of the Administrative Procedure Act that require ANA to provide notice of its proposed interpretive rules and statements of policy and to seek public comment on such proposals. This notice serves to fulfill the statutory notice and public comment requirement. ANA voluntarily includes rules of practice and procedures in this notice to be transparent. The proposed interpretive rules, statements of policy, and rules of ANA practice and procedure reflected in clarifications, modifications, and new text will appear in the five FY 2024 NOFOs: SEDS—HHS-2024-ACF-ANA-NK-0050; SEDS—AK—HHS-2024-ACF-ANA-NA-0051; ERE—HHS-2024-ACF-ANA-NR-0061; P&M—HHS-2024-ACF-ANA-NL-0059; EMI—HHS-2024-ACF-ANA-NB-0054.

*A. Interpretive rules, statements of policy, procedures, and practice.* The proposals in this section reflect ANA's proposed changes in rules, policy, or procedure that will take effect in the FY 2024 NOFOs.

#### 1. Fully-Funding Awards

ANA regulations state that awards will “generally . . . be made available for a one-year budget period and subsequent non-competing continuation awards with the same project period will also be for one year”. 45 CFR 1336.32 (emphasis added). In accordance with the regulation, ANA awards are currently awarded in 12-month increments and recipients with multi-year awards must submit a non-competitive continuation application to receive funding for the next budget period. In addition, if a recipient is unable to complete all activities within a budget period, they must request approval of a carryover budget amendment to use the funds from a previous budget period. In FY 2024, ANA will fully fund all competitive awards for the programs SEDS, ERE, P&M, and SEDS for Alaska for up to 36 months. This will promote self-governance and self-determination of tribes, Alaska Natives, and other Native American organizations; reduce the administrative burden of recipients by not requiring annual non-competing continuation applications for multi-year projects; and reduce the need for post-