

§ 202.20 [Amended]

■ 8. Amend § 202.20 by removing and reserving paragraph (c)(2)(xvii).

Appendix B to Part 202 [Amended]

■ 9. In Appendix B to Part 202, remove the sentence “(For works first published only in a country other than the United States, the law requires the deposit of the best edition as first published.)” and replace with “(For works first published only in a country other than the United States, the law requires the deposit of the work as first published.)”

Dated: May 10, 2018.

Sarang Vijay Damle,
General Counsel and Associate Register of Copyrights.

[FR Doc. 2018–10422 Filed 5–16–18; 8:45 am]

BILLING CODE 1410–30–P

LIBRARY OF CONGRESS**Copyright Office****37 CFR Parts 201, 202**

[Docket No. 2018–3]

Group Registration of Newsletters

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Copyright Office is proposing to update its regulation governing the group registration option for newsletters, which are defined in part as a class of serials that are published at least two days each week. The proposed rule would make a number of changes to reflect current Office practices, promote efficiency of the registration process, and encourage broader participation in the registration system by reducing the burden on applicants. Specifically, the proposed rule would require applicants to file an online application, rather than a paper application, and upload a complete digital copy of each issue through the electronic registration system instead of submitting them in physical form. The proposed rule would amend the definition of “newsletter,” and eliminate the requirement that each issue must be a work made for hire and the requirement that the applicants submit their claims within a certain period of time. In addition, the proposed rule would remove the requirement that the claimant provide the Library with complimentary subscriptions to or microfilm of the newsletter as a condition for using the group registration option. Under the proposed rule, however, newsletter publishers would remain subject to the

mandatory deposit requirement. Specifically, if the newsletter is published in the United States in a physical format, the publisher must provide the Library with two complimentary subscriptions to the newsletter, unless it is informed that the newsletter is not needed for the Library’s collections. Newsletters published only in electronic form would continue to be subject to the general, existing on-demand mandatory deposit regime for electronic serials. The Office invites public comment on these proposed changes.

DATES: Comments must be made in writing and must be received in the U.S. Copyright Office no later than June 18, 2018.

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 <https://www.copyright.gov/rulemaking/group-newsletters/>. 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: Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice, or Erik Bertin, Deputy Director of Registration Policy and Practice, by telephone at 202–707–8040, or by email at rkas@loc.gov or ebertin@loc.gov; or Cindy Paige Abramson, Assistant General Counsel, by telephone at 202–707–0676, or by email at ciab@loc.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

When Congress enacted the Copyright Act of 1976 (the “Act”), it authorized the Register of Copyrights (the “Register”) to specify by regulation the administrative classes of works for the purpose of seeking a registration and the nature of the deposits required for each such class. See 17 U.S.C. 408(c). In addition, Congress granted the Register the discretion to allow groups of related works to be registered with one application and one filing fee, a procedure known as “group registration.” See 17 U.S.C. 408(c)(1). Congress recognized that requiring applicants to submit separate applications for certain types of works may be so burdensome and expensive

that authors and copyright owners may forgo registration altogether, since copyright registration is not a prerequisite to copyright protection. 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). Pursuant to the authority granted by Congress, the Register has issued regulations permitting the U.S. Copyright Office (the “Office”) to issue a group registration for limited categories of works, provided that certain conditions have been met. See generally 37 CFR 202.3(b)(5), (6), (9), 202.4.

II. The Existing Group Registration Option for Newsletters

In 1995, the Office promulgated a rule offering a group registration option for newsletter publishers, concluding that it would further Congress’s desire to promote registration of works that may be too burdensome and expensive to be registered separately.¹ Under that rule, a “newsletter” is defined as a “a serial published and distributed by mail or electronic media (online or telefacsimile), or in any medium,” with publication occurring “at least two days each week” and “contain[ing] news or information of interest chiefly to a special group (for example, trade and professional associations, corporate in-house groups, schools, colleges, or churches).” 37 CFR 202.3(b)(9)(i). In contrast, the option for group registration of serials is limited to less-frequently published serials—*i.e.*, those published at intervals of one week or longer. *Id.* § 202.3(b)(6)(i).

The current group registration option for newsletters has a number of requirements. Specifically, the applicant must complete and submit a paper application using Form G/DN, include at least two newsletter issues in each group, and “designate the first and last day that [the] issues in the group were published.” 37 CFR 202.3(b)(9), (b)(9)(viii). In addition, the newsletter issues must be “essentially all-new collective works or all-new issues that have not been published before,” “bear issue dates within a single calendar month under the same continuing title,” be works made for hire, and have the

¹ See 60 FR 15874 (Mar. 28, 1995). Before that rule, the Office had offered group registration options for serials and newspapers, but newsletters could not be registered under those options because they did not meet the relevant requirements, most notably the requirements related to frequency of publication. 57 FR 39615 (Sept. 1, 1992); 55 FR 50556 (Dec. 7, 1990). The Office recently issued a final rule updating the procedures for group registration for newspapers, to similarly streamline the registration process, and intends to do the same for serials. See 83 FR 4144 (Jan. 30, 2018).

same person or organization as the author and claimant for all issues in the group. *Id.* § 202.3(b)(9)(ii)–(v). Form G/DN also indicates that newsletters are customarily sold by subscription as opposed to on newsstands, although this requirement is not mentioned in the regulation itself. *See* 60 FR at 15875.

To satisfy the registration deposit requirements for this group option, the applicant must submit one complete copy of each issue that is included in the group. 37 CFR 202.3(b)(9)(vi)(A). The current regulation also states that if the newsletter is one that has been selected for the Library's collections, the claimant is required to provide either "as many as two complimentary subscriptions of the newsletter in the edition most suitable to the Library's needs," or "a single positive, 35 mm silver halide microfilm meeting the Library's best edition criteria that includes all issues published as final editions in the designated calendar month," whichever the Library prefers. *Id.* § 202.3(b)(9)(vi)(B). This provision has been in effect for more than fifteen years, but relatively few newsletters have been selected for the Library's collection.

Finally, the current regulation states that registration must be "sought within three months after the publication date of the last issue included in the group." *Id.* § 202.3(b)(9)(vii). The deadline is intended to ensure that the Library receives these types of works in a timely manner. 64 FR 19522, 29523 (Jun. 1, 1999). If the claimant is unable to provide subscription copies or microfilm, or is unable to do so within three months after publication, the regulation states that each issue may be registered on an individual basis by submitting a paper application on Form SE or Short Form SE. 37 CFR 202.3(b)(9)(vi)(C).

III. The Current Rule Governing Mandatory Deposit of Newsletters

Section 407 of the Copyright Act states that if a work is published in the United States, the owner of copyright or the owner of the exclusive right of publication must affirmatively deposit two copies of the "best edition" of that work with the Library within three months after publication. 17 U.S.C. 407(a)–(b). This is known as the "mandatory deposit" requirement. As a general rule, publishers may satisfy this requirement by registering their works with the Office, or by sending copies to the Copyright Office's Copyright Acquisitions Division without seeking a registration. If a publisher fails to comply with the mandatory deposit requirement, the Office may issue a

written demand for those works, and if the required copies are not received within three months thereafter, the copyright owner or owner of the exclusive right of publication in that work may be subject to fines or other monetary liability. *Id.* 407(d). The Office has the authority to establish regulations governing mandatory deposit, including regulations to exempt any categories of material from these requirements. *See id.* 407(c), 702.

Newsletters published in a physical format (including works published both in physical and electronic formats) are subject to these affirmative mandatory deposit requirements. 37 CFR 202.19(c)(5). Electronic-only newsletters are subject to a separate mandatory deposit regime. Specifically, in 2010, the Office adopted an interim rule that established a different process for serials published solely in electronic form. (Newsletters, as a type of serial, are subject to these rules.) That interim rule established a general exemption for most "[e]lectronic works published in the United States and available only online," except for serials published solely in electronic formats (*i.e.*, "online-only" serials). *Id.* For online-only serials, there is no affirmative obligation to deposit works with the Copyright Office. Instead, if the Library desires a particular serial title for its collections, the Office will issue a written demand requiring the publisher to deposit copies of that serial. *Id.* 202.24.

IV. The Proposed Rule

The existing regulations governing group registration of newsletters require updating, both to better account for current practice, and to allow the Office to streamline and modernize its registration procedures. Accordingly, the Office is proposing to amend the regulation governing the group option for newsletters to modify the eligibility requirements for this group option in several respects.

To summarize, the proposed rule would do the following things:

(1) The rule would clarify and expand the category of works eligible for the group registration option, including by eliminating the work-for-hire requirement, by making clear that newsletters need not be collective works, and by eliminating the three-month deadline for filing the registration application.

(2) The rule would memorialize the Office's longstanding position regarding the scope of a registration for a group of newsletter issues—*i.e.*, a registration for a group of newsletter issues covers each issue in the group, and if each issue

constitutes a collective work, the articles, photographs, illustrations, or other contributions appearing within those issues—if they are fully owned by the copyright claimant and if they were first published in those issues.

(3) The rule would require applicants to register their newsletters through the Office's electronic registration system, and would discontinue the existing paper application.

(4) The rule would require applicants to upload their newsletters in digital form through the electronic registration system; the Office would no longer accept physical copies, such as a photocopy of each issue in the group, or digital copies that have been saved onto a flash drive, disc, or other physical storage medium that is delivered to the Office.

(5) Newsletter publishers would no longer be required to provide either subscriptions or microfilm copies for the Library's collections as a condition for using the group registration option. But the rule would also make clear that electronic deposits submitted to the Office through the registration system would not satisfy the mandatory deposit requirements in section 407, and would amend the mandatory deposit regulations to provide guidance on fulfilling those requirements. Specifically, if a newsletter is published in the United States in a physical format, the publisher must provide the Library with two complimentary subscriptions to the newsletter, unless it is informed that the newsletter is not needed for the Library's collections. Newsletters published only in electronic form will continue to be subject to the existing on-demand mandatory deposit regime.

The next sections discuss changes warranting more discussion.

A. Works Eligible

The proposed rule clarifies that newsletter issues can be, but do not *have* to be, collective works to qualify for the group registration option. Thus, for example, a newsletter that contains a single article and a single photograph would not be considered a collective work, because it does not contain a sufficient number of contributions—but nevertheless it would still be eligible for registration as part of the group, if the rest of the eligibility requirements have been met.² In this respect, the proposed

² *See* H.R. Rep. No. 94–1476, at 122 (1976) (stating that a work does not qualify as a collective work "where relatively few separate elements have been brought together," as in the case of "a composition consisting of words and music, a work

rule differs from the corresponding group registration options for serials and newspapers. To register a group of serials or newspapers, each issue in the group must be a collective work. *See* 37 CFR 202.3(b)(6)(i)(C)–(E), 202.4(e)(2). By contrast, under the proposed rule, publishers may register a group of newsletters whether or not each issue satisfies the statutory definition for a collective work.

The rule also clarifies that each newsletter issue in the group must be fixed and distributed as a discrete, self-contained work.³ An applicant may satisfy this requirement if the newsletter as a whole is fixed in a tangible medium of expression, and the content of each issue does not change once it has been distributed. For example, a publisher that mails a newsletter to its subscribers would satisfy this requirement, because the newsletter is clearly fixed and distributed in a physical format. A publisher that emails an electronic newsletter to its subscribers may satisfy this requirement if each issue contains a fixed selection of content, such as a PDF version of a physical publication. Similarly, a publisher that allows its subscribers to download a newsletter from its website may satisfy this requirement if each issue is distributed as a self-contained work and the content of each issue does not change once it has been downloaded.

The current regulation states that newsletter publishers must submit their claims within three months after the publication of the most recent issue in the group. 37 CFR 202.3(b)(9)(vii). The proposed rule eliminates this requirement, as it existed as a means of encouraging publishers to provide subscriptions or copies to the Library as early as possible. Since the proposed rule eliminates that requirement, the timeliness requirement can be eliminated as well, especially because the Copyright Act itself already contains a number of incentives for early registration.

The proposed rule continues the existing requirement that the works be “all new” collective works or “all new” issues that have not been published before.⁴ In other words, the issues

included in the group cannot be derivative versions of a previously published issue or a newsletter that is frequently modified, updated, or adapted.

The proposed rule clarifies the scope of the group registration option in various respects, including by eliminating the existing reference to “daily newsletters,” 37 CFR 202.3(b)(9), which is inaccurate, and by clarifying that a group of newsletters must “usually” be published at least two days a week, to account for occasional situations where the newsletter suspends publication (e.g., for a holiday).

B. Scope of Protection

The proposed rule clarifies that a registration for a group of newsletters covers each issue in the group, and each issue would be registered as a separate work. In other words, the group registration is treated as the legal equivalent of a separate registration for each newsletter issue.

If the newsletters qualify and are claimed as collective works, then those issues would be registered as separate collective works. As a general rule, a registration for a collective work covers the individual contributions contained within that work if they are fully owned by the copyright claimant and if they were first published in that work.⁵ A registration for a group of newsletter issues constituting collective works is effectively treated as a separate collective work registration for each issue in the group. Thus, in such cases, the group registration also covers the articles, photographs, illustrations, or other contributions appearing *within* those issues—if they are fully owned by the copyright claimant at the time the application was filed, and if they were first published in those issues. By contrast, if an issue constituting a collective work contains contributions that are not fully owned by the copyright claimant, and/or contributions that were previously published, the registration will not extend to those works. *See Morris v. Business Concepts, Inc.*, 259 F.3d 65, 71

(2d Cir. 2001) (“Unless the copyright owner of a collective work also owns all the rights in a constituent part, a collective work registration will not extend to the constituent part.”), *abrogated on other grounds by Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 160 (2010).

With respect to the information collected as part of a group registration and examination practices, the Office must balance the public interest in creating a meaningful record (*i.e.*, collecting information regarding each individual contribution within a newsletter issue) with the relative burden on applicants wishing to participate in the registration system. When an applicant submits multiple issues, it is difficult to collect granular information concerning the individual articles, photographs, and other component works within each issue. Requiring applicants to identify the author and title of each individual contribution would impose a significant burden both on applicants and the Office alike. This would discourage registration, which in turn, would diminish the value of the Office’s public record. Imposing these burdens would also be contrary to the Congressional purpose of providing the Office with the authority to create group registration options: To ease the registration of certain works.

Accordingly, the Office’s application to register a group of newsletter issues does not contain spaces where the applicant can provide titles, authors, or other identifying information for each contribution, or identify component works created by a third party and transferred to the claimant by written agreement. But the Office foresees the future possibility of applicants submitting metadata for the component works appearing within each issue, and the possibility of the Office incorporating this information into the registration record. If this becomes feasible once the Office implements its next-generation registration system, it may require this type of information as a condition for using this group registration option.

If each issue appears to be a collective work, the examiner will examine the issue as a whole to determine if it contains sufficient compilation authorship to warrant registration as a collective work. And the examiner will review the issue to determine whether it contains “a number of contributions” constituting “separate and independent works in themselves” 17 U.S.C. 101 (definition of “collective work”). When the Office issues a group registration, the certificate will identify the title,

published with illustrations or front matter, or three one-act plays”).

³ Similar language has appeared in the *Compendium of U.S. Copyright Office Practices, Third Edition* since December 2014. *See* Copyright Office, *Compendium of U.S. Copyright Office Practices* sec. 1113 (3d ed. 2017) (hereinafter the “*Compendium*”).

⁴ The current rule states that the works must be “essentially all new collective works or all new issues.” 37 CFR 202.3(b)(9)(ii) (emphasis added). The proposed rule eliminates the word “essentially,” as it is likely to cause confusion.

⁵ *See, e.g., Alaska Stock, LLC v. Houghton Mifflin Harcourt Pub. Co.*, 747 F.3d 673, 683 (9th Cir. 2014); *Morris v. Bus. Concepts, Inc.*, 259 F.3d 65, 68 (2d Cir. 2001); *Compendium* secs. 509.1, 509.2; *see also* 17 U.S.C. 201(c) (“Copyright in each separate contribution to a collective work is distinct from copyright in the collective work as a whole, and vests initially in the author of the contribution. In the absence of an express transfer of the copyright or of any rights under it, the owner of copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work . . .”).

author, and claimant for each newsletter issue in the group, but it will not identify the titles, authors, or claimants for the individual contributions appearing within those issues.

The scope of protection for a group registration issued under the proposed rule will have several consequences in infringement actions. First, a group registration may be used to satisfy the statutory requirements for instituting an infringement action involving any of the newsletter issues that were included within the group.⁶ 17 U.S.C. 411(a). Likewise, a group registration may be used to enforce the copyright in any of the individual contributions appearing within issues constituting collective works—provided that the claimant fully owned those contributions at the time the application for registration is submitted, and provided that the contributions were first published in one of those issues.

Second, the proposed rule clarifies that the group as a whole is not considered a compilation, a collective work, or a derivative work. Instead, the group is merely an administrative classification created solely for the purpose of registering multiple works with one application and one filing fee. The chronological selection, coordination, and arrangement of the issues within the group is entirely dictated by the regulatory requirements for this option. Likewise, when a group of newsletter issues are combined for the purpose of facilitating registration, those works are not “recast, transformed, or adapted” in any way, and the group as a whole is not “a work based upon one or more preexisting works” because there is no copyrightable authorship in simply collecting a month of issues and arranging them in chronological order. 17 U.S.C. 101 (definition of “derivative work”).

C. Online Registration Requirement

On December 14, 2012, the Office made some modifications to its electronic registration system to allow newsletter publishers to submit their claims with the online application. Under the proposed rule, applicants would be required to use the electronic application designated for a group of newsletter issues as a condition for seeking a group registration. The Office would no longer accept groups of newsletter issues submitted for

registration on paper using Form G/DN.⁷ If, after the effective date of this rule, such paper applications are received, the Office will refuse registration. The Office invites comment on this proposal, including whether the Office should eliminate the paper application for newsletter issues, phase it out after a specified period of time, or continue to offer Form G/DN for applicants who prefer to use the paper-based system.

The Office’s decision to offer a group option is entirely discretionary, and Congress gave the Office broad authority to establish the requirements for these types of claims. 17 U.S.C. 408(c)(1). Currently, the vast majority of the claims submitted on Form G/DN require correspondence or other action from the Office, which increases overall pendency and contributes to the Office’s backlog of pending claims. Applicants routinely file claims that are not eligible for this group option, fail to provide information expressly requested on the form, or add extraneous information that is not requested. In each case, however, the Office must first scan these paper applications into the registration system and input the relevant information by hand before an examiner can reject the application as having been improperly filed. This is a cumbersome, labor-intensive process, and if it is done incorrectly, the information must be re-entered into the system. In many cases, the Office must contact the applicant to request additional information or permission to correct the application.

Addressing these issues imposes significant burdens on the Office’s limited resources, and has had an adverse effect on the examination of other types of works within the Literary Division of the Registration Program. Eliminating the paper application should mitigate many of these problems. Among other improvements, the online application contains automated validations that prevent applicants from submitting applications that fail to comply with the eligibility requirements for this group option, such as including

too many issues in the group (*i.e.*, more than one calendar month of issues).

For these reasons, the Office believes that requiring applicants to submit online applications is necessary to improve the overall efficiency of the group registration process. Nonetheless, the Office invites comment on this aspect of the proposed rule.

D. Digital Registration Deposits

As noted above, to register a group of newsletters under the proposed rule, applicants will be required to submit a complete digital copy of each issue in the group, regardless of whether the newsletter is published in a physical or electronic form and regardless of whether the newsletter is published in the United States or abroad. Requiring applicants to upload digital copies to the electronic system will increase the efficiency of the group registration process. The Office does not need physical copies to examine a newsletter for copyrightable authorship, or to determine whether the applicant satisfied the formal and legal requirements for this group option. See 17 U.S.C. 410(a) (providing that the Register of Copyrights must determine whether “material deposited [for registration] constitutes copyrightable subject matter”). Electronic submissions also take less time to process, and are easier to track and handle than physical copies. A registration specialist can examine a digital copy as soon as it has been uploaded to the electronic registration system. By contrast, when an applicant submits an online application and mails a physical deposit to the Office, it may take weeks to connect the application with the correct deposit. In addition, each copy must be moved multiple times during the examination process.

Requiring digital uploads may also provide newsletter publishers with certain legal benefits. When the Office registers a group of newsletters and issues a certificate of registration, the effective date of registration is the date on which the Office received the application, filing fee, and deposit in proper form. When an applicant uploads a digital copy of the deposit to the electronic system, the Office typically receives the application, filing fee, and deposit on the same date. By contrast, when an applicant sends physical copies to the Office, the deposit may arrive long after the date that the application and filing fee were

⁶ Alternatively, a plaintiff may satisfy this statutory requirement if the Office refused registration, provided that the plaintiff serves a copy of the complaint on the Register of Copyrights. 17 U.S.C. 411(a).

⁷ Because the Office is proposing to eliminate Form G/DN, and require applicants to submit their claims through the electronic registration system, the term G/DN will soon be obsolete. Going forward, the Office will refer to this option as “GRNL,” which stands for “group newsletters.” In addition, the Office recently issued a final rule that requires applicants to file an online application in order to correct or amplify the information set forth in a basic registration for any work capable of being registered through the electronic system, rather than filing a paper application. 82 FR 27424 (June 15, 2017). This online filing requirement will apply to supplementary registrations for groups of newsletter issues—even if the issues were originally registered using Form G/DN. See 37 CFR 202.6(e)(1); 81 FR 86656, 86657, n.3 (Dec. 1, 2016).

received—thereby establishing a later effective date of registration.⁸

E. Mandatory Deposit

Although the proposed rule eliminates the requirement to provide subscriptions or microfilm as a condition of using the group registration option, newsletter publishers would still generally be subject to the mandatory deposit requirement under section 407.

To assist publishers with complying with these mandatory deposit requirements, the proposed rule amends the Office's mandatory deposit regulations, 37 CFR 202.19, to provide specific rules for all serials (a definition that includes newsletters) that are published in the United States in a physical format or in both a physical and electronic format.⁹ Newsletter publishers will be expected to provide two complimentary subscriptions to such newsletters, unless they have been informed by CAD that the serial title is not needed for the Library's collections. If subscription copies are not received within three months after publication of each issue, the Copyright Acquisitions Division ("CAD") may issue a written demand for ongoing subscriptions to that publication. The failure to provide subscription copies when demanded by the Office would subject the owner to penalties under section 407.

No change is being made to the mandatory deposit scheme for electronic-only serials; such serials will continue to be subject to the existing, demand-based mandatory deposit scheme.¹⁰

V. Conclusion

The proposed rule, if adopted, will encourage broader participation in the registration system, and increase the efficiency of the process for both the Office and copyright owners alike, while providing the Library with a means for adding newsletters to its collections. The Office invites public comment on all these proposed changes.

List of Subjects

37 CFR Part 201

Copyright, General Provisions.

⁸ The Office recognizes that some publishers may not have a digital copy of their issues or may find it difficult to create a digital copy for the purpose of seeking a group registration. The Office proposes to address these concerns on a case-by-case basis. If an applicant is unable to upload a particular newsletter to the electronic system, the applicant may request special relief from the deposit requirements under 37 CFR 202.20(d).

⁹ The same proposal is being made as part of the notice of proposed rulemaking relating to group registration of serials.

¹⁰ See 37 CFR 202.19(c)(5), 202.24(a).

37 CFR Part 202

Copyright, Preregistration and registration of claims to copyright.

Proposed Regulation

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.

■ 2. Amend § 201.1 by revising paragraph (c)(6) to read as follows:

§ 201.1 Communication with the U.S. Copyright Office.

* * * * *

(c) * * *

(6) *Mandatory Deposit Copies.*

Mandatory deposit copies of published works submitted for the Library of Congress under 17 U.S.C. 407 and § 202.19 of this chapter (including complimentary subscriptions to serial publications), and newspaper microfilm copies submitted under § 202.4(e) of this chapter, should be addressed to: Library of Congress, U.S. Copyright Office, Attn: 407 Deposits, 101 Independence Avenue SE, Washington, DC 20559–6600.

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PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

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

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

§ 202.3 [Amended]

■ 4. Amend § 202.3 by removing and reserving paragraph (b)(9).

■ 5. Amend § 202.4 by adding paragraph (f) and a new sentence after the first sentence of paragraph (n) to read as follows.

§ 202.4 Group Registration.

* * * * *

(f) *Group registration of newsletters.* Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that a group of newsletter issues may be registered with one application, one filing fee, the required deposit, and the filing fee required by § 201.3(c) of this chapter, if the following conditions are met:

(1) *Eligible works.*

(A) All the issues in the group must be newsletters. For purposes of this section, a newsletter is a serial that is published and distributed by mail,

electronic media, or other medium, including paper, email, or download. Publication must usually occur at least two days each week and the newsletter must contain news or information that is chiefly of interest to a special group, such as trade and professional associations, colleges, schools, or churches. Newsletters are typically distributed through subscriptions, but are not distributed through newsstands or other retail outlets.

(B) The group must include at least two issues.

(C) Each issue in the group must be an all-new issue or an all-new collective work that has not been previously published, and each issue must be fixed and distributed as a discrete, self-contained work.

(D) The author and claimant for each issue must be the same person or organization.

(E) All the issues in the group must be published under the same continuing title, they must be published within the same calendar month and bear issue dates within that month, and the applicant must identify the earliest and latest date that the issues were published during that month.

(2) *Application.* The applicant must complete and submit the online application designated for a group of newsletter issues. The application may be submitted by any of the parties listed in § 202.3(c)(1).

(3) *Deposit.* The applicant must submit one complete copy of each issue that is included in the group. The issues must be submitted in digital form, and each issue must be contained in a separate electronic file. The applicant must use the file-naming convention and submit digital files in accordance with instructions specified on the Copyright Office's website. The files must be submitted in Portable Document Format (PDF), they must be assembled in an orderly form, and they must be uploaded to the electronic registration system as individual electronic files (*i.e.*, not .zip files). The files must be viewable and searchable, contain embedded fonts, and be free from any access restrictions (such as those implemented through digital rights management) that prevent the viewing and examination of the work. The file size for each uploaded file must not exceed 500 megabytes, but files may be compressed to comply with this requirement. Copies submitted under this paragraph will be considered solely for the purpose of registration under section 408 of title 17 of the United States Code, and will not satisfy the mandatory deposit requirement under

section 407 of title 17 of the United States Code.

* * * * *

(n) *The scope of a group registration.*
* * * When the Office issues a group registration under paragraph (f) of this section, the registration covers each issue in the group and each issue is registered as a separate work or a separate collective work (as the case may be). * * *

■ 6. Amend § 202.19 by adding paragraph (d)(2)(x) to read as follows:

§ 202.19 Deposit of published copies or phonorecords for the Library of Congress.

* * * * *

(d) * * *

(2) * * *

(x) In the case of serials (as defined in § 202.3(b)(1)(v), but excluding newspapers) published in the United States in a physical format, or in both a physical and an electronic format, the copyright owner or the owner of the exclusive right of publication must provide the Library of Congress with two complimentary subscriptions to the serial, unless the Copyright Acquisitions Division informs the owner that the serial is not needed for the Library's collections. Subscription copies must be physically mailed to the Copyright Office, at the address for mandatory deposit copies specified in § 201.1(c) of this chapter, promptly after the publication of each issue, and the subscription(s) must be maintained on an ongoing basis. The owner may cancel the subscription(s) if the serial is no longer published by the owner, if the serial is no longer published in the United States in a physical format, or if the Copyright Acquisitions Division informs the owner that the serial is no longer needed for the Library's collections. In addition, prior to commencing the subscriptions, the owner must send a letter to the Copyright Acquisitions Division at the address specified in § 201.1(b) of this chapter confirming that the owner will provide the requested number of subscriptions for the Library of Congress. The letter must include the name of the publisher, the title of the newsletter, the International Standard Serial Number ("ISSN") that has been assigned to the newsletter (if any), and the issue date and the numerical or chronological designations that appear on the first issue that will be provided under the subscriptions.

Dated: May 11, 2018.

Sarang V. Damle,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2018-10420 Filed 5-16-18; 8:45 am]

BILLING CODE 1410-30-P

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Copyright Royalty Board

17 CFR Part 384

[Docket No. 17-CRB-0001-BER (2019-2023)]

Determination of Royalty Rates and Terms for Making Ephemeral Copies of Sound Recordings for Transmission to Business Establishments (Business Establishments III)

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Proposed rule.

SUMMARY: The Copyright Royalty Judges (Judges) publish for comment proposed regulations that set rates and terms for the making of an ephemeral recording of a sound recording by a business establishment service for the period January 1, 2019, through December 31, 2023.

DATES: Comments and objections are due no later than June 18, 2018.

ADDRESSES: You may submit comments and objections, identified by docket number 17-CRB-0001-BER (2019-2023), by any of the following methods:

CRB's electronic filing application: Submit comments online in eCRB at <https://app.crb.gov/>.

U.S. mail: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024-0977; or

Overnight service (only USPS Express Mail is acceptable): Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024-0977; or

Commercial courier: Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue SE, Washington, DC 20559-6000. Deliver to: Congressional Courier Acceptance Site, 2nd Street NE and D Street NE, Washington, DC; or

Hand delivery: Library of Congress, James Madison Memorial Building, LM-401, 101 Independence Avenue SE, Washington, DC 20559-6000.

Instructions: Unless submitting online, commenters must submit an original, two paper copies, and an electronic version on a CD. All submissions must include a reference to the CRB and this docket number. All submissions will be posted without

change to eCRB at <https://app.crb.gov/> including any personal information provided.

Docket: For access to the docket to read submitted background documents or comments, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at <https://app.crb.gov/> and search for docket number 17-CRB-0001-BER (2019-2023).

FOR FURTHER INFORMATION CONTACT:

Anita Blaine, CRB Program Specialist, by telephone at (202) 707-7658 or email at crb@loc.gov.

SUPPLEMENTARY INFORMATION: In 1995, Congress enacted the Digital Performance in Sound Recordings Act, Public Law 104-39, which created an exclusive right, subject to certain limitations, for copyright owners of sound recordings to perform publicly those sound recordings by means of certain digital audio transmissions. Among the limitations on the performance right was the creation of a statutory license for nonexempt, noninteractive digital subscription transmissions. 17 U.S.C. 114(d).

The scope of the section 114 statutory license was expanded in 1998 upon the passage of the Digital Millennium Copyright Act of 1998 (DMCA), Public Law 105-34, which allows public performance of a sound recording when made in accordance with the terms and rates of the statutory license, by a preexisting satellite digital audio radio service or as part of an eligible nonsubscription transmission. 17 U.S.C. 114(d).

The DMCA also created a statutory license for the making of an "ephemeral recording" of a sound recording by certain transmitting organizations. 17 U.S.C. 112(e). This license, among other things, allows entities that transmit performances of sound recordings to business establishments to make an ephemeral recording of a sound recording for later transmission, pursuant to the limitations set forth in section 114(d)(1)(C)(iv).

Chapter 8 of the Copyright Act requires the Copyright Royalty Judges (Judges) to conduct proceedings every five years to determine the royalty rates and terms for "the activities described in section 112(e)(1) relating to the limitation on exclusive rights specified by section 114(d)(1)(C)(iv)." 17 U.S.C. 801(b)(1), 804(b)(2). Accordingly, the Judges published a notice commencing the current proceeding and requesting that interested parties submit petitions to participate. 82 FR 143 (Jan. 3, 2017).

The Judges received Petitions to Participate from Mood Media