

provisions in 29 CFR 1910.147. Describe any such effects. Where possible, please provide detailed descriptions of the size and scope of operation for affected small entities and the likely technical, economic, and safety impacts for those entities.

33. In addition, are there any reasons that the benefits of reducing exposure to hazardous energy might be different in small firms than in larger firms? Are there any reasons why the costs for controlling hazardous energy would be higher for small employers than they would be for larger employers? Are there provisions that would be especially costly to small employers? Please describe any specific concerns related to potential impacts on small entities that you believe warrant special attention from OSHA. Please describe alternatives that might serve to minimize those impacts while meeting the requirements of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.*

#### IV. Authority and Signature

Loren Sweatt, Acting Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice pursuant to 29 U.S.C. 653, 655, and 657, Secretary's Order 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR part 1911.

Signed at Washington, DC, on May 7, 2019.

**Loren Sweatt,**

*Acting Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2019–10247 Filed 5–17–19; 8:45 am]

**BILLING CODE 4510–26–P**

## LIBRARY OF CONGRESS

### U.S. Copyright Office

#### 37 CFR Parts 201 and 202

[Docket No. 2019–4]

#### Group Registration of Works on an Album of Music

**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 musical works, sound recordings, and certain other works contained on an album. The proposed rule will expand the registration options currently available to register multiple musical works or sound recordings under one application. In particular, this proposed group registration option will permit the

registration of multiple musical works and/or sound recordings distributed together, regardless of whether such distribution occurs via physical or digital media.

**DATES:** Comments on the proposed rule must be made in writing and received by the U.S. Copyright Office no later than 11:59 p.m. EDT on July 19, 2019.

**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/gram>. 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:

Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at [regans@copyright.gov](mailto:regans@copyright.gov), Robert Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice, by email at [rkas@copyright.gov](mailto:rkas@copyright.gov), Erik Bertin, Deputy Director, Registration Policy & Practice, by email at [ebertin@copyright.gov](mailto:ebertin@copyright.gov), or John R. Riley, Attorney-Advisor, by email at [jril@copyright.gov](mailto:jril@copyright.gov). All can be reached by telephone at 202–707–8040.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The U.S. Copyright Office (“Office”) is proposing to create a new group registration option for musical works, sound recordings, and associated literary, pictorial, and graphic works contained on an album. When Congress enacted the Copyright Act, it authorized the Register of Copyrights to specify by regulation the administrative classes of works for the purpose of seeking a registration and the nature of the deposit required for each such class. In addition, Congress gave the Register the discretion to allow registration of groups of related works with one application and one filing fee, a procedure known as “group registration.”<sup>1</sup> Pursuant to this authority, the Register issued regulations permitting the Office to issue group registrations for certain

limited categories of works, provided that 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 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, although registration must be made before instituting a civil infringement action.<sup>4</sup> For musical works, not appearing in the Office’s records can have additional repercussions, as “the copyright owner must be identified in the registration or other public records of the Copyright Office” to be entitled to certain statutory royalties for the reproduction and distribution of non-digital phonorecords under the section 115 license.<sup>5</sup> Further, if copyright owners do not submit their works for registration, the public record will lack information concerning those works, diminishing the value of the Office’s records.

When multiple works are included in one submission, however, it can be more difficult to adequately capture information about each work, particularly within the technological constraints of the current electronic registration system. The Office must also consider the potential effect any group registration option may have on its overall administration of the copyright registration system, to avoid an adverse effect on the timeframe for examining other types of works.<sup>6</sup> Therefore, group registration options require careful balancing of the copyright owners’ desire for more liberal registration options, the need for an accurate public record, and the need for an efficient method of facilitating the examination of each work.

<sup>2</sup> See generally 37 CFR 202.3(b)(5), 202.4; see also 83 FR 65612 (Dec. 21, 2018) (proposed group registration of short online literary works).

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

<sup>4</sup> See 17 U.S.C. 411(a); *Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881, 886 (2019).

<sup>5</sup> 17 U.S.C. 115(c)(1)(A).

<sup>6</sup> See 84 FR 3693, 3694 (Feb. 13, 2019) (establishing limit on number of works in the group of unpublished works in light of projected examination costs); 83 FR 2542, 2544 (Jan. 18, 2018) (establishing limit on number of photographs that may be included in a group in light of the projected costs of examining claims for that group).

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

## II. Existing Registration Options for Musical Works and/or Sound Recordings on an Album

A sound recording and the musical work embodied in the sound recording are considered separate works. Under the Copyright Office's existing regulations and registration practices, a single musical work and the recording of that work may be registered with one application and one filing fee if the composition and recording are embodied in the same phonorecord and if the same party has been named as the claimant for both works.<sup>7</sup> In addition, copyright owners have three main options for registering multiple musical works and sound recordings with one application and one filing fee: (1) Registering multiple unpublished works as a group of related works; (2) registering a collective work together with the individual contributions included within that work; or (3) registering multiple published works as a unit of publication.<sup>8</sup> These options are summarized below.

### A. Unpublished Works

Multiple sound recordings, musical works, or other creative works may be registered with one application and fee under the group registration option for unpublished works if (1) all of the works are unpublished; (2) the works are registered in the same administrative class; (3) all of the works are by the same author or the same joint authors; (4) the author or joint authors are named as the copyright claimant; and (5) the authorship statement for each work and each claimant is exactly the same.<sup>9</sup> Up to ten sound recordings and ten musical works, *i.e.*, twenty total works, may be registered under this option if each musical work and sound recording is fixed in the same phonorecord and if the copyright claimant for both works is the same person or organization.<sup>10</sup> This may be beneficial to authors and copyright owners as a group registration covers each copyrightable work in the group, though this option is only available if registration is made before the works have been published.

<sup>7</sup> See 37 CFR 202.3(b)(1)(iv). For purposes of registration, a "claimant" may be the author of the musical work and the sound recording or a person or organization that owns all of the exclusive rights in those works. *Id.* at 202.3(a)(3).

<sup>8</sup> See U.S. Copyright Office, *Circular 34: Multiple Works* (Mar. 2019), <https://www.copyright.gov/circs/circ34.pdf>.

<sup>9</sup> 37 CFR 202.4(c).

<sup>10</sup> *Id.* at 202.3(b)(1)(iv), 202.4(c)(2).

### B. Collective Works and Contributions to Collective Works

Applicants may presently register multiple musical works and/or sound recordings with one application and filing fee, if they are part of a "collective work" and if certain requirements have been met. A collective work is a type of compilation where there is a "work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole."<sup>11</sup> The authorship in a collective work comes from the original selection, coordination, and arrangement of the independent works.<sup>12</sup> But not all groupings of works qualify for registration as a collective work. For example, while some courts have held that albums consisting of selected sound recordings of musical works are "compilations,"<sup>13</sup> an album would not be considered a collective work if it does not contain a sufficient number of contributions or a sufficient amount of creative selection, coordination, or arrangement.<sup>14</sup>

A collective work registration will extend to the individual works on an album if the following requirements have been met. First, each individual work must contain a sufficient amount of original authorship. Second, the copyright in the collective work and the individual component works must be owned by the same party.<sup>15</sup> And third, the individual works must not have been previously published or registered

<sup>11</sup> 17 U.S.C. 101 (definition of collective work); see also *id.* ("The term 'compilation' includes collective works.").

<sup>12</sup> See U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices, Third Edition* sec. 312.2 (3d ed. 2017) (citing *Feist Publ'ns., Inc. v. Rural Tel. Serv. Co. Inc.*, 499 U.S. 340, 348 (1991)) ("Compendium (Third)").

<sup>13</sup> See, e.g., *Bryant v. Media Rights Prods.*, 603 F.3d 135, 140–41 (2d Cir. 2010) ("An album falls within the Act's expansive definition of compilation. An album is a collection of preexisting materials—songs—that are selected and arranged by the author in a way that results in an original work of authorship—the album."); *Vargas v. Viacom Int'l, Inc.*, 2018 U.S. Dist. LEXIS 204474, at \*15–16 (S.D.N.Y. Nov. 30, 2018).

<sup>14</sup> See, e.g., *Compendium (Third)* sec. 312.2 (noting that "selection[s] consisting of less than four items will be scrutinized for sufficient authorship" and that selections "that [are] mechanical or routine," or are "commonplace" will not trigger copyright protection).

<sup>15</sup> See *Morris v. Bus. Concepts, Inc.*, 259 F.3d 65, 70–71 (2d Cir. 2001), *abrogated on other grounds by Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 160 (2010); *King Records, Inc. v. Bennett*, 438 F. Supp. 2d 812, 843 (M.D. Tenn. 2006) ("[T]he copyright of a collection of sound recordings in the form of an album extends copyright protection to both the album and the individual sound recordings contained therein, regardless of whether the sound recordings are individually listed on the certificate of registration.").

and must not be in the public domain.<sup>16</sup> But a collective work is considered a single work for purposes of calculating statutory damages, therefore, registering a collective work together with the individual works contained in it may have important consequences in an infringement action.<sup>17</sup>

In practice, most music albums are registered as collective works by record companies that authored or own the collective work and the sound recordings on the album. By contrast, musical works contained within an album are generally authored and/or owned by a wider variety of songwriters, composers, and music publishers. These works are not typically covered by the collective work registration, because the authors or owners of the musical works are often not the author or owner of the collective work, that is, the album. In such cases, the musical works must be registered separately from the album, and the applicant generally must submit a separate application for each work. The collective work option is therefore of limited value to songwriters, composers, and music publishers.

### B. Unit of Publication

Certain applicants may also register multiple musical works and sound recordings as a single work, with one application and filing fee, by using the "unit of publication" option.<sup>18</sup> This is an administrative procedure that allows an applicant to register a number of works that were physically packaged or bundled together as a single unit by the claimant and first published on the same date.<sup>19</sup>

A registration issued under this option covers each work in the unit that is owned by the copyright claimant. A unit of publication is different from a collective work because it does not require compilation authorship, and the unit does not need to contain "a number of contributions, constituting separate and independent works in themselves."<sup>20</sup> This option may be used to register "a package of separately fixed component works that are physically bundled together for distribution to the

<sup>16</sup> *Compendium (Third)* sec. 509.2; U.S. Copyright Office, *Circular 34: Multiple Works* 2–3.

<sup>17</sup> See 17 U.S.C. 504(c)(1) (A copyright owner may be entitled to recover "an award of statutory damages for all infringements involved in the [infringement] action, with respect to any one work," and "[f]or the purposes of this subsection, all the parts of a compilation . . . constitute one work."); see also *UMG Recordings, Inc. v. MP3.com, Inc.*, 109 F. Supp. 2d 223, 224–25 (S.D.N.Y. 2000).

<sup>18</sup> See 37 CFR 202.3(b)(4).

<sup>19</sup> *Compendium (Third)* secs. 1103, 1107.2.

<sup>20</sup> 17 U.S.C. 101 (definition of collective work); *Compendium (Third)* sec. 1103.

public as a single, integrated unit,” such as a “CD packaged with cover art and a leaflet containing lyrics” or a “box set of music CDs.”<sup>21</sup> This registration accommodation has long-allowed one application to not only extend to any collective work that is included within the unit (e.g., a compilation of sound recordings), but also the cover art, liner notes, and any other separately fixed work contained in the unit and owned by the same claimant.

Because the unit of publication option is restricted to works that were first published in a physical unit, this option is not available for works first published, or published solely, on a digital album distributed over the internet, an increasingly common practice.<sup>22</sup> The Office has declined to extend the unit of publication option to digital products, explaining that “[t]he unit of publication option was always intended to be a narrow accommodation to account for a particular scenario: Where a physical product bundles together multiple types of works of authorship as a single ‘unit,’ and those separate works are not published individually.”<sup>23</sup> It makes little sense to require separate applications for each work of authorship in this situation, because this could result in duplicative deposits.<sup>24</sup> When considering digital products, the calculus is different. There is less concern over burdening applicants (or the Office) with duplicative deposits, but it is typically more difficult for the Office to verify whether multiple works have been packaged and distributed as a unit, or if they were distributed as “a single digital file or in multiple digital files, or could readily be published only as a bundle, or both in a bundle and individually.”<sup>25</sup>

In concluding that it would be inappropriate to make the unit of publication option generically available to digital products, the Office noted its intention to “create a new group registration option to accommodate [digital music albums],” citing “the inability to register multiple musical works fixed and/or distributed on an album,” including those released first

(or only) in digital formats.<sup>26</sup> This proposed rule follows through on this statement by proposing a new group registration option for multiple musical works, as well as sound recordings and other works distributed in the same album, subject to the eligibility criteria outlined below.

### III. The Proposed Rule

While the options described above remain useful to facilitate the registration of many musical works and sound recordings, in practice, the varying eligibility requirements can result in uneven registration options (and associated fees) for musical work copyright owners versus sound recording copyright owners (since the collective work option is more typically available for the latter), and for physical versus digital-only albums (since the unit of publication option may only be used to register physical products).

To address these issues, the Office is proposing to create a group registration option specifically for works by the same author(s) that are contained on the same album. This option will be known as “Group Registration of Works on an Album of Music” or “GRAM.” This alternative is intended to expand registration options for the authors and other owners of musical works, sound recordings, and associated literary, pictorial, or graphic works in a manner that provides more flexibility for the registration of multiple works on a particular album. Each work in the group will be registered as a separate work, and each work should be eligible for a separate award of statutory damage awards in an infringement action.

#### A. Eligibility Requirements

As proposed, applicants that fail to satisfy the eligibility requirements outlined below will not be permitted to use this option to register works.

##### 1. Definition of an “Album”; Works That May Be Included in This Option

The proposed rule limits the group registration option to musical works, sound recordings, and any associated literary, pictorial, or graphic works on an album of music, such as liner notes and cover artwork.<sup>27</sup> For the purposes of

this registration option, the proposed rule defines “album” as “a single physical or electronic unit of distribution containing at least two musical works and/or sound recordings embodied in phonorecords, including any associated literary, pictorial, or graphic works distributed with the unit.”<sup>28</sup>

This definition is intended to encompass groups of musical works and/or sound recordings released to the public,<sup>29</sup> and includes both physical units of distribution such as CDs, cassettes, and vinyl records as well as digital releases that are available for download as an album (e.g., multiple digital tracks offered at a unified album price). The proposed rule does not distinguish between an album that can only be purchased in its entirety, such as a multi-track CD, and an album uploaded to a digital music service that is offered to the public both in its entirety and as individual songs that may also be individually downloaded without purchasing the album as a whole. In all cases, the musical works and/or sound recordings must be fixed and distributed together in an audio form. Works embodied in a visually perceptible form, such as books of sheet music, would not be eligible.

The proposed rule may be used to register up to twenty musical works or twenty sound recordings contained in an album. It may also be used to register up to twenty musical works and twenty sound recordings, i.e., forty total works, if the works are fixed in the same phonorecord, if the works are created by the same author or have at least one common author, and if the claimant for each work in the group is the same. The Office recognizes that some albums contain more than twenty musical works and sound recordings, but

<sup>28</sup> The Office recognizes that in the music industry, the word “album” sometimes is used to refer to a larger collection of tracks, in contrast to smaller bundles of tracks, such as EPs. For this rule, there is no policy reason to treat smaller bundles differently. See *What is the Difference Between a Single, an EP and an Album*, TuneCore, <https://support.tunecore.com/hc/en-us/articles/115006689928-What-is-the-difference-between-a-Single-an-EP-and-an-Album> (last visited May 1, 2019) (noting that a single is one track and an album has two or more tracks); *What is the Difference Between Single, EP and Albums?*, CDBaby, <https://support.cdbaby.com/hc/en-us/articles/360008275672-What-is-the-difference-between-Single-EP-and-Albums> (last visited May 1, 2019) (same); see also *Billboard 200*, Wikipedia, [https://en.wikipedia.org/wiki/Billboard\\_200](https://en.wikipedia.org/wiki/Billboard_200) (last visited May 1, 2019) (noting *Billboard 200* list ranks LPs and EPs together as “albums”). Conversely, the Office may reassess this option in the future if “albums” stop being a popular means for releasing multiple tracks together.

<sup>29</sup> If all the works on the album have not been previously published, applicants should register the works as a group registration of unpublished works.

<sup>21</sup> *Compendium (Third)* sec. 1107.1.

<sup>22</sup> See, e.g., Keith Caulfield, *Chance the Rapper’s ‘Coloring Book’ is First Streaming-Exclusive Album to Chart on Billboard 200*, *Billboard* (May 22, 2016), <https://www.billboard.com/articles/columns/chart-beat/7378361/chance-the-rapper-coloring-book-first-streaming-exclusive>; Jason Bullinger, *Led Zeppelin Releases Three Digital Only Albums* (Sept. 28, 2018), <http://www.altrevolt.com/led-zeppelin-releases-three-digital-only-albums/>.

<sup>23</sup> 82 FR 45625, 45627 (Sept. 29, 2017).

<sup>24</sup> *Id.* (providing example of individual pieces of a board game).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 45628.

<sup>27</sup> The proposed rule would not apply to any motion pictures or other audiovisual works that may be included on an album, because the Office has concluded that including such works would disproportionately increase the amount of time needed to examine each application. Such motion pictures or audiovisual works would have to be registered separate from the works registered through a GRAM registration. The Office understands that many digital albums increasingly contain audiovisual content and welcomes comments on this provision.

believes this number will make this option available to the majority of albums actually sold in the market.<sup>30</sup> This option also benefits copyright owners that are seeking to register two or three works that likely would not meet the statutory requirements for a collective work.

Based upon the Office's experience registering music albums, most claims will involve registration of a dozen or fewer works. As discussed below, applicants will be required to submit their claims through the existing online registration system. The Office does not currently have the ability to charge differential prices to offset the additional work involved in examining these claims. The Office will closely monitor the number of musical works and sound recordings that are submitted to determine if this option has an adverse effect on processing times for other types of claims handled by the Performing Arts Division. If the average number of works proves to be closer to twenty, or if these claims increase overall processing times, the Office may need to revisit the proposed limit, or its associated fee.

This proposed rule will also permit the registration of associated literary, pictorial, and graphic works in the album, including cover art, liner notes, and/or posters. As noted above, the physical packaging requirement of the unit of publication accommodation has limited the opportunity to register such ancillary works released together in the digital environment. This proposed rule is intended to address that limitation by allowing such works to be registered together with the musical works and/or sound recordings, subject to the additional eligibility requirements discussed below.

The proposed rule does not limit the number of literary, pictorial, or graphic works that may be included in the claim, for two reasons. To qualify for this option, the works must be created or co-created by the author of the musical works and/or sound recordings. This typically occurs when musical works, sound recordings, and other album content are created by the same singer-songwriter, or when sound recordings and related album material are created as a work made for hire. The Office expects that the vast majority of GRAM claims will be limited to music and/or sound recordings, and relatively few will include any associated literary, pictorial, or graphic works. If these types of works are included in the

claim, the Office expects that they will take less time to examine than the musical works or sound recordings. If these assumptions prove to be incorrect, the Office may revisit this issue and impose a numerical limit on the amount of associated material that may be included in each claim.

Finally, the group registration option cannot be used to register sound recordings that were fixed before February 14, 1972, because, as a general rule, those works are not eligible for full federal copyright protection.<sup>31</sup> And unlike the registration for a collective work, this group registration option will not cover the authorship involved in selecting, coordinating, and arranging the works into the album as a whole, consistent with the general scope of a group registration.<sup>32</sup> To register the authorship involved in selecting and arranging the works, the applicant would need to separately register the album as a collective work or compilation.

## 2. Author and Claimant

Under the proposed rule, all of the works claimed in the group must have a common author, although authorship for each work claimed need not be identical. This requirement may be satisfied if the works were created by the same author. In the case of a joint work, this requirement may be satisfied if each work was co-created by the same co-author, even if the other co-authors are different.<sup>33</sup> In addition, the

copyright claimant(s) for each work must be the same person(s) or organization.<sup>34</sup> Specifically, the claimant may either be (1) the author or co-author of all of the works, or (2) the party that owns all of the exclusive rights that initially belonged to the author or co-authors. If the author(s) and the copyright claimant(s) are different, the applicant must provide an appropriate transfer statement that indicates how the claimant obtained ownership of all of the exclusive rights in the works, such as "by written agreement."

For example, if multiple songs on an album were created by the same songwriter, that individual could be named as the copyright claimant (even if the copyright is owned by a music publisher). If a music publisher owns all of the exclusive rights in the works claimed on the application, that publisher could register the works in its own name by identifying itself as the copyright claimant and providing an appropriate transfer statement explaining how it obtained ownership of the copyright. Similarly, a singer-songwriter that created the musical works, sound recordings, and photographs on an album could register all of those works by naming himself or herself as the copyright claimant. Alternatively, a third party that owns all of the exclusive rights in those works could register them in its own name by providing an appropriate transfer statement indicating how it obtained ownership of the rights that initially belonged to the singer-songwriter.

To be clear, a third party may only be named as a claimant or co-claimant if that party owns the copyright in all of the works in the group.<sup>35</sup> If a party owns one or more—but less than all—of the exclusive rights in the works, that party cannot be a copyright claimant. Likewise, if the works were created by two or more co-authors, the claimant or co-claimants must own or co-own all of the rights that initially belonged to the

album contains the same featured artist across tracks, that artist could be listed as the author of all tracks, even if different producers co-authored various tracks. *See Compendium (Third)* 803.3. Similarly, if a songwriter co-authored multiple musical works on an album, any such works may be registered in the group, even if each work was co-authored with different writing partners.

<sup>34</sup> In this respect the proposed rule is similar to the rules governing other group registration options. *See, e.g.*, 37 CFR 202.4(c)(5) (unpublished works), (d)(1)(iv) (serials), (e)(3) (newspapers), (f)(1)(iv) (newsletters), (g)(2) (contributions to periodicals), (h)(4) (unpublished photographs), (i)(4) (published photographs).

<sup>35</sup> *Id.* at 202.3(a)(3); *Compendium (Third)* sec. 404 ("A person or entity who owns one or more—but less than all—of the exclusive rights in a work is not eligible to be a claimant.").

<sup>31</sup> Title II of the Orrin G. Hatch-Bob Goodlatte Music Modernization Act, the Classics Protection and Access Act, provides for federal remedies for certain unauthorized uses of pre-1972 sound recordings, while preserving the rule that "no sound recording fixed before February 15, 1972, shall be subject to copyright under this title." Public Law 115–264, sec. 202, 132 Stat. 3676, 3728–38 (2018); 17 U.S.C. 301(c). Foreign sound recordings fixed before February 14, 1972, however, may be eligible for copyright protection in the United States, but these works must be registered on an individual basis using Form GATT. *See* 17 U.S.C. 104(A); 37 CFR 202.12(c)(1), (d); 71 FR 15368, 15369 (Mar. 28, 2006); *see also* 84 FR 1661, 1670 (Feb. 5, 2019) (discussing interplay between 17 U.S.C. 104A and 303 following enactment of the Music Modernization Act).

<sup>32</sup> *See* 37 CFR 202.4(n) ("For purposes of registration, the group as a whole is not considered a compilation, a collective work, or a derivative work . . ."). A court may separately determine whether multiple works infringing on any album were part of a collective work. *VHT, Inc. v. Zillow Grp., Inc.*, 918 F.3d 723, 749 (9th Cir. 2019) ("Though the registration label is not controlling, it may be considered by the court when assessing whether a work is a compilation. . . . Ultimately, what counts is the statutory definition."); *Yellow Pages Photos, Inc. v. Ziplocal, LP*, 795 F.3d 1255, 1277 (11th Cir. 2015) ("Although the manner of copyright registration is not dispositive of the works issue, this Court has previously considered it to be at least a relevant factor.").

<sup>33</sup> For example, in cases where sound recordings are not registered as works made for hire, if an

<sup>30</sup> In cases where an album contains over twenty tracks, such as a double album, an applicant may file multiple applications under this option.

co-authors.<sup>36</sup> If a party owns or co-owns the rights that initially belonged to some, but not all, of the co-authors, that party cannot be named as a copyright claimant.

In all cases, the application may be submitted by an author, a party that owns all of the exclusive rights in the works, a party that owns one or more (but less than all) of the exclusive rights in the works, or an authorized agent of the foregoing parties.

The authorship and ownership of musical works and sound recordings can be complex. The Office recognizes that the proposed framework does not capture every division of rights that potentially exists within the music industry. This is due to the limitations of the current electronic registration system, and the limited nature of the Office's examination. As discussed in more detail below, the Office does not plan to create a new application form for this group registration option. Instead, these claims will be submitted using the Standard Application. This application was designed to register one work that was created or co-created by the same author or co-authors, assuming that the work is owned or co-owned by the same claimant or co-claimant(s).

The fields within the Standard Application are limited and cannot be changed. They are not capable of capturing nuanced ownership information, which limits the Office's ability to evaluate claims involving transfers of ownership involving multiple works and multiple parties. The Office will consider these issues when it begins to develop the requirements for its next-generation registration system and welcomes input from authors, publishers, recording companies, and other interested parties concerning the features and capabilities that should be considered.

### 3. Title Information

The applicant will be required to provide a title for the album, a title for each musical work and/or sound recording, titles for any associated literary, pictorial, or graphic works that are included in the group, and a title that identifies the group as a whole. The album title should be provided in the field marked "Title of Larger Work." The title of the musical works, sound recordings, and any associated literary, pictorial, or graphic works should be provided in the field marked "Contents Titles." When registering sound recordings together with the musical

works embodied in those works, the same title may be provided for both works. When registering literary, pictorial, or graphic works, applicants may provide the file name that has been assigned to each work or a descriptive identification, such as "cover art," "liner notes," "photo of recording artist," "photo of guitar," etc.

The title of the group as a whole will be used to identify the registration in the online public record. This title should be provided in the field marked "Title of Work Being Registered" and should begin with the term "GRAM," which will be used to identify the claim and assign it to an appropriate member of the Performing Arts Division. The group title may include any additional words that reasonably identify the group as a whole, such as the author's name(s), the album title, the type of works, or the number of works in the group, as in "GRAM songs by Antwan Patton & André Benjamin," "GRAM five songs from The Dungeon Album," "GRAM songs, sound recordings, and cover artwork from the album Scorpicorn."

### 4. Publication Information

The application must specify the date and nation of publication for the album, and all the works in the group must be first published on the album and on the same date. If the album includes works that were previously published (either on an individual basis or on a different album), or previously registered with the Office, those works should be excluded from the claim.<sup>37</sup> In this respect, the proposed rule is similar to the rules governing the registration of a collective work or a unit of publication.<sup>38</sup>

#### B. Application Requirements

In keeping with the Office's recent rules encouraging online registration,<sup>39</sup> the proposed rule requires applicants to electronically submit the application.<sup>40</sup> The Office recently amended its regulations to require other group registrations to be filed electronically, and the rationales provided in those

rulemakings apply equally here.<sup>41</sup> As is the case with these other recent registration rules, the proposed rule would allow the Office to waive this online filing requirement in exceptional cases.<sup>42</sup>

Ordinarily, when the Office creates a new group registration option, it develops a corresponding application form to collect the information needed for that type of claim.<sup>43</sup> But the Office is beginning to work on the technical requirements for its next-generation registration system, and it does not intend to conduct any further development on the current system. In the interim, claims submitted under this new group registration option will need to be adapted to fit within the registration system as it currently exists.

Under the proposed rule, applicants will be required to submit their claims through the electronic system and they will be required to use the Standard Application. If the claim includes one or more sound recordings the applicant should select the Standard Application designated for a "Sound Recording." If the group includes musical works but does not include any sound recordings, the applicant should select the Standard Application designated for a "Work of the Performing Arts." Further instructions on how to complete the application will be provided by the Office through traditional avenues, including its website, circulars, or Chapter 1100 of the *Compendium*.

#### C. Filing Fee

Under the proposed rule, the filing fee for this option will be the fee that currently applies to any claim submitted on the Standard Application.<sup>44</sup> The Office has issued a proposal to increase this fee from \$55 to \$75.<sup>45</sup> If that proposal is adopted, the new fee will apply to any claim submitted on the Standard Application, including claims involving works contained on an album. The Office does not have the ability to charge differential prices when multiple works are submitted on the Standard

<sup>41</sup> See, e.g., *id.* at 202.4(g)(6) (contributions to periodicals), 202.4(e)(5) (group newspapers), 202.4(f)(2) (group newsletters).

<sup>42</sup> See, e.g., *id.* at 202.4(g)(9), (h)(11), (i)(11), 202.6(e)(8).

<sup>43</sup> See *id.* at 202.4(c)(8), (d)(2), (e)(5), (f)(2), (g)(6), (h)(8), (i)(8).

<sup>44</sup> Section 708(b) authorizes the Register to adjust the fees that the Office charges for certain services, but before doing so it must conduct a study of the costs incurred in providing each service. 17 U.S.C. 708(b)(5). The Office intends to issue a supplemental notice of proposed rulemaking regarding its fee schedule that will give the public an opportunity to comment on the proposed fee for this group registration option, as well as fees that will be proposed in other unrelated rulemakings.

<sup>45</sup> 83 FR 25054, 24057 (May 24, 2018).

<sup>36</sup> Shared ownership of all the musical works on an album is not an eligibility requirement, because each song will be registered as an individual work.

<sup>37</sup> See *Compendium (Third)* secs. 621.4, 621.5.

<sup>38</sup> See *id.* secs. 509.1, 1107.1.

<sup>39</sup> See 84 FR at 3698 (group registration of unpublished works); 83 FR 4144, 4146 (Jan. 30, 2019) (group registration of newspapers); see also 83 FR 66182, 66184 (Dec. 26, 2018) (architectural works notice of proposed rulemaking); 83 FR at 65616 (short online literary works notice of proposed rulemaking).

<sup>40</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. 37 CFR 202.6(e)(1).

Application. However, the Office will consider this issue as it begins to develop the technical and legal requirements for its next-generation registration system.<sup>46</sup> In the interim, because the Office cannot presently charge a higher fee for GRAM claims, should processing times for this group option significantly outstrip the overall average processing time for Standard Applications, the Office may consider an adjustment to the number of works or complexity of claims permitted in this group to minimize subsidization.

#### D. Deposit Requirements

The deposit requirements for this group registration option will be the same as the requirements that normally apply to claims involving musical works, sound recordings, and associated album material.

Briefly stated, if the claim includes any sound recordings, the applicant should submit a complete phonorecord of the best edition of those sound recordings,<sup>47</sup> along with any printed or other visually perceptible material distributed with the recordings (regardless of whether the applicant intends to register that material).<sup>48</sup> If the album was published in a physical form (such as a CD or vinyl record) or in both physical and digital form, the applicant should submit two physical phonorecords, along with two physical copies of any related album material.<sup>49</sup> If the album was published solely in digital form, the applicant may upload a digital phonorecord along with a digital copy of any related album material.<sup>50</sup>

If the claim does not include any sound recordings, the applicant should submit a complete phonorecord of each musical work being registered.<sup>51</sup> If the claim includes any associated literary, pictorial, or graphic works, the applicant should submit a complete copy of those works. Musical works

published solely on phonorecords are not subject to the best edition requirement.<sup>52</sup> Therefore, authors and owners of these works may submit digital phonorecords and digital copies to the electronic registration system (regardless of whether the album was published in a physical or digital form). Alternatively, the applicant may submit a physical phonorecord containing each musical work, along with a physical copy of any literary, pictorial, or graphic works that are included in the claim.

When submitting a digital deposit, each work must be contained in a separate electronic file. The files must be assembled in an orderly form, each must be submitted in one of the acceptable file formats listed on the Office's website,<sup>53</sup> and they must be uploaded to the electronic registration system as individual electronic files (not .zip files). A submission would be considered "orderly" if the file name for each musical work and/or sound recording can reasonably be matched with the corresponding title entered on the application so that the examiner can verify that the correct works were uploaded. In addition, the applicant would have to provide documentation confirming that the musical works and/or sound recordings were included on the album. Specific guidance for this requirement will be provided on the Office's website, circulars, and the *Compendium*. By way of example, applicants could upload a photo of the liner notes for the album or a screenshot from an online music service where the album may be found.

#### IV. Conclusion

The proposed rule is intended to facilitate broader participation in the registration system by making it easier for the authors or owners of musical works and/or sound recordings to register multiple works at the same time. The Office invites public comment on these proposed changes.

#### List of Subjects

##### 37 CFR Part 201

Cable television, Copyright, Jukeboxes, Recordings, Satellites.

##### 37 CFR Part 202

Claims, Copyright.

#### Proposed Regulations

For the reasons set forth in the preamble, the Copyright Office proposes

<sup>52</sup> *Id.* at 202.19(c)(4) (exempting "musical works published only as embodied in phonorecords" from the 17 U.S.C. 407(a) deposit requirement).

<sup>53</sup> See U.S. Copyright Office, *eCO Acceptable File Types*, <https://www.copyright.gov/eco/help-file-types.html> (last visited Mar. 30, 2019).

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 § 201.3 by:

■ a. Redesignating paragraphs (c)(9) through (c)(25) as paragraphs (c)(10) through (c)(26), respectively.

■ b. Adding a new subparagraph (c)(9). The addition reads as follows:

#### § 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.

\* \* \* \* \*

(c) \* \* \*

\* \* \* \* \*

(9) Registration of a group of works on an album .....	55
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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.

■ 4. Amend § 202.4 by:

■ a. Redesignating paragraphs (k) through (n) as paragraphs (o) through (r), respectively.

■ b. Adding new paragraph (k).

■ c. Adding and reserving new paragraphs (l), (m), and (n).

■ d. Revising the newly designated paragraph (r) in the third sentence by removing the words "or (k)of" and adding in its place the words "(k), or (o) of".

The addition reads as follows:

#### § 202.4 Group registration.

\* \* \* \* \*

(k) *Group registration of works on an album.* Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that a group of two or more musical works and/or two or more sound recordings, and any associated literary, pictorial, or graphic works, may be registered with one application, the required deposit, and the filing fee required by § 201.3 of this chapter, if the following conditions are met:

(1) *Eligible works.*

(i) All of the works in the group must be contained on the same *album*. For the purposes of this section, an "album" is "a single physical or electronic unit of distribution containing at least two

<sup>46</sup> See 83 FR 52336, 52339 (Oct. 17, 2018).

<sup>47</sup> See 37 CFR 202.20(c)(1)(iii) (noting best edition requirement). Guidelines for identifying the "best edition" of a sound recording are provided in section V of the "Best Edition Statement," which appears in Appendix B to Part 202 of the Office's regulations and in *Circular 7B: Best Edition of Published Copyrighted Works for the Collections of the Library of Congress*. 37 CFR pt. 202, app. B; U.S. Copyright Office, *Circular 7B: Best Edition of Published Copyrighted Works for the Collections of the Library of Congress* (Sept. 2017), <https://www.copyright.gov/circs/circ07b.pdf>.

<sup>48</sup> See 37 CFR 202.19(b)(2), 202.20(b)(2)(v).

<sup>49</sup> *Id.* at 202.19(b)(2)(i), 202.20(b)(2)(v).

<sup>50</sup> *Id.* at 202.20(b)(2)(iii)(B). Alternatively, applicants may save the digital sound recordings and related album material onto a physical disc or other storage medium and submit the works in that form. *Id.* at 202.3(b)(2)(i)(D).

<sup>51</sup> *Id.* at 202.20(c)(1)(iii), (c)(2)(i)(H).

musical works and/or sound recordings embodied in a phonorecord, including any associated literary, pictorial, or graphic works distributed with the unit."

(ii) The group may include up to twenty musical works and/or sound recordings, together with any associated literary, pictorial, or graphic works included with the same album. Where a musical work and a sound recording are embodied in the same phonorecord, the group may include up to twenty musical works and twenty sound recordings, and any associated literary, pictorial, or graphic works included with the same album.

(iii) The applicant must provide a title for the group as a whole that begins with the term "GRAM," a title for the album, and a title for each musical work, sound recording, and associated literary, pictorial, or graphic work claimed in the group.

(iv) All of the works in the group must be created by the same author or the works must have a common joint author, and the copyright claimant or co-claimants for each work must be the same person or organization. The works may be registered as works made for hire if they are identified in the application as such.

(v) All of the works must be first published on the same album and on the same date, and the date and nation of publication must be specified in the application.

(2) *Application.* If the group includes at least one sound recording, the applicant must complete and submit the Standard Application designated for a "Sound Recording." If the group does not include any sound recordings, the applicant must complete and submit the Standard Application designated for a "Work of the Performing Arts. The application may be submitted by any of the parties listed in § 202.3(c)(1).

(3) *Deposit.*

(i) If the claim includes any sound recordings, the applicant must submit two complete phonorecords containing the best edition of each recording, and two complete copies of any associated literary, pictorial, or graphic works that are included in the group. A phonorecord will be considered complete if it satisfies the requirements set forth in § 202.19(b)(2). The deposit may be submitted in a digital form if the album has been distributed solely in a digital format, and if the requirements set forth in paragraph (k)(3)(iii) of this section have been met.

(ii) If the claim does not include any sound recordings, the applicant must submit one complete phonorecord of each musical work that is included in

the group. If the claim includes any associated literary, pictorial, or graphic works, the applicant must submit one complete copy of each work.

(iii) The deposit may be submitted in a digital form if the following requirements have been met. Each work must be contained in a separate electronic file. The files must be assembled in an orderly form, they must be submitted in one of the electronic formats approved by the Office, and they must be uploaded to the electronic registration system as individual electronic files (not .zip files). The file size for each uploaded file must not exceed 500 megabytes; the files may be compressed to comply with this requirement. In addition, the applicant must submit documentation in accordance with the instructions specified on the Copyright Office's website confirming that the musical works and/or sound recordings were included on the album.

(4) *Special relief.* In an exceptional case, the Copyright Office may waive the online filing requirement set forth in paragraph (l)(2) of this section or may grant special relief from the deposit requirement under § 202.20(d), 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.

Dated: May 13, 2019.

**Regan A. Smith,**

*General Counsel and Associate Register of Copyrights.*

[FR Doc. 2019-10166 Filed 5-17-19; 8:45 am]

**BILLING CODE 1410-30-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA-R02-OAR-2019-0164; FRL-9993-70-Region 2] Approval of Air Quality Implementation Plans;**

### **New Jersey; Determination of Attainment for the 1971 Sulfur Dioxide National Ambient Air Quality Standard; Warren County Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to make the determination that the Warren County Sulfur Dioxide (SO<sub>2</sub>) Nonattainment Area has attained the 1971 SO<sub>2</sub> primary and secondary National Ambient Air Quality Standard (NAAQS). This action does not constitute a redesignation to

attainment. The Warren County Nonattainment Area will remain nonattainment for the 1971 primary and secondary NAAQS until EPA determines that the Area meets the Clean Air Act (CAA) requirements for redesignation to attainment, including an approved maintenance plan. If the EPA finalizes this rule, certain attainment planning requirements will be suspended for so long as the area remains in attainment of the NAAQS. This action is being taken under the CAA.

**DATES:** Written comments must be received on or before June 19, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R02-OAR-2019-0164 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Fradkin, (212) 637-3702, or by email at [fradkin.kenneth@epa.gov](mailto:fradkin.kenneth@epa.gov).

## **I. Background**

### *a. Nonattainment Designation*

The EPA designated all of Warren County, New Jersey as attainment for the 1971 SO<sub>2</sub> primary and secondary NAAQS on March 3, 1978 (43 FR 8962). On December 31, 1987 (52 FR 49408), the EPA redesignated portions of Warren County as nonattainment for both the primary and secondary 1971 SO<sub>2</sub> NAAQS at the request of the State of New Jersey (the State) to revise the air quality designation for the area identified in the State's request. EPA issued a minor correction to the