

TABLE 1 TO § 100.911—Continued

| Event   |   |                                 |
|---|---|---------------------------------|
| (l) <i>Michigan Championships Swimming Event</i> Detroit, MI. | All waters of the Detroit River and Belle Isle Beach between the following two lines: The first line is drawn directly across the channel from position 42°20.517' N, 082°59.159' W to 42°20.705' N, 082°59.233' W; the second line, to the north, is drawn directly across the channel from position 42°20.754' N, 082°58.681' W to 42°20.997' N, 082°58.846' W. | One day in August or September. |
| (m) <i>Bay City Tall Ships Parade of Sail</i> Bay City, MI.   | All waters throughout the federal navigational channel of Saginaw Bay from Light Buoy 11 at position 43°43.90' N, 083°46.87' W and Light 12 at position 43°43.93' N, 083°46.95' W to the Saginaw River, and on all waters of the Saginaw River from its mouth to the Veterans Memorial Bridge in Bay City, MI at position 43°35.77' N, 083°53.60' W.              | Tri-annually in July.           |
| Event   | Marine Safety Unit Toledo Special Local Regulations   | Date                            |
| (n) <i>Frogtown Race Regatta</i> Toledo, OH.                  | All waters of the Maumee River, Toledo, OH, from the Martin Luther King Jr. Memorial Bridge at River Mile 4.30 to the Michael DiSalle Bridge at River Mile 6.73.  | One day in September.           |
| (o) <i>Dragon Boat Learning Festival</i> Toledo, OH.          | All waters of the Maumee River in Toledo, OH between the Martin Luther King Jr. Memorial Bridge at river mile 4.30 and a line extending from a point at position 41°38.78' N, 083°31.84' W at International Park straight across the river to shore near the mouth of Swan Creek at position 41°38.79' N, 083°32.03' W.   | One day in June or July.        |

**§§ 100.912 through 100.921, 100.927, and 100.928 [Removed]**

■ 3. Remove §§ 100.912, 100.913, 100.914, 100.915, 100.916, 100.917, 100.918, 100.919, 100.920, 100.921, 100.927, and 100.928.

Dated: October 11, 2018.

**Jeffrey W. Novak,**

*Captain, U.S. Coast Guard, Captain of the Port Detroit.*

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**BILLING CODE 9110–04–P**

**LIBRARY OF CONGRESS**

**Copyright Office**

**37 CFR Parts 201 and 202**

[Docket No. 2018–9]

**Registration Modernization**

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

**ACTION:** Notification of inquiry.

**SUMMARY:** The U.S. Copyright Office is building a new registration system to meet the demands of the digital age. As the Office develops a new technological infrastructure for this system, it is considering several legal and policy changes to improve user experience, increase Office efficiency, and decrease processing times. The Office is seeking public comment to inform its decisions on how to improve the regulations and practices related to the registration of copyright claims.

**DATES:** Written comments must be received no later than 11:59 p.m. Eastern Time on January 15, 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 <https://www.copyright.gov/rulemaking/reg-modernization>. 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 at [regans@copyright.gov](mailto:regans@copyright.gov); Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice at [rkas@copyright.gov](mailto:rkas@copyright.gov); Erik Bertin, Deputy Director of Registration Policy and Practice at [ebertin@copyright.gov](mailto:ebertin@copyright.gov); Cindy Abramson, Assistant General Counsel at [ciab@copyright.gov](mailto:ciab@copyright.gov); or Jalyce Mangum at [jmang@copyright.gov](mailto:jmang@copyright.gov). All can be reached by telephone by calling 202–707–3000.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The U.S. Copyright Office (the “Office”) is statutorily responsible for administering the nation’s copyright laws pursuant to the Copyright Act.<sup>1</sup>

<sup>1</sup> See 17 U.S.C. 701(a) (“All administrative functions and duties under this title . . . are the responsibility of the Register of Copyrights as director of the Copyright Office of the Library of Congress.”).

One of the most significant responsibilities assigned to the Office is the registration of copyright claims. The Office’s registration services are vital to creators and users of creative works of all types, including large and small businesses, individuals, and non-profit organizations. Copyright registration provides essential benefits for copyright owners. Before bringing a lawsuit for infringement of a U.S. work, registration of the claim must be made in accordance with the Copyright Act, or refused by the Office.<sup>2</sup> A timely registration constitutes prima facie evidence of the validity of the copyright and the facts stated in the certificate of registration.<sup>3</sup> Additionally, copyright owners must obtain a timely registration to seek statutory damages and attorney’s fees in litigation.<sup>4</sup> A registration also creates a public record that includes key facts relating to the authorship and ownership of the work, as well as information about the work itself, such as title, year of creation, and date of publication (if any). And an index of

<sup>2</sup> 17 U.S.C. 411(a). The Supreme Court recently granted certiorari to resolve a conflict among the circuits concerning the interpretation of section 411(a), specifically, whether a copyright owner may commence an infringement suit after delivering the proper deposit, application, and fee to the Copyright Office, but before the Register of Copyrights has acted on the application for registration. In the government’s view, the statute requires the copyright owner to receive either a registration or a refusal from the Copyright Office before instituting suit. See Br. for the U.S. as Amicus Curiae for Writ of Cert. at 12, *Fourth Estate Pub. Ben. Corp. v. Wall-Street.com, LLC*, 856 F.3d 1338 (11th Cir. 2017), (No. 17–571), available at <https://www.copyright.gov/rulings-filings/briefs/fourth-estate-pub-ben-corp-v-wall-street-com-138-s-ct-720-2018.pdf>.

<sup>3</sup> 17 U.S.C. 410(c).

<sup>4</sup> See 17 U.S.C. 412, 504, 505.

each registration is published in the Online Public Record, the database posted on the Office's website containing indexes of records relating to registrations and document recordations issued after 1977.<sup>5</sup> In fiscal year 2017, the Office received 539,662 claims to copyright and issued 452,122 registrations.<sup>6</sup> And in fiscal year 2018, the Office processed more than 600,000 claims. It is therefore crucial that the Office have an innovative and modern copyright registration system that can meet the rapidly expanding needs of the highly diverse copyright community and the public at large.

The Office is dedicated to modernizing its systems. Starting in 2011, the Office began a series of comprehensive and targeted efforts to understand and analyze its information technology ("IT") needs. The Office issued its *Priorities and Special Projects of the United States Copyright Office (October 2011–October 2013)*, which highlighted the need for technological upgrades. The Office then undertook a comprehensive study of its technological capabilities and needs, which included extensive stakeholder feedback. The resulting 2015 *Report and Recommendations of the Technical Upgrades Special Project Team* acknowledged challenges with the current user experience and access to the public record, and offered recommendations for improvement.<sup>7</sup> Based on congressional direction, the Office followed its initial report with a more detailed plan, 2016's *Provisional Information Technology Modernization Plan and Cost Analysis* ("Provisional IT Plan").<sup>8</sup> And in 2017, the Office prepared a *Modified U.S. Copyright Office Provisional IT Modernization Plan* ("Modified IT Plan")<sup>9</sup> at the

direction of the House Committee on Appropriations that includes "potential opportunities for shared efficiencies and cost-savings as well as ways the [Library of Congress' (the "Library's") Office of the Chief Information Officer ("OCIO")] can support the Copyright Office in its overall modernization efforts."<sup>10</sup>

A principal reason that the Office has prioritized modernization is to improve the Office's processing times for claims submitted for registration.<sup>11</sup> Current processing times vary based on a number of factors, including delays in the receipt of the deposit, the number of examiners available to review pending claims, the complexity of the claim, whether there are errors or inconsistencies in the registration materials, and whether the Office needs to correspond with an applicant to resolve those issues. If the examiner sends an email or other correspondence, the applicant will be given 45 days to respond, and if the applicant responds in a timely manner, the examiner will review and respond within 30 days after the applicant's response has been received.<sup>12</sup>

The Office intends to replace the current electronic system (known as "eCO") with a modern solution that meets the changing needs of individual creators, industry (including on the user side), copyright practitioners, and the general public. In the past year, the Office engaged stakeholders in targeted outreach efforts with the assistance of a third-party contractor. The contractor interviewed numerous examiners, supervisors, and managers from the Office's Registration Program to identify common problems faced by applicants and the Office. External user interviews were conducted in Washington DC, New York City, Nashville, and Los Angeles with companies, organizations, lawyers, and individual creators who engage with the copyright registration system. In addition, the Office analyzed eCO survey data as well as calls received by the Public Information Office ("PIO")

<http://www.copyright.gov/reports/itplan/modified-modernization-plan.pdf>.

<sup>10</sup> See 163 Cong. Rec. H4033 (daily ed. May 3, 2017) (explanatory statement submitted by Rep. Rodney Frelinghuysen, Chairman of the H. Comm. on Appropriations), available at <https://www.congress.gov/congressional-record/2017/5/3/house-section/article/H3949-2>; see also Modified IT Plan at 1.

<sup>11</sup> The current processing times are posted on the Office's website with separate figures for claims submitted through the electronic registration system and claims filed on paper forms. See *Registration Processing Times*, Copyright.gov, <https://www.copyright.gov/registration/docs/processing-times-faqs.pdf>.

<sup>12</sup> U.S. Copyright Office, Compendium of U.S. Copyright Office Practices 605.6(B), (D) (3d ed. 2017) ("Compendium (Third)").

and eCO help desk, which included over 10,000 responses from individual applicants.

Based on the information gathered during these outreach efforts, the Office is planning to develop several solutions to improve the registration system. These solutions will include a more powerful dashboard, which will allow users to track application progress; an integrated drag and drop submission option for electronic deposits; and an improved messaging system to confirm that a submission has been received and provide details on what to expect next. The Office also intends to improve the flow and usability of the user interface. For example, the Office plans to develop a mechanism that will allow users to view a draft version of the registration certificate before final submission to confirm that the correct information has been entered. The Office also plans to implement more automated validations to enhance the application.

As the Office identifies the IT infrastructure needed to support the new registration system, we are considering a number of legal and policy changes to improve the efficiency of the system for both users and the Office. The Office invites public comment in three specific areas of reform: The administration and substance of the application for registration, the utility of the public record, and the deposit requirements for registration.

While this document addresses a broad range of issues related to the national copyright registration system, the Office will continue to focus on additional topics in current and future rulemakings and notices of inquiry. For example, the Office has open rulemakings related to certain group registration options, and is preparing additional notices concerning group registration options for musical compositions and sound recordings, certain short online literary works, and websites.<sup>13</sup>

## II. Subjects of Inquiry

### A. The Application Process: How Users Engage With the Registration System

1. New Solutions for Delivering Application Assistance: How should the Office integrate in-application support and assistance to users of the electronic registration system?

Through the data it has collected, the Office confirmed that users approach

<sup>13</sup> Information related to open rulemakings, including instructions for submitting public comments, can be found at <https://www.copyright.gov/rulemaking/>.

<sup>5</sup> Indexes of records related to earlier registrations and recordations, as well as the actual records, are available at the Copyright Office.

<sup>6</sup> See U.S. Copyright Office, Fiscal 2017 Annual Report 4–5 (2017), available at <https://www.copyright.gov/reports/annual/2017/ar2017.pdf>. During the same period, the Office rejected more than 17,000 claims for failure to comply with the statutory and/or regulatory requirements for registration, and closed more than 52,000 claims because the applicant failed to respond to a written communication from the Office.

<sup>7</sup> See U.S. Copyright Office, Report and Recommendations of the Technical Upgrades Special Project Team (Feb. 18, 2015), available at [https://www.copyright.gov/docs/technical\\_upgrades/usco-technicalupgrades.pdf](https://www.copyright.gov/docs/technical_upgrades/usco-technicalupgrades.pdf).

<sup>8</sup> U.S. Copyright Office, Provisional Information Technology Modernization Plan and Cost Analysis (Feb. 29, 2016), available at <http://www.copyright.gov/reports/itplan/technology-report.pdf>.

<sup>9</sup> Library of Congress & U.S. Copyright Office, Modified U.S. Copyright Office Provisional IT Modernization Plan (Sept. 1, 2017), available at

the electronic registration system with varying levels of understanding of copyright law and technical experience. Infrequent users require more guidance than frequent users. Therefore, in-application assistance should be pointed and flexible.

The Office is considering a multi-tier option that will offer different levels of support during the online application process. The first level, or Tier One, would provide the most elementary and basic support by placing an icon next to certain application terms that would expand to display one to two concise sentences of explanatory text. At Tier Two, users would receive in-depth substantive assistance through a help panel that would expand to provide comprehensive information and instructions on pertinent copyright concepts. The Office is also contemplating a live chat support feature to resolve common problems quickly and efficiently, subject to the availability of resources.

The Office welcomes comment on these multi-tier support options and invites other ideas for improving in-application assistance and support. The Office also seeks comment on the potential value and benefit of a live chat service as well as the most common questions users have when filling out applications for registration.

**2. Electronic Applications and Payments:** Should the Office mandate the use of electronic applications and payments, and eliminate the paper application and payment options via check or money order?

Section 409 of the Copyright Act authorizes the Register of Copyrights to prescribe forms for copyright registration. At present, the Office maintains three basic registration forms: The Standard and Single electronic applications, and the paper application. Paper applications, however, continue to be less efficient than electronic forms. The Office must scan each paper form into the registration system and input the relevant information by hand before an examiner even begins to review the claim. This is a cumbersome, labor-intensive process. Also, a significant portion of claims submitted on paper forms require correspondence or other action from the Office, which further increases pendency times and contributes to the overall backlog of pending claims.<sup>14</sup> For example,

<sup>14</sup> The average time for the Office to resolve a paper application that requires correspondence is 20 months. By contrast, the average time for the Office to resolve an electronic application that requires correspondence is nine months. *Registration Processing Times, Copyright.gov*,

applicants routinely fail to provide information expressly requested on paper forms, or add materially conflicting information. In many cases, the Office must contact the applicant to request additional information or permission to correct the application. As a result, paper applications are more costly to process than electronic applications, and the corresponding filing fee for a basic registration submitted on a paper form is \$85 (compared to \$55 for a basic registration submitted on an electronic form).<sup>15</sup>

Addressing common errors on paper applications imposes significant burdens on the Office's limited resources, and has had an adverse effect on the examination of claims submitted on electronic forms. Eliminating the paper application should mitigate many of these problems. Among other improvements, the new online application is expected to contain automated validations that would prevent applicants from submitting claims that fail to provide pertinent information. Also, the Office intends to develop a reliable system that is maintained to mitigate service interruptions and technical processing delays. For these reasons, the Office believes mandating electronic applications is necessary to improve the overall efficiency of the registration process.

The Office is also contemplating requiring the designation of an email address for receiving correspondence concerning applications for registration, and eliminating physical correspondence and physical forms of payment such as checks and money orders. These changes would facilitate end-to-end electronic processing of applications, thereby improving efficiency, reducing processing errors, and decreasing pendency times.<sup>16</sup>

The Office recognizes that public access to computers and internet technology continues to rise. Nearly every local library provides free public access to computers and the internet.<sup>17</sup>

<https://www.copyright.gov/registration/docs/processing-times-faqs.pdf> (last visited Oct. 4, 2018).

<sup>15</sup> The Office recently proposed to increase the filing fee for a basic registration submitted on a paper form to \$125. *Copyright Office Fees*, 83 FR 24054, 24057 (May 24, 2018).

<sup>16</sup> The U.S. Patent and Trademark Office ("USPTO") recently issued a similar proposal that would eliminate paper applications for trademark claims and require trademark applicants "to provide and maintain an email address for correspondence." *See Changes to the Trademark Rules of Practice To Mandate Electronic Filing*, 83 FR 24701, 24702 (May 30, 2018).

<sup>17</sup> Institute of Museum and Library Services, *Public Libraries in the United States Survey Fiscal Year 2012 10* (Dec. 2014), available at <https://>

In fiscal year 2017, 96% of basic registrations were submitted electronically, which reflects the pervasiveness of computer and internet access among the Office's users.

At the same time, the Office is aware that certain communities do not have access to computer and internet technologies. A number of factors may contribute to a person's ability to access the Office's electronic system, including age, educational attainment, household income, and community type. Some of the most frequent users of paper applications include older adults and individuals who are incarcerated. Thus, to serve these populations and other individual needs, the Office is considering offering the paper application upon written request demonstrating sufficient need.

The Office welcomes comment on the viability of the proposal to require electronic applications and payments and invites the submission of other proposals to improve the efficiency of the Office's registration processes for populations with limited access to computer and internet technology.

**3. Electronic Certificates:** Should the Office issue electronic certificates and offer paper certificates for an additional fee?

The Copyright Act mandates the payment of a fee as one of the conditions for seeking a copyright registration.<sup>18</sup> Section 708(a)(1) of the statute provides that fees shall be paid to the Register "on filing each application . . . for registration of a copyright claim" and for "the issuance of a certificate of registration if registration is made." The cost of issuing a certificate is included in the filing fee for a basic registration, though the Office does charge an additional fee if extra copies of the certificate are needed.<sup>19</sup>

The Office has always issued certificates of registration on a special type of paper that confirms the authenticity of each document. The Office prints roughly 10,000 to 20,000 certificates in any given week. This requires a substantial amount of resources both in terms of employee compensation and the cost of maintaining printing equipment. Paper certificates are also subject to delays associated with mail delivery, and many certificates are returned to the Office as undeliverable due to errors or omissions in the mailing addresses provided by

[www.imls.gov/assets/1/AssetManager/PLS\\_FY2012.pdf](http://www.imls.gov/assets/1/AssetManager/PLS_FY2012.pdf).

<sup>18</sup> See 17 U.S.C. 408(a).

<sup>19</sup> See 37 CFR 201.3(c)(13).

applicants.<sup>20</sup> To expedite the delivery of certificates, and to reduce the rate of returned mail, the Office is contemplating providing electronic certificates of registration with appropriate watermarks or other security measures needed to ensure authenticity (in lieu of issuing paper certificates). The cost of the electronic certificate would be included in the basic registration fee. But upon request, the Office would provide paper certificates for an additional fee.

For copyright owners, defaulting to electronic certificates would facilitate speedier access to certificates. And it would allow the Office to reallocate resources used in printing and mailing paper certificates to other important tasks.

The Office welcomes comment on this proposal.

4. Dynamic Pricing Models: Should the Office replace the Single, Standard, and group applications with a dynamic pricing model that scales fees based on the number and type of works submitted for registration?

On May 24, 2018, the Office issued a Notice of Proposed Rulemaking and Fee Study proposing the adoption of a new fee schedule to account for inflationary increases and the expected cost of IT modernization over the next several years.<sup>21</sup> The Fee Study was issued pursuant to the Office's routine adjustment of fees, which occurs every three to five years, so it did not address alternative models for calculating and collecting fees.

As mentioned above, the Copyright Act requires the payment of fees "on filing each application under section 408 for registration of a copyright claim or for a supplementary registration."<sup>22</sup> Currently, the Office maintains three basic registration forms: (1) The Standard Application, (2) the Single Application, and (3) the paper application. And the Office recently proposed fees for nine types of group applications.<sup>23</sup> Basic and group registrations account for the highest volume of the Office's fee generating services, and processing these registrations is the costliest activity the Office performs.<sup>24</sup> This is due, in part, to the varying complexity posed by certain types of claims. For example,

claims submitted on the Single Application tend to be straightforward, because they must be limited to one work by one author that is owned by that same individual. By contrast, claims submitted on the Standard Application tend to be more complex because they may involve works created by multiple authors, works with multiple owners, as well as works made for hire, derivative works, collective works, compilations, or other complicated issues.

Setting fees that accurately account for difficult and/or divergent claims is important because the Office recovers approximately 60% of its costs through fees.<sup>25</sup> To achieve a more precise pricing model, the Office is considering adopting a system that varies fees based upon the kind of work submitted for registration and/or the number of works included in each application. This approach may also address user concerns regarding the numerical limits that currently apply to the Office's existing group registration options.

Under this approach, the fee for any particular application could be dynamic and vary based on information provided in the application. The Office could charge a base fee for registering an individual work, and an incrementally higher fee for each additional work that is added to the application (assuming the pertinent facts for each work remains the same). Or the Office could conceivably offer a subscription service that would let authors register a specific number of works over a designated period (assuming the pertinent facts for each work remain the same).

Many commenters have expressed support for these ideas.<sup>26</sup> The Office invites additional comment on this approach, as well as the submission of alternative methods for calculating fees that would sustain the Office, provide equity to users, and encourage registration.

<sup>25</sup> U.S. Copyright Office, Fiscal 2017 Annual Report 15 (2017), available at <https://www.copyright.gov/reports/annual/2017/ar2017.pdf>; see 83 FR 24054, 24057–58 (May 24, 2018) (explaining methodology for targeted cost of fee recovery).

<sup>26</sup> See, e.g., Coalition of Visual Artists, Comments Submitted in Response to the U.S. Copyright Office's December 1, 2016 Notice of Proposed Rulemaking at 17, 23–24, 59 (Jan. 30, 2017); Browning-Smith PC, Comments Submitted in Response to the U.S. Copyright Office's October 12, 2017 Notice of Proposed Rulemaking at 1–2 (Nov. 17, 2017); Copyright Alliance, Comments Submitted in Response to the U.S. Copyright Office's October 12, 2017 Notice of Proposed Rulemaking at 2 (Nov. 17, 2017).

*B. Application Information: The Information Requested on the Application for Registration*

5. Authorship Statements and Administrative Classifications: Should the Office eliminate the Author Created and Nature of Authorship sections of the application, and instead, require the applicant to identify the work being submitted for registration, rather than the elements of authorship contained in the work?

Section 409 of the Copyright Act enumerates nine items of information that should be requested on the application for registration. None of these provisions requires the applicant to identify the type of work or the type of authorship being registered, except in the case of a compilation or derivative work. But section 409(10) gives the Register discretion to request "any other information regarded" by her "as bearing upon the preparation or identification of the work or the existence, ownership, or duration of the copyright." Pursuant to this section, the Office has required applicants to "clearly identify the copyrightable authorship that the applicant intends to register" and "assert a claim to copyright in that authorship."<sup>27</sup>

The statute also authorizes the Register to issue regulations specifying the "administrative classes into which works are to be placed for purposes of deposit and registration" and to develop the application forms that should be used to register each claim.<sup>28</sup> Pursuant to this authority, the Office established five administrative classes for purposes of registration—namely, literary works, serials, works of the visual arts, works of the performing arts, and sound recordings—and developed a corresponding application for each class—Forms TX, SE, VA, PA, and SR.

Because these forms can be used to register different types of works,<sup>29</sup> the

<sup>27</sup> Compendium (Third) 618.1. This practice was a departure from the Office's practices under the 1909 Act. The prior statute enumerated 11 classes of works that were eligible for copyright protection, such as books, periodicals, lectures, and musical compositions, and the Office developed a specific registration application for each class. When completing these applications copyright owners were not asked to identify the authorship they intended to register, because this information could be deduced from the form itself. For example, a work submitted on Form K presumably contained two-dimensional artwork, because that form could only be used to register prints and pictorial illustrations.

<sup>28</sup> 17 U.S.C. 408(c), 409.

<sup>29</sup> For instance, Form SR is primarily intended for sound recordings, but it can be used to register a sound recording and the musical work, dramatic work, or literary embodied in that recording. Form SE is intended for registering a single issue of a

<sup>20</sup> In July 2018 alone, the Office received 1,737 pieces of returned mail, most of which were undeliverable paper certificates.

<sup>21</sup> 83 FR 24054 (May 24, 2018).

<sup>22</sup> 17 U.S.C. 708(a)(1).

<sup>23</sup> 83 FR at 24057.

<sup>24</sup> See Booz Allen Hamilton, 2017 Fee Study Report 13 (Dec. 2017), available at <https://www.copyright.gov/policy/feestudy2018>.

Office added a space to each application that asked the applicant to identify the “nature of authorship” being registered. But the Office found that some applicants provided vague or ambiguous statements in this portion of the application, such as “plot,” “character,” “story idea,” “beats,” “loops,” or “remastering.” To address situations where it was unclear whether statements referred to copyrightable authorship or uncopyrightable material, the Office developed extensive practices for communicating with the applicant, amending the application, and/or annotating the certificate.<sup>30</sup>

When the Office introduced the eCO system, it included a series of checkboxes in the “Author Created” field, which were intended to minimize these problems.<sup>31</sup> These boxes encourage applicants to provide an authorship statement that describes the work being registered. But many of the checkboxes focus on the individual elements of the work, such as “text,” “music,” or “lyrics,” rather than the work as a whole.

Collectively, this system can cause confusion for applicants and additional work for examiners. The Office is considering requiring applicants to identify the type of work being deposited. This approach has the benefit of ensuring that the work as a whole is considered by the examiner in addition to the individual elements of authorship. The Office is currently testing this approach with the new version of the Single Application, which was released on December 18, 2017. Instead of providing a blank space or a series of checkboxes that encourage applicants to assert claims in the individual elements of the work, the applicant is prompted to select an entry from a dropdown list that best describes the work as a whole. The Office intends to follow this same approach when it launches the new application for registering groups of unpublished works.<sup>32</sup>

The Office welcomes public comment on how this approach has been working. In addition, the Office welcomes public comment on the following proposals or other alternative suggestions for improving this portion of the application:

serial publication, but it also can be used to register the individual articles, photographs, or other component works appearing within that issue.

<sup>30</sup> See, e.g., *Compendium (Third)* 618.8(A)(1)–(11); U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices* 619 (2d ed. 1988).

<sup>31</sup> This approach was inspired by Form VA, which contains a similar set of checkboxes.

<sup>32</sup> See Group Registration of Unpublished Works, 82 FR 47415, 47418–19 (Oct. 12, 2017).

(a) Should the Office eliminate the Author Created and Nature of Authorship sections in all of its applications, and instead, allow the applicant to provide a general statement that appropriately describes the work as a whole?

(b) Should the Office eliminate the Author Created and Nature of Authorship sections in all of its applications, and instead, allow the examiner to add a statement that appropriately describes the work submitted for registration?

(c) Should the Office eliminate the Author Created and Nature of Authorship sections in all of its applications, and instead, develop a searchable, crowdsourced list of terms that could be used to describe the work—similar to the USPTO’s trademark ID manual for identifying and classifying goods and services?<sup>33</sup>

The Office also invites comment on its current administrative classifications. These classes are solely for administrative purposes and have no bearing on the subject matter or exclusive rights provided by copyright.<sup>34</sup> Instead, they identify the application form used to register each type of work and determine how the Office assigns applications to examiners for processing. If the work is registered, the administrative class will be reflected in the registration number that is assigned to the certificate and the public record for that claim. Interested parties often use this information to search the Office’s records for specific types of works or authors.

The Office, however, recognizes that these classifications, and the corresponding application forms, may be confusing for some applicants. Many works do not fit neatly into a specific class. For example, a children’s book could be classified as either a literary or visual arts work, depending on the amount of text versus artwork that appears within the deposit, and the Office will accept such a work regardless of whether it is submitted on Form TX or Form VA.

This confusion could be alleviated by letting applicants provide a general statement describing the work as a whole. The Office could use that information to assign the work to the appropriate class for purposes of routing the application for examination and indexing the public record. The Office requests public comment on this idea. We also welcome comment on whether the Office should modify the current

administrative classes or create additional or alternative class structures.

6. Derivative Works: Should the Office require users to explicitly identify whether a work submitted for registration is a derivative work?

The Copyright Act defines a derivative work as “a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted.”<sup>35</sup> This category also includes “[a] work consisting of editorial revisions, annotations, elaborations, or other modifications, which, as a whole, represent an original work of authorship.”<sup>36</sup> Thus, by definition, a derivative work contains at least two forms of authorship: (1) “The authorship in the preexisting work(s) that have been recast, transformed, or adapted within the derivative work; and [(2)] the new authorship involved in recasting, transforming, or adapting the preexisting work(s).”<sup>37</sup>

To register a claim to copyright in a derivative work, the Copyright Act states that the application must include “an identification of any preexisting work or works that it is based on or incorporates, and a brief, general statement of the additional material covered by the copyright claim being registered.”<sup>38</sup> The Office obtains this information on the current application in two steps. First, the Office requires the applicant to “identify the new authorship that the applicant intends to register” by checking “one or more boxes that appear under the heading Author Created” in the online application, or by providing a statement in the Nature of Authorship space on the paper application, “that accurately describe[s] the new material that the applicant intends to register.”<sup>39</sup> Second, if the derivative work contains an appreciable amount of preexisting material that is previously published, previously registered, in the public domain, or owned by a third party, the applicant must identify that material “by checking one or more boxes” in the Material Excluded field of the online application or by providing a brief statement in the corresponding section

<sup>35</sup> 17 U.S.C. 101 (definition of “derivative work”).

<sup>36</sup> 17 U.S.C. 101 (definition of “derivative work”).

<sup>37</sup> *Compendium (Third)* 618.5.

<sup>38</sup> 17 U.S.C. 409(9).

<sup>39</sup> *Compendium (Third)* 618.5.

<sup>33</sup> See *Trademark ID Manual*, USPTO.gov <https://tmidm.uspto.gov/id-master-list-public.html>.

<sup>34</sup> 17 U.S.C. 408(c).

of the paper application. As with the Author Created section discussed above, these checkboxes encourage applicants to identify individual elements of the work that should be excluded from the claim, without identifying the preexisting work itself. In addition, the applicant must identify the elements of the work that should be “included” in the claim by completing another set of checkboxes in the online application or by providing a brief statement in the corresponding section of the paper application.

The Office is considering a different approach to streamline the way that applicants provide this type of information. As discussed above, applicants would be asked to identify the type of work the author created. Applicants would be given an opportunity to identify any elements that should be excluded from the claim using their own words, rather than a set of predetermined checkboxes. And the Office would eliminate the requirement to identify the new material that should be “included” in the claim and assume that the applicant intends to register all copyrightable aspects of the work that have not been expressly disclaimed.<sup>40</sup>

In addition, the Office is considering asking applicants to affirmatively state whether the work submitted for registration is a derivative work. The question would be accompanied by informational text to educate applicants on derivative work authorship. If the applicant identifies the work as a derivative work, the applicant would be asked to identify the preexisting work that the derivative work is based on or incorporates. The Office welcomes comment on these proposals. The Office also invites comment on whether the Office should take a similar approach with claims involving compilations and collective works.

**7. Simplifying Transfer Statements:** Should the Office restrict the transfer statement options to “by written agreement,” “by inheritance,” and “by operation of law”?

Copyright ownership in a work initially vests in the author or authors of that work.<sup>41</sup> However, “[t]he ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or

pass as personal property by the applicable laws of intestate succession.”<sup>42</sup> If the individual or organization named as the claimant or co-claimant is not an author of the work, the applicant must provide “a brief statement of how the claimant obtained ownership of the copyright.”<sup>43</sup> The Office refers to this as a transfer statement.<sup>44</sup>

The transfer statement should confirm that the copyright was transferred to the claimant by written agreement, by inheritance, or by operation of law.<sup>45</sup> In the current online application, the applicant may provide this information by selecting one of the options listed in a dropdown menu.<sup>46</sup> The options include “By written agreement” (which is the most common response provided) and “By inheritance.” If these options do not fully describe the transfer, the applicant may provide a more specific transfer statement in a blank space marked “Transfer Statement Other.”<sup>47</sup> This option has created inefficiencies for the Office. Providing conflicting information in the “Other” field is one of the most common reasons that the Office must correspond with applicants, which delays the resolution of claims and increases pendency times.

Because the only acceptable means of transferring a copyright are “by written agreement,” “by inheritance,” or “by operation of law,” the Office is considering whether to add “by operation of law” to the list of acceptable transfer statements and remove the “Other” space. In addition, the Office plans to include automated validations that would prevent an applicant from submitting an application without a transfer statement in cases where the names provided in the author and claimant fields do not match. The Office welcomes comment on these proposals.

**8. In-Process Corrections:** Should the Office permit applicants to make in-process edits to open cases prior to the examination of the application materials?

Currently the Office does not permit an applicant to make manual corrections or edits to an application once it has been received by the Office. To make a correction or edit, an applicant must contact PIO and ask the Office to make the revision on the applicant’s behalf. To improve

efficiency, the Office is considering allowing applicants to make changes to pending applications at any point before an examiner opens the application for review.

To implement this proposal, the Office must be able to assign an appropriate Effective Date of Registration (“EDR”). The EDR is the day on which an acceptable application, complete deposit copy, and filing fee—which are later determined by the Register of Copyrights or a court of competent jurisdiction to be acceptable for registration—have all been received in the Office in proper form.<sup>48</sup> “Where the three necessary elements are received at different times the date of receipt of the last of them is controlling, regardless of when the Copyright Office acts on the claim.”<sup>49</sup> Certain in-process changes can affect the EDR assigned to a registered work. For example, the EDR may change if the applicant replaces the deposit copy that accompanies an application for registration or submits an insufficient or uncollectible filing fee.<sup>50</sup> By contrast, replacing or updating the title of the work would not change the EDR.<sup>51</sup>

The Office invites comment on this proposal.

**9. The Rights and Permissions Field:** Should the Office allow authorized users to make changes to the Rights and Permission field in a completed registration?

In completing an online application for registration, an “applicant may provide the name, address, and other contact information for the person and/or organization that should be contacted for permission to use the work.”<sup>52</sup> This is known as Rights and Permissions information. Providing this information is optional and applicants may include as little information as they prefer. The application also cautions that any information provided in this portion of the application will appear in the Online Public Record for the work.<sup>53</sup>

Once a certificate of registration has been issued, the Office may remove certain personally identifiable information from the Online Public Record and replace it with substitute information. To do so, the author, claimant, or an authorized representative must submit “a written

<sup>40</sup> The Office is currently employing this approach with the new version of the Single Application, and it intends to follow this same approach when it launches the new application for registering groups of unpublished works. See Group Registration of Unpublished Works, 82 FR 47415, 47419 (Oct. 12, 2017).

<sup>41</sup> 17 U.S.C. 201(a).

<sup>42</sup> 17 U.S.C. 201(d)(1).

<sup>43</sup> 17 U.S.C. 409(5).

<sup>44</sup> Compendium (Third) 620.2.

<sup>45</sup> See 17 U.S.C. 201(d)(1), 204(a).

<sup>46</sup> Compendium (Third) 620.9(A).

<sup>47</sup> Compendium (Third) 620.9(A).

<sup>48</sup> 17 U.S.C. 410(d).

<sup>49</sup> H.R. Rep. No. 94-1476, at 157 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5773.

<sup>50</sup> Compendium (Third) 625.2.

<sup>51</sup> Compendium (Third) 625.1.

<sup>52</sup> Compendium (Third) 622.1. There is no corresponding space for providing Rights and Permissions information in a paper application.

<sup>53</sup> Compendium (Third) 622.1.

request in the form of an affidavit, and must pay the appropriate fee for this service.”<sup>54</sup> Alternatively, an author, claimant, or other interested party may update Rights and Permissions information by submitting an application for a supplementary registration and paying the appropriate fee for that service.<sup>55</sup> If the application is approved, the Office will issue a separate certificate containing the updated information, and cross-reference the records for the initial registration and the supplementary registration. However, the Office will not remove or replace the Rights and Permissions information that appears on the original certificate or record.

The Office is considering building a user interface that will let users update Rights and Permissions information, as necessary, without having to submit a formal written removal request and fee and without having to seek a supplementary registration. This proposal is aligned with the Office’s general goal to empower users to engage with the Online Public Record. The Office also believes that this change would improve the accuracy of Rights and Permissions information for persons who may be interested in licensing particular works.

The Office welcomes comment on this proposal, specifically addressing how it may affect the user’s decision to provide Rights and Permissions information in an application for registration and how self-service changes may improve the quality of the Online Public Record. The Office also requests comment on whether this option should be limited to the party that submitted the initial application or the account associated with that submission to prevent third parties from making unauthorized changes to the record.

10. Additional Data: What additional data should the Office collect on applications for registration? For example, should ISBNs or other unique identifiers be mandatory? Should the Office accept other optional data?

The utility of the Office’s Online Public Record is affected by the search capability of the electronic system (currently, the Voyager system), but it is also affected by the data contained within the record itself. The Office seeks input from members of the public that use and search the Online Public Record to determine whether additional data

could be included in the online record to enhance the functionality of the system. For instance, the number of page numbers in a book might assist in matching a particular publication with the edition of a work that was registered. Low-resolution images or sound clips could help identify a work for potential licensing. The Office welcomes comments on any additional data that should be included in the registration record to enhance the value of the public registry. In particular, should the Office allow applicants to voluntarily upload low-resolution images or sound bites of their works to appear in the Online Public Record?

As another example, the current system allows the applicant to include certain unique identifiers in the application, including an International Standard Book Number (“ISBN”), International Standard Recording Code (“ISRC”), International Standard Serial Number (“ISSN”), International Standard Audiovisual Number (“ISAN”), International Standard Music Number (“ISMN”), International Standard Musical Work Code (“ISWC”), International Standard Text Code (“ISTC”), or Entertainment Identifier Registry number (“EIDR”).<sup>56</sup> If these numbers are provided in the appropriate fields, they will appear on the certificate and in the Online Public Record. These unique identifiers may assist “in the identification of a work and may facilitate licensing,” particularly in the digital environment.<sup>57</sup>

The Office is considering making it mandatory for applicants to provide unique identifiers for published works if a number or code has been assigned when the claim is submitted. Alternatively, the applicant could be required to add an identifier to the record if it appears in or on the deposit copy submitted with the application for registration. The Office believes this would improve the utility of the public record because users would be able to search the Online Public Record using those unique identifiers.

The Office has noted, “reliable, up-to-date information about copyrighted works is a critical prerequisite for efficient licensing.”<sup>58</sup> As such, consistent with the in-process

correction process noted above, the Office would allow applicants to add unique identifiers to pending cases as long as the changes are made before the case has been opened by the examiner. In addition, the Office is considering establishing a procedure for adding unique identifiers to completed registration records, potentially at no cost, which would be similar to the proposed procedure for updating Rights and Permissions information.

Finally, the Office appreciates that standard identifiers are not a static universe. Therefore, it is considering accepting additional identifiers in the new system, such as the Interested Parties Information (“IPI”), International Standard Name Identifier (“ISNI”), and the Plus Registry.

The Office welcomes comment on these proposals. We also invite the public to identify other types of data that could be included in the registration application—either on an optional or mandatory basis—to improve the quality and utility of the public record. The Office encourages commenters to identify any special considerations for particular categories of copyrighted works.

11. Application Programming Interfaces (“APIs”): What considerations should the Office take into account in developing APIs for the electronic registration system?

The Office is exploring the use of standard application programming interfaces (“APIs”) as part of the new electronic registration system. APIs offer opportunities for automated advancements. They could be used by companies to build a registration workflow into their normal business processes, or by third parties to create customized user interfaces for particular types of creators or industries, such as photographers, songwriters, book publishers, or recording artists. APIs could facilitate batch submissions of applications for registration. They could also be used to import and autofill work information, such as the title, author name(s), and date of publication from other databases when an author provides a unique identifier on an online application. In addition to making the application easier to complete, APIs could improve the accuracy of information provided on the application by minimizing errors from manual input, thereby increasing efficiency and decreasing processing times.

Post-registration, APIs could also facilitate the export of data from the Office’s Online Public Record, allowing the record to be augmented by private

<sup>54</sup> 37 CFR 201.2(e)(1); Compendium (Third) 622.1. See generally Removal of Personally Identifiable Information from Registration Records, 82 FR 9004 (Feb. 2, 2017).

<sup>55</sup> 37 CFR 202.6(d), (e); Compendium (Third) 1802.

<sup>56</sup> Compendium (Third) 612.6(C); see U.S. Copyright Office, U.S. Copyright Office Adds Unique Identifiers to the Electronic Registration System, Issue No. 706 (Feb. 5, 2018), <https://www.copyright.gov/newsnet/2018/706.html>.

<sup>57</sup> Compendium (Third) 612.6(C).

<sup>58</sup> U.S. Copyright Office, Copyright and the Music Marketplace 59–62 (2015) (discussing data standards in music industry); see Compendium (Third) 612.6(C) (noting that unique identifiers assist “in the identification of a work and may facilitate licensing”).



entities to provide potentially useful facts about the work that may not be captured in the Online Public Record, such as additional information about the deposited works. This could foster efficient licensing transactions in registered works, and help detect the infringement of registered works. That said, the Office is committed to providing the public with accurate information about copyright and does not want the introduction of third-party API access to enable consumer confusion or facilitate business models that charge excessive premiums or otherwise prey upon individual authors who may be less sophisticated about the copyright system.

The Office invites comment on how it should utilize APIs to integrate external data into the official registry or export internal data from the Office's registry to facilitate enhanced services offered by private entities. What factors should the Office consider? Should the Office limit API access to verified entities to minimize spam submissions and deter predatory behavior? Should the Office initiate API access through a pilot program, similar to past initiatives?<sup>59</sup>

### C. Public Record: How Users Engage and Manage Copyright Office Records

12. The Online Registration Record: Should the Office expand the Online Public Record to include refusals, closures, correspondence, and appeals?

Because the Copyright Office is primarily an office of public record,<sup>60</sup> all "public records, indexes, and deposits" are available for public inspection pursuant to section 705(c) of the Copyright Act. In addition, with the exception of deposited articles retained by the Office,<sup>61</sup> section 706(a) of the Copyright Act makes the Office's records available for copying by the public. To that end, registration application materials that the Office receives, including any associated correspondence between the Office and an applicant, create public records that the Office maintains in full form within the Office and in condensed form in the Online Public Record.

Full records of approved, closed, or refused registration applications, and pending applications, including any

associated correspondence, are available in the Office for public inspection and copying, under certain circumstances, and for a fee.<sup>62</sup> Condensed indexes of approved post-1977 registration applications are available on the Office's website for free via the Online Public Record.<sup>63</sup> The Office maintains the Online Public Record pursuant to section 707(a) of the Act, which provides that the Register "shall compile and publish at periodic intervals catalogs of all copyright registrations." This provision also gives the Register the discretion to "determine, on the basis of practicability and usefulness, the form" of publication of these records.<sup>64</sup>

Due to considerations of feasibility and current technological limitations, the Online Public Record does not contain all of the information that is contained in the Office's full registration records. In particular, it does not include a copy of any correspondence between the Office and the applicant. It does not include information concerning claims that have been refused, claims that have been voluntarily withdrawn, or claims that have been closed for failure to respond to a written communication from the Office. Likewise, it does not contain information concerning first or second requests for reconsideration (although recent decisions that have been issued by the Review Board are available on the Office's website).<sup>65</sup> These types of records are maintained solely in the full registration record, which must be viewed at the Office.<sup>66</sup> As a result, courts, litigants, and the public may not be aware of refused claims or communications between the Office and applicant that resulted in material modifications to the registration materials.

The Office is considering whether to expand the Online Public Record to include correspondence records

between the Office and an applicant, and refused registration application records including any associated appeal records.<sup>67</sup> The Office believes these additions would greatly improve the utility of the public record, and invites public comment on the type and scope of information that should be included in the Online Public Record. In particular, the Office invites comment on whether it should publish condensed or full versions of these records, and comment on how these changes to the public record would affect stakeholders in different industries.

13. Linking Registration and Recordation Records: What considerations should the Office take into account in expanding the Online Public Record to connect registration and recordation records and provide chain of title information?

In addition to expanding the type of information included in the Online Public Record, the Office seeks to build improved search functionality, which will include enhancing the connection between its registration and recordation records. Currently, registration and recordation records are maintained as discrete data sets. A search for a name, title, or registration number pulls up the records for any registration or recordation that has been indexed with that information. And in some cases, there are hyperlinks within the registration record that allows the user to pull up any corresponding recordation records. But it is not possible to view all of the registration and recordation information on the same screen. This limits the functionality of the Online Public Record and makes it difficult to obtain chain of title information.

The Office seeks to create a new version of the Online Public Record that would seamlessly link registration and recordation records and provide robust chain of title information. To inform its future activities concerning this endeavor, the Office invites comment on how it should link registration and recordation records in the Online Public Record, the level of detail and specificity that should be included within the chain of title, and the potential value of that information to copyright owners, users, and the general public.

<sup>67</sup>This proposal is made in consideration of the Removal of Personally Identifiable Information final rule codified at 37 CFR 201.2(e), (f).

<sup>62</sup> See 37 CFR 201.2(b).

<sup>63</sup> *Public Catalog*, *Cocatalog.loc.gov*, <https://cocatalog.loc.gov>. The Copyright Office currently publishes the registration of vessel hull designs in a separate database on its website, listing all registrations in reverse chronological order. See *Registration of Vessel Designs*, *Copyright.gov*, <https://www.copyright.gov/vessels/>.

<sup>64</sup> 17 U.S.C. 707(a).

<sup>65</sup> *Review Board Letters Online*, *Copyright.gov*, <https://www.copyright.gov/rulings-filings/review-board/>.

<sup>66</sup> See 37 CFR 201.2(b)(1); 201.2(b)(5) (providing that, "[i]n exceptional circumstances" the Office "may allow inspection of pending applications and open correspondence files by someone other than the copyright claimant, upon submission of a written request which is deemed by the Register to show good cause for such access and establishes that the person making the request is one properly and directly concerned.").

<sup>59</sup> See, e.g., Pilot Program for Bulk Submission of Claims to Copyright, 82 FR 21551 (May 9, 2017).

<sup>60</sup> See generally 17 U.S.C. 705.

<sup>61</sup> Only authorized persons may receive copies of deposited articles. Persons authorized to receive copies of deposited articles include the copyright claimant of record or his or her designated agent, or an attorney representing the plaintiff or defendant in litigation, actual or prospective, involving the deposit materials. 17 U.S.C. 706(b); see also 37 CFR 201.2(d)(2).



14. Unified Case Numbers: Should the Office issue one case number to track and identify a work or group of works through the registration and appeal process?

The Office currently uses multiple identification numbers to keep track of applications, correspondence, and requests for reconsideration. The Office assigns a service request/case number to each application to keep track of the claim within the electronic registration system. A separate “THREAD ID” is assigned to each email communication sent by the Office. A separate “Correspondence ID” is assigned to each letter that is sent by the Office. And the Office assigns another “Correspondence ID” when it issues a response to a request for reconsideration.

Administering and tracking disparate numbers for these types of records has created internal and external challenges for the Office and users alike. For instance, THREAD and Correspondence ID numbers have occasionally been attached to the wrong service request/case number. Examiners often catch these errors, but they must be fixed by hand to ensure that the correspondence materials are assigned to the appropriate case. To avoid these problems and improve the transparency of its records, the Office is proposing to unify its identification numbers to create a clear relationship between an application for registration, any correspondence, and any associated request for reconsideration. This would benefit users because they would only be tasked with monitoring one case number over the life cycle of a claim. The Office invites comment on this proposal.

#### *D. Deposit Requirements: The Deposit Requirements for Registration and Related Security Considerations*

15. Digital First Strategy: Should the Office require only electronic and identifying material for all deposits for registration, thereby eliminating the need to submit physical deposits for purposes of registration?

The Office is seeking comment on a new approach for registration deposits. Under this approach, applicants would be required to submit electronic deposit copies and phonorecords, or other identifying material, for the purpose of registering a work under section 408 of the Copyright Act. Copyright owners would only be expected to submit physical copies or phonorecords if they receive a written demand from the Office for that material pursuant to the mandatory deposit provisions set forth in section 407. In other words, the

Library would continue to receive physical copies or phonorecords through mandatory deposit if they are needed for its collections, but only if the Office affirmatively issues a written demand for that material on the Library’s behalf and provides adequate notice to the copyright owner.<sup>68</sup>

The Office already administers two separate sets of deposit requirements as codified in the Copyright Act: The requirements for depositing a work for the Library pursuant to section 407 (the “mandatory deposit requirement”)<sup>69</sup> and the deposit requirements for registering a work with the Copyright Office pursuant to section 408 (the “deposit requirements for registration”).<sup>70</sup> It has been suggested that a digital approach to deposit requirements for registration would make clearer the discrete aims of the registration and mandatory deposit requirements, as the deposit needs for registration examination purposes in many cases can be fulfilled without receiving a physical copy of the work where identifying material is sufficient.<sup>71</sup>

Both sections 407 and 408 give the Register broad authority to issue regulations dictating the specific nature of the copies and phonorecords that must be deposited, and in practice, the Register has traditionally exercised this authority in significant ways. Specifically, section 408(c)(1) authorizes the Register to “specify by regulation the administrative classes into which works are to be placed for purposes of deposit and registration, and the nature of the copies or phonorecords to be deposited in the various classes specified.”<sup>72</sup> In addition, the Register may further “require or permit, for particular classes, the deposit of identifying material instead of copies or phonorecords.”<sup>73</sup> Currently, a wide range of works may be registered with identifying material, including most pictorial and graphic works and computer programs.<sup>74</sup>

In enacting section 407, Congress balanced different, important interests, including the “value of the copies or phonorecords to the collections of the Library of Congress” and “the burdens

and costs to the copyright owner of providing [copies of the works].”<sup>75</sup> Thus, under section 407(c), the Register may exempt any categories of material from the mandatory deposit requirements, or demand only one copy or phonorecord if it provides a “satisfactory archival record of a work.”<sup>76</sup> As both the Office and the Library acknowledge that the Library does not need every deposit submitted for registration in its collections, over the years the Register has adopted a series of exemptions from the mandatory deposit requirement, including exemptions for most electronic works that are available only online, musical works that are published solely on phonorecords, advertising material, scientific or technical diagrams, greeting cards, individual lectures or sermons, and most three-dimensional sculptural works.<sup>77</sup>

Considering a digital approach to deposit requirements for registration, the Office seeks comment on whether and how it should expand the classes of excepted works under section 408. Pursuant to its authority under section 408(c)(1), the Office is considering whether it should, for all classes of works, accept only, or preferentially, electronic copies or phonorecords and identifying material to satisfy the deposit requirement for registration.<sup>78</sup>

The Office takes seriously its responsibility to administer both the registration and mandatory deposit requirements. But the advent of a new registration system provides an opportunity to think innovatively about the best way to design a 21st century copyright registration system while serving the Library’s collection needs. A digital approach to deposit requirements for registration would aim to (1) reduce the pendency time for processing applications, (2) reduce the number of physical deposit materials that the Office of Registration Policy & Practice (“RPP”) processes, and (3) simplify the deposit requirements for registration.

Although pendency times have improved,<sup>79</sup> this remains a crucial concern for the Office. On April 25, 2018, the House Subcommittee on

<sup>75</sup> H.R. Rep. No. 94–1476, at 151 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5767.

<sup>76</sup> 17 U.S.C. 407(c).

<sup>77</sup> See 37 CFR 202.19(c).

<sup>78</sup> Where it is impractical or impossible to provide an electronic deposit, the Office would still accept a physical deposit.

<sup>79</sup> Between April 3, 2018, and October 2, 2018, the average processing time for all claims decreased from eight months to seven months. See *Registration Processing Times, Copyright.gov*, <https://www.copyright.gov/registration/docs/processing-times-faqs.pdf> (last visited Oct. 4, 2018).

<sup>68</sup> This approach would be similar to the demand-based mandatory deposit scheme that the Office established for electronic-only serials and recently proposed to expand to include electronic-only books. See 75 FR 3863, 3865–66 (Jan. 25, 2010); 83 FR 16269 (Apr. 16, 2018).

<sup>69</sup> See 17 U.S.C. 407.

<sup>70</sup> See 17 U.S.C. 408.

<sup>71</sup> See, e.g., 37 CFR 202.20(c)(2), 202.21.

<sup>72</sup> 17 U.S.C. 408(c)(1).

<sup>73</sup> 17 U.S.C. 408(c)(1).

<sup>74</sup> 37 CFR 202.20(c)(2) (iv), (v), (vii).

Legislative Branch Appropriations highlighted the need for the Office to decrease its processing times in its hearing on the Library of Congress's fiscal year 2019 budget request.<sup>80</sup> While inquiring about the appropriate turnaround time for completing a copyright registration, Chairman Kevin Yoder emphasized that the aim is to make the registration system "more efficient and quicker."<sup>81</sup> It is believed that this proposal would further significantly decrease burdens on both copyright owners and the Copyright Office by simplifying registration requirements and the examination process, and subsequently decreasing pendency times.

When an applicant sends a physical deposit with their application for registration, that deposit must be sent offsite to be screened and decontaminated for possible pathogens. Once the deposit is delivered to the Office, the Office's Receipt Analysis and Control Division ("RAC") must manually match the physical deposit to its corresponding pending application and deliver the deposit to an examiner.<sup>82</sup> This time consuming process can delay examination. And if the examiner later discovers that the applicant submitted an incorrect deposit, this process may be repeated, which would delay examination and re-set the EDR to the date that an acceptable deposit was received by the Office. Additionally, physical deposits are often heavy and unwieldy. The Office moves these deposits multiple times during the examination process,

<sup>80</sup> See *Legislative Branch Appropriations for 2019, Hearings Before the Subcomm. on Legislative Branch of the H. Comm. on Appropriations, Part 2*, 115th Cong., 2d Sess. 325, 357–359 (2018)(statement from Rep. Kevin Yoder, Chairman, Subcomm. on Legislative Branch concerning registration processing times, noting "we really want the Copyright Office to be successful and [] efficient"), available at <https://www.gpo.gov/fdsys/pkg/CHRG-115hhrg30357/pdf/CHRG-115hhrg30357.pdf>.

<sup>81</sup> *Legislative Branch Appropriations for 2019, Hearings Before the Subcomm. on Legislative Branch of the H. Comm. on Appropriations, Part 2*, 115th Cong., 2d Sess. at 358 (2018).

<sup>82</sup> When an applicant submits an online application and sends the deposit through the mail, they are expected to print and attach a "shipping slip" to the deposit. This document contains a barcode generated by the electronic registration system that is used to connect the deposit with the appropriate registration application. Unfortunately, large quantities of deposits are submitted without a shipping slip. In such cases, RAC staff must correspond with the applicant to obtain the ten-digit case numbers that have been assigned to all of the applications submitted by that party, and then search for those applications in the electronic registration system. Before delivering the deposit to the examiner for a substantive review, RAC staff must match each application to its corresponding deposit by manually generating a new shipping slip with an identifying barcode.

which increases the risk that they may be damaged, misplaced, mismatched, or lost.

By contrast, when an applicant uploads a digital deposit to the electronic registration system, the Office receives the deposit as soon as the application is submitted. An examiner can immediately access the deposit when they open the application. Examiners do not need to move deposits around the Office. Electronic deposits allow examiners to process more claims per hour, thereby cutting processing times significantly.

The Office is interested in hearing from copyright owners on how this digital approach may or may not incentivize the routine registration of copyrighted works and improve the efficiency of the registration system. The Office also seeks comments on how this approach may affect copyright owners with regard to their compliance with mandatory deposit.

#### 16. Digital Deposit Security

Any approach that increases the deposit of digital formats must be supported by a robust security system. Users have expressed concern regarding the capacity of the Office's current IT infrastructure to handle an increase in digital deposits, as well as the Office's mechanisms for securing these deposits.

The Office currently utilizes a multi-level security design to ensure the confidentiality, integrity, and availability of the data within the eCO system. The system is certified to operate at the National Institute of Standards and Technology ("NIST") Moderate security level.<sup>83</sup> The entire eCO system operates on hardware and software dedicated to this system and it does not share any computer or storage resources. Strict access controls are in place throughout the system for public users, staff, and system administrators, enforcing the principle of least privilege, which means that users in each role may only access what is needed for their role. The system is also protected by multiple levels of network firewalls and other network-based security, such as anti-malware protection. Finally, the eCO system is under continuous monitoring, both operational and security, to ensure that

<sup>83</sup> See National Institute of Standards and Technology, Minimum Security Requirements for Federal Information and Information Systems, FIPS PUB 200, available at <https://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.200.pdf>; National Institute of Standards and Technology, Security and Privacy Controls for Information Systems and Organizations, SP 800–53, available at <https://csrc.nist.gov/CSRC/media//Publications/sp/800-53/rev-5/draft/documents/sp800-53r5-draft.pdf>.

these security controls are and remain effective.

The Office, working with OCIO, plans to implement these same controls in the new online registration system. Additionally, the Office's IT infrastructure is being updated to support increased numbers of digital deposits. The Office welcomes comment on the current and future state of the Office's deposit security as well as any additional approaches to this issue.

#### E. Additional Considerations

The Office is dedicated to developing a robust and efficient registration system and invites comment on any additional considerations that it should take into account during its modernization process.

Dated: October 11, 2018.

**Karyn Temple,**

*Acting Register of Copyrights and Director of the U.S. Copyright Office.*

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

#### RIN 2900–AP64

#### Adopting Standards for Laboratory Requirements

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its medical regulations to establish standards for VA clinical laboratories. The Department of Health and Human Services (HHS) has established standards for the staffing, management, procedures, and oversight of clinical laboratories that perform testing used for the diagnosis, prevention, or treatment of any disease or impairment of, or health assessment of, human beings. VA is required, in consultation with HHS, to establish standards equal to those applicable to other clinical laboratories. As a matter of policy and practice VA has applied HHS standards to its VA laboratory operations, and this proposed rule would formalize this practice. The proposed rule would establish quality standards for laboratory testing performed on specimens from humans, such as blood, body fluid and tissue, for the purpose of diagnosis, prevention, or treatment of disease, or assessment of health. Specifically, it would address how VA applies regulations as the controlling