

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Parts 201 and 202

[Docket No. 2023–8]

#### Group Registration of Updates to a News Website

**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 frequently updated news websites. The rapid pace at which many web-based materials are created and updated presents a challenge for copyright registrants. This challenge is especially pronounced for frequently updated news websites. This option will enable online news publishers to register a group of updates to a news website as a collective work with a deposit composed of identifying material representing sufficient portions of the works, rather than the complete contents of the website. The Office invites comment on this proposal and the questions below.

**DATES:** Comments on the proposed rule must be made in writing and must be received by the U.S. Copyright Office no later than February 20, 2024.

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

**FOR FURTHER INFORMATION CONTACT:** Rhea Efthimiadis, Assistant to the General Counsel, by email at [meft@copyright.gov](mailto:meft@copyright.gov) or by telephone at 202–707–8350.

## SUPPLEMENTARY INFORMATION:

### I. Background

The U.S. Copyright Office (“Office”) is proposing to create a new group registration option for frequently updated news websites. When Congress enacted the Copyright Act of 1976 (“Copyright Act” or “Act”), it authorized the Register of Copyrights (“Register”) to specify by regulation the administrative classes of works for the purpose of seeking registration and the nature of the deposit required for each such class.<sup>1</sup> Congress afforded the Register discretion to permit registration of groups of related works with one application and one filing fee, known as “group registration.”<sup>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>

In providing the Register the discretion to provide for group registrations, 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.<sup>4</sup> Group registration options must be designed, however, in a manner that balances claimants’ need for an efficient method to submit applications with the Office’s need to examine applications and provide an adequate public record. Exercising this statutory discretion, Registers have over the years issued regulations providing for group registrations for certain categories of works and establishing eligibility requirements.

The Copyright Act also gives the Register broad authority to issue regulations concerning the nature of the copies that must be deposited in support of registration. Section 408 provides that the Register may issue regulations establishing “the nature of the copies . . . to be deposited” in specific classes of works and to “permit, for particular classes, the deposit of identifying material instead of copies or phonorecords.”<sup>5</sup> The legislative history indicates that Congress believed that a deposit of identifying material should be permitted in cases where the copies

or phonorecords would be too “bulky, unwieldy, easily broken, or otherwise impractical [to serve] as records identifying the work registered.”<sup>6</sup> The Office has used this authority to require only identifying material in certain circumstances. For example, for computer programs, automated databases, or other literary works fixed or published solely in machine-readable copies, the Office permits the deposit of “identifying portions” of the specific version of the work the applicant intends to register.<sup>7</sup>

After receiving input from stakeholders and carefully considering the issue, the Office has concluded that there is a need for a new group registration accommodation for frequently updated news websites.<sup>8</sup> The Office welcomes public comment on its proposal and subjects of inquiry set forth here.

#### A. The Need for a New Group Registration Option

This proposed rulemaking stems from the rapid development and predominance of news websites over print newspapers, and requests submitted by online publishers to the Office. Over the past two decades, the internet has become an increasingly common method for distributing, displaying, and performing copyrightable content. More than eight in ten Americans get news from digital devices, and, as of 2021, more than half prefer digital platforms to access news.<sup>9</sup> Thus, a significant amount of news content must be offered in an online environment to meet demand. The current state of the news media industry requires dynamism, “with content constantly changing, updating, and refreshing in real time.”<sup>10</sup> Because of

<sup>6</sup> H.R. Rep. No. 94–1476, at 154.

<sup>7</sup> See 37 CFR 202.20(c)(2)(vii). For example, with regards to deposit requirements for computer programs, the Office has defined “identifying portions” as the first and last twenty-five pages of the work.

<sup>8</sup> The proposed regulations define a “website” as a web page or set of interconnected web pages that are accessed using a uniform resource locator (“URL”) organized under a particular domain name. See also U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices* sec. 1002.1 (3d ed. 2021) (“Compendium (Third)”). For example, the Office’s website is located at *copyright.gov*, and the Library of Congress’s website is located at *loc.gov*.

<sup>9</sup> Elisa Shearer, *More Than Eight-In-Ten Americans Get News from Digital Devices*, Pew Research Center (Jan. 12, 2021), <https://www.pewresearch.org/fact-tank/2021/01/12/more-than-eight-in-ten-americans-get-news-from-digital-devices/>.

<sup>10</sup> MPA—The Association of Magazine Media Comments at 5, Submitted in Response to Nov. 9, 2021 Notice of Inquiry, Publishers’ Protections Study, U.S. Copyright Office Dkt. No. 2021–5 (Jan.

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

<sup>2</sup> *Id.*

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

<sup>4</sup> Copyright registration is not a prerequisite to copyright protection, although registration generally must be made before instituting a civil infringement action in Federal court. 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. 408(c)(1).

this, news publishers assert they face unique obstacles when it comes to registering their works and have encouraged the Office to develop practices for registering “newspaper websites” that are “updated frequently.”<sup>11</sup>

### B. The Office’s Prior Studies

The Office acknowledged the news publishers’ concerns in previous statements and reports. In 2011, the Office released a paper titled *Priorities and Special Projects of the United States Copyright Office (October 2011–October 2013)*, which acknowledged the challenges in registering websites and content published on websites.<sup>12</sup> The paper noted that websites may contain “a great number of contributions from many authors” and changes may be made “daily or even several times a day.”<sup>13</sup> It identified several issues to be addressed, such as the appropriate means for creating an accurate and informative record of copyright ownership and the appropriate form of the deposit. It also invited public input regarding whether “a group registration scheme [should] be implemented that would permit a single registration to cover content disseminated over a period of many days or weeks.”<sup>14</sup>

As the Office considered stakeholder input in response to the paper, it issued public guidance to address registration of online content. In 2014, the Office released the *Compendium of U.S. Copyright Office Practices, Third Edition*, which contains an entire chapter on websites and website content.<sup>15</sup> In 2017, it released a circular that provides additional information on this topic.<sup>16</sup> These resources explain

5, 2022), <https://www.regulations.gov/comment/COLC-2021-0006-0044> (“MPA—The Association of Magazine Media Comments”).

<sup>11</sup> Newspaper Association of America Comments at 12–18, Submitted in Response to July 15, 2009 Notice of Proposed Rulemaking, Mandatory Deposit of Published Electronic Works Available Only Online, U.S. Copyright Office Dkt. No. 2009–3 (Aug. 31, 2009) (emphasis omitted) (seeking a group registration option for newspaper websites), <https://www.copyright.gov/rulemaking/online-only/comments/naa.pdf> (“Newspaper Association of America Comments”).

<sup>12</sup> U.S. Copyright Office, *Priorities and Special Projects of the United States Copyright Office October 2011–October 2013* (2011), <https://www.copyright.gov/docs/priorities.pdf>.

<sup>13</sup> *Id.* at 11.

<sup>14</sup> *Id.*

<sup>15</sup> U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices* ch. 1000 (3d ed. 2014). The Office published a new version of the Compendium (Third) in January 2021. The 2021 version cited in this notice is available at <https://copyright.gov/comp3/>.

<sup>16</sup> U.S. Copyright Office, *Circular 66: Copyright Registration of websites and website Content* (revised Mar. 2021), <https://copyright.gov/circs/circ66.pdf>.

how to identify the author(s) and owner(s) of websites, website content, and user-generated content. They identify factors that may determine whether a work has been published online; discuss the distinctions between copyrightable authorship and uncopyrightable material, and between a website and an online database; and provide step-by-step instructions for completing a registration application and preparing a deposit for an online work.

Although these resources offer guidance for registering online content, news publishers have continued to express concern about the difficulty of registering frequently updated websites. As discussed in detail below, applicants who seek to register dynamic news websites are currently required to submit a separate application, deposit, and filing fee for each website update. This is particularly costly and time-consuming for news content, which can be added, modified, or removed on a daily or hourly basis.

The Office also looked at some of these issues as part of its 2021 study assessing press publishers’ existing protections under U.S. copyright law. That study, and its resulting 2022 report, *Copyright Protections for Press Publishers*, was undertaken after a series of congressional hearings on reforms to digital copyright law, which considered what changes “are needed to ensure the growth of creative industries without undermining incentives for digital platforms and technologies.”<sup>17</sup> As part of the study, the Office requested public input on the effectiveness of current copyright protections for press publishers. It received feedback from news publishers that registration challenges make registering frequently updated news content impracticable.<sup>18</sup> They expressed frustration that “[t]he inability to register dynamic and voluminous website content is a foundational enforcement shortcoming.”<sup>19</sup> They stated that, because “[t]here is currently no feasible way to apply for a single group

<sup>17</sup> Letter from Senators Leahy, Tillis, Cornyn, Hirono, Klobuchar, and Coons to Shira Perlmutter, Register of Copyrights, at 1 (May 3, 2021), <https://www.copyright.gov/policy/publishersprotections/letter-to-the-copyright-office.pdf>.

<sup>18</sup> See, e.g., News Corporation Comments at 10–11, Submitted in Response to Oct. 12, 2021 Notice of Inquiry, Publishers’ Protections Study, U.S. Copyright Office Dkt. No. 2021–5 (Nov. 26, 2021), <https://www.regulations.gov/comment/COLC-2021-0006-0016> (“News Corporation Comments”).

<sup>19</sup> News Media Alliance Comments at 19, Submitted in Response to Oct. 12, 2021 Notice of Inquiry, Publishers’ Protections Study, U.S. Copyright Office Dkt. No. 2021–5 (Nov. 23, 2021), <https://www.regulations.gov/comment/COLC-2021-0006-0020> (“News Media Alliance Comments”).

registration of the full contents of a dynamic news media website, on which articles are constantly being published and updated.”<sup>20</sup> It is “beyond difficult for news publishers to acquire meaningful copyright protection for their output,”<sup>21</sup> and stated that, “with no feasible means to access all of the statutory remedies for infringement of their online news content,” infringers are left “free to pick and choose from works among that content without fear of significant or immediate consequence.”<sup>22</sup>

### C. Deposit-Related Challenges

The Office is aware that one of the biggest challenges in registering a website is providing a deposit that displays the work in its entirety. Copyright registration of published works generally requires the submission of two complete copies of the best edition of the work.<sup>23</sup> In addition to their use in the examination process, deposits serve as a record of the contents of a work. They can also serve an important evidentiary function if the copyright owner did not create or maintain an archive copy of a work before making updates. For example, a copyright owner who registered the updates to a website could use the deposits to confirm that a specific contribution was posted on a particular date and did not appear in earlier versions of the same website.<sup>24</sup>

The deposit requirements for a website vary depending on the nature of the claim and the type and number of works being registered. If an applicant created one of the individual works on a website—such as an article, blog entry, or photograph—the applicant ordinarily should submit a complete copy of that work.<sup>25</sup> If, however, the applicant

<sup>20</sup> News Corporation Comments at 10.

<sup>21</sup> *Id.* at 11.

<sup>22</sup> *Id.*

<sup>23</sup> 17 U.S.C. 408(b)(2). The Copyright Act authorizes the Register to promulgate regulations specifying the exceptions to this general rule. 17 U.S.C. 408(c)(1).

<sup>24</sup> One way that some litigants have attempted to show what was posted on a particular date is to use web archiving platforms like the internet Archive’s Wayback Machine. Courts have taken different approaches on whether to admit these records into evidence. See *United States v. Gasperini*, 894 F.3d 482, 490 (2d Cir. 2018) (finding a sufficient basis to admit screenshots produced by the Wayback Machine into evidence where the office manager of the internet Archive “explained how the Archive captures and preserves evidence of the contents of the internet at any given time” and “testified that the screenshots were authentic and accurate copies of the Archive’s records”). But see *Ward v. Am. Airlines, Inc.*, No. 4:20-cv-00371-O, 2020 U.S. Dist. LEXIS 205771 (N.D. Tex. Oct. 16, 2020) (declining to take judicial notice of references from the Wayback Machine).

<sup>25</sup> 37 CFR 202.20(b)(2)(iii)(B) (“If the work is published solely in an electronic format,” the

selected, coordinated, and/or arranged the content on the website, and owns the copyright in some or all of the content, then it may register the collective work and the individual contributions it owns with the same submission.<sup>26</sup> In this situation, the deposit should reflect the collective work authorship, by displaying the component works as they would appear when viewed on the website.<sup>27</sup> Typically, this requires the applicant to include a complete copy of the entire website as published on a particular date.

The Office recognizes that submitting a complete copy of an entire dynamic website has been difficult for many applicants and causes problems for the Office as well.<sup>28</sup> Perhaps the most common problem occurs when applicants submit individual folders containing hundreds or thousands of disaggregated files that do not show the organization of the website. Similar problems result from the submission of individual PDF (Portable Document Format) pages that display the website in a linear fashion without showing the coordination and/or arrangement of the web pages in relation to each other. In other cases, applicants attempt to register a website by submitting the hypertext markup language (HTML) establishing the format and layout of the content on the site rather than visually depicting it.

Current technological means for fixing and normalizing website content for copyright deposit purposes are limited. The Office's current registration system only accepts certain file types that could display the image of a website, such as PDF, JPEG (Joint Photographic Experts Group), DWF (Autodesk Design), BMP (BitMap Image), GIF (Graphics

deposit is considered "complete" if it contains "all elements constituting the work in its published form, *i.e.*, the complete work as published, including metadata and authorship for which registration is not sought."

<sup>26</sup> As with any other claim, the registration will not cover "unclaimable material," which includes previously published or registered material, material that is in the public domain, copyrightable material that is owned by a third party, or material generated by artificial intelligence without human authorship. *See* Compendium (Third) sec. 509.2; 85 FR 16190, 16192 (Mar. 16, 2023).

<sup>27</sup> *See* 37 CFR 202.20(b)(2)(iii)(B) ("Publication in an electronic only format requires submission of the digital file(s) in exact first-publication form and content."); *see also* Compendium (Third) sec. 1010.

<sup>28</sup> *See, e.g.*, Newspaper Association of America Comments at 12–18 ("The burden of requiring a separate registration for each publication date of a newspaper website, with a print-out or other physical copy, is a powerful disincentive, if not a virtual bar, to registration."); News Media Alliance Comments at 19 (highlighting "[t]he inability to register . . . voluminous website content" as a "foundational enforcement shortcoming").

Interchange Format), TIFF (Tagged Image File Format), and PUB (Microsoft Publisher).<sup>29</sup> The Office is developing a new Enterprise Copyright System ("ECS") that will include new capabilities for uploading large files and large numbers of files. The Office is also exploring the acceptance of new file formats, such as .epub, that may better enable the fixation of online content.<sup>30</sup> But for the time being, the Office encourages applicants to submit website claims in a PDF package.<sup>31</sup>

When a website is fixed in a PDF package, the Office should be able to view the website as it existed on the date identified in the registration application, and to examine the compilation authorship involved in selecting, coordinating, and/or arranging the website as a whole. The Office recognizes that this is not a solution for all applicants. Some applicants are able to fix certain aspects of a website in a PDF package but find it difficult to fix it in a way that depicts the complete website. For large websites, such as news media websites, the resulting file may include hundreds or even thousands of pages, which makes it difficult for the Office to examine the selection, coordination, and arrangement of the website as a whole. Additionally, the organization and arrangement shown in a PDF package may vary depending on whether it depicts the website as it would appear on a desktop computer, a mobile phone, or other electronic device. Capturing the website by saving pages in PDF format may also include selection and arrangement that was not created by a human author, such as advertisements inserted into the website by an algorithm. Moreover, a PDF package only captures component works consisting of text, photographs, or pictorial or graphic material.

#### D. Existing Registration Options

News website publishers have described to the Office the limitations of the existing registration options available to them. Specifically, they explain that registering each individual update to a website separately is not practical or feasible. The Office has reviewed its registration options and concludes that there is substantial need for a new option for online news websites that are frequently updated.

<sup>29</sup> The list of acceptable file formats is posted on the Office's website at <https://www.copyright.gov/eco/help-file-types.html>.

<sup>30</sup> *See* Modernization, U.S. Copyright Office, <https://copyright.gov/copyright-modernization/> (last visited Dec. 21, 2023); 85 FR 12704 (Mar. 3, 2020); 83 FR 52336 (Oct. 17, 2018).

<sup>31</sup> *See* Compendium (Third) sec. 1010.

Current group registration options are not sufficient because they require all works within the group to have the same author. For example, an applicant may register up to 750 photographs with the same application, if they were all created by the same author and are owned by the same claimant.<sup>32</sup> Similarly, another group registration option allows registration of up to fifty blog entries, social media posts, and other short online literary works if the works were all created by the same individual and published within a three-month period.<sup>33</sup> Because news websites are typically collective works that include the individual contributions of multiple authors, such an approach to group registrations is not a good fit for their publishers.

Another existing registration option for a website including works authored by multiple authors is to register it as a collective work. Although collective works contain multiple works of authorship, they are considered "one work" for purposes of registration.<sup>34</sup> A website can be a collective work if it contains "a number of contributions" that constitute "separate and independent works in themselves," and if those contributions "are assembled into a collective whole" "in such a way that the resulting work as a whole constitutes an original work of authorship."<sup>35</sup> A registration for a collective work covers the authorship involved in selecting and arranging component works into a collective whole.<sup>36</sup> In the case of a website, this typically involves selecting, coordinating, and arranging the various web pages that make up the site, as well as the selection, coordination, and arrangement of the separate and independent works on each individual web page.

A registration for a collective work may also cover the individual works that make up the collective work if certain requirements are met. The Copyright Act provides that the copyright in a collective work "extends

<sup>32</sup> 37 CFR 202.4(h), (i).

<sup>33</sup> 85 FR 37341 (June 22, 2020).

<sup>34</sup> *Compare* 17 U.S.C. 101 (defining a collective work as "a work" and recognizing that "[t]he term 'compilation' includes collective works") *with* 17 U.S.C. 504(c)(1) ("all the parts of a compilation . . . constitute one work"). A collective work is a type of compilation. Therefore, a collective work must meet the same statutory requirement as a compilation; there must be a sufficiently creative selection, coordination, or arrangement of the component works.

<sup>35</sup> 17 U.S.C. 101 (definitions of "compilation" and "collective work").

<sup>36</sup> *See* H.R. Rep. No. 94-1476, at 120 (noting that the "key" element in creating a collective work is the "assemblage or gathering of 'separate and independent works . . . into a collective whole'").

only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work.”<sup>37</sup> The “[c]opyright in each separate contribution to a collective work is distinct from copyright in the collective work as a whole, and vests initially in the author of the contribution.”<sup>38</sup> If the claimant fully owns the copyright in those contributions,<sup>39</sup> however, courts have held that a collective work registration may also cover the contributions that make up the collective work.<sup>40</sup> The Office has taken a similar position.<sup>41</sup>

Collective work registration, however, may not be a satisfactory option for website publishers. First, as discussed above, providing a complete deposit of a website is challenging. Second, even if the collective work registration extends to all the individual components of a specific website, the registration would extend only to the material in the deposit that was owned by the copyright claimant as of the effective date of registration. An applicant would need to prepare a new registration application for any subsequent changes made to that

website, which would be as burdensome and expensive as other options. Third, a collective work registration would not provide protection for any individual works that have been previously published.<sup>42</sup> Finally, when a website is registered as a compilation, the statute provides that the copyright owner may seek only one award of statutory damages for infringement of the compilation as a whole—rather than a separate award for each individual work that appears on the website—even if the defendant infringed all of the works covered by the registration.<sup>43</sup>

Alternatively, a website owner could choose to register a few individual works from the website, instead of the website as a whole. This alternative might appeal to a website owner who does not fully own the copyright in all of the component works that make up the website, struggles to create a deposit copy of the entire website, or wants to retain the possibility of collecting multiple statutory damages awards. If a website owner were concerned that the entire contents of the website could be copied or scraped by a third party, registering one or more of the component works on the website and providing deposit copies of only those component works should be sufficient to initiate a claim for infringement.<sup>44</sup> And if more than one of the individual works were registered in a timely manner, these registrations may provide a means for seeking attorneys’ fees and multiple statutory damages awards in an infringement action.<sup>45</sup>

This approach too has limitations. Registration of select works individually only protects the copyright owner if an infringer copies the specific works that were registered. It also does not offer protection for the selection, coordination, or arrangement of the website as a whole, which may be an important element of the authorship of the website.

## II. A New Framework for Registering News Websites

The Office proposes a new rule pursuant to which a news publisher will be able to register a news website as a collective work (including any individual component works it fully owns, such as literary works,

photographs, and/or graphics)<sup>46</sup> with a deposit composed of identifying material, rather than the complete contents of the website. The material may include representative examples of the updates published in a calendar month, provided that they represent sufficient portions of selection, coordination or arrangement authorship. The works must be created by the same entity, and that entity must be named as the copyright claimant for the collective work. Each of these requirements is discussed below.

### A. Eligibility Requirements

Due to the potential number of updates in this group option, and to limit the accommodation that permits identifying material rather than complete copies, the Office will strictly apply all of the eligibility requirements. To facilitate compliance with the requirements, the Office will provide a checklist for applicants, as well as additional guidance through its publications.

#### 1. Works That May Be Included in the Group

The proposed rule will limit this registration option to “news websites.” A “website” will be defined as a web page or set of interconnected web pages that are accessed using a URL organized under a particular domain name. In addition, a “website” will include any web page whose URL incorporates the primary domain name for that site. For example, any web page that includes the URL “*copyright.gov/*” would be considered part of the Office’s website, regardless of the length of the file name. By contrast, any web page that includes the URL “*loc.gov/*” would be considered a different website, even though *copyright.gov* and *loc.gov* are linked to each other, stored on the same servers, and emanate from the same agency.

The Office proposes to model the definition of “news website” after the regulation defining a “newspaper.”<sup>47</sup> This approach is consistent with the goal of this rulemaking—to address obstacles to registering online news content produced by news publishers, who often also publish newspapers. The Office’s “newspaper” definition has been generally accepted by these publishers.<sup>48</sup> A “news website” will be

<sup>37</sup> 17 U.S.C. 103(b).

<sup>38</sup> *Id.* at 201(c). The Act further states that “[i]n the absence of an express transfer of the copyright” in a particular contribution, “the owner of copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series.” *Id.*

<sup>39</sup> A contribution to a collective work is “fully owned” by the publisher if it owns all of the exclusive rights in that contribution. *See, e.g., Morris v. Business Concepts, Inc.*, 259 F.3d 65, 68 (2d Cir. 2001) (“Unless the copyright owner of a collective work also owns all the rights in a constituent part, a collective work registration will not extend to the constituent part.”), *abrogated on other grounds by Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 160 (2010); Compendium (Third) secs. 509.1, 509.2.

<sup>40</sup> *See Sohm v. Scholastic Inc.*, 959 F.3d 39, 53 (2d Cir. 2020) (registration of a compilation of photographs by an applicant that owns the rights to the component works also registers the individual photographs even where the copyright application did not list the individual authors of the photographs); *Metro. Reg’l Info. Sys., Inc. v. Am. Home Realty Network, Inc.*, 722 F.3d 591, 598 (4th Cir. 2013) (“[C]ollective work registrations [are] sufficient to permit an infringement action on behalf of component works, at least so long as the registrant owns the rights to the component works as well.”); *Alaska Stock, LLC v. Houghton Mifflin Harcourt Publ’g Co.*, 747 F.3d 673, 683, 685 (9th Cir. 2014) (a collective work registration “extended registration to the component parts if the party registering the collective work owned the copyright to the component parts”).

<sup>41</sup> *See* 17 U.S.C. 103(b) (“The copyright in a compilation . . . extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material.”); Compendium (Third) secs. 509, 509.1, 509.2.

<sup>42</sup> *See* Compendium (Third) sec. 509.2 (providing that a collective work registration does not cover contributions that were previously published or registered).

<sup>43</sup> 17 U.S.C. 504(c)(1) (“For the purposes of this subsection, all the parts of a compilation or derivative work constitute one work.”).

<sup>44</sup> *See id.* at 411(a).

<sup>45</sup> *Id.* at 504(c)(1).

<sup>46</sup> For such applications, the Office will not examine each component work. Thus, the collective work claimant will bear the burden of proving that it owns the individual component works claimed in the submission.

<sup>47</sup> *See* 37 CFR 202.4(e)(1).

<sup>48</sup> *See, e.g.,* News Media Alliance Comments at 2, Submitted in Response to Nov. 6, 2017 Notice of Proposed Rulemaking, Group Registration of

defined as a website that is mainly designed to be a primary source of written information on current events, either local, national, or international in scope, that contains a broad range of news on all subjects and activities and is not limited to any specific subject matter.

## 2. The Collective Work Requirement

This new group registration option would cover a group of collective works, and the electronic registration system will automatically add the term “collective work authorship” to the group news websites application. As a type of compilation, each collective work must contain a sufficiently creative selection, coordination, or arrangement of the individual component works, such as articles, photographs, illustrations, or other content.<sup>49</sup> Whether the content itself is entirely new is irrelevant to this determination. An update to a news website could be considered original if it contains a new selection, coordination, and arrangement of content, even if that individual content has been previously published on the website—such as articles appearing in previous updates.

A collective work will be eligible for this registration option if it was first published on a publicly accessible website, including news websites protected by paywalls. This option will also be available where the work was simultaneously published both on the internet and in a physical form. Each collective work within the group will be considered a separate work for purposes of section 504(c)(1).

As a general rule, a registration under this group option will cover the individual contributions contained within the collective work if they are fully owned by the copyright claimant and if they were first published in that work. By contrast, if a collective work contains contributions that are not fully owned by the copyright claimant, and/or contributions that were previously published, the registration will not extend to those works.<sup>50</sup>

Newspapers, U.S. Copyright Office Dkt. No. 2017–16 (Dec. 6, 2017), <https://www.regulations.gov/comment/COLC-2017-0010-0005> (“News Media Alliance—Group Registration of Newspapers Comments”).

<sup>49</sup> A compilation is “a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship.” 17 U.S.C. 101.

<sup>50</sup> See *Morris*, 259 F.3d at 71 (“Unless the copyright owner of a collective work also owns all the rights in a constituent part, a collective work registration will not extend to the constituent part.”).

## 3. One Month Limitation

Under the proposed rule, an applicant can include updates published on the same website within the same calendar month. Applicants will be required to identify the earliest and latest date that updates were published on the website during the month specified in the application. Claims bearing dates outside of the single calendar month will be refused.<sup>51</sup>

The Office proposes one calendar month as the appropriate limit for this option based on several considerations, including consultations with news media representatives and experience with the group registration option for print newspapers.<sup>52</sup> As discussed below, applicants will be required to submit their claims through the current registration system. To minimize the need for additional development, the Office intends to use the application designated for group newspapers for this purpose. This form may be used to register up to one month of newspaper issues, and it contains technical validations that prevent applicants from entering publication dates that are more than one month apart. Because newspaper and news website claims will be submitted on the same form, it will be necessary to limit both claims to the same one-month time period.

Permitting registration of one calendar month of daily updates to the same news website represents an appropriate balance between the interests of copyright owners and the administrative capabilities of the Office. The Office does not currently have the ability to charge differential prices based on the number of works in the group or the complexity of the claim. Given the technical limitations of the existing registration system and the modest filing fee that would be involved, a reasonable limit on the number of works included in each claim is necessary to manage the administrative burden. In the future, the Office may consider whether a different time range may be preferable once it has introduced its new enterprise copyright system.

## 4. Authorship, Ownership, and Work Made for Hire Requirements

Each collective work in the group must have been created as a work made for hire, with the same person or entity named as the author and copyright claimant. Applicants may not submit groups of collective works created by different authors (such as twenty-five collective works by Online News, Inc.

<sup>51</sup> See 37 CFR 202.4(p).

<sup>52</sup> See, e.g., News Media Alliance—Group Registration of Newspapers Comments at 2.

and twenty-five collective works by Sports Net, Inc.), even if those collective works appear on the same website.

## 5. Title and URL

Applicants will be required to provide a title that identifies the news website. In all cases, the title must include the URL for the site. For example, if the applicant is registering the online version of the *Grand Rapids Gazette*, the Office would accept a title such as “grgazette.michigannews” or *Grand Rapids Gazette* (grgazette.michigannews).<sup>53</sup>

A title for the group of collective works as a whole will be created automatically by the electronic registration system and will be used to identify the registration in the Office’s online public record. The group title will include the website title and the publication dates provided in the application. For example, if the applicant provides the title “grgazette.michigannews” and states that the earliest collective work in the group was published on March 1, 2024, and the most recent one was published on March 31, 2024, the system will generate the following group title: “grgazette.michigannews. [Published: 2024–03–01 to 2024–03–31. Issues: March 2024].” In this respect, the group title will be similar to the format of the group title currently used for registration of a group of newspaper issues.

*Subject of Inquiry:* The Office seeks public comments regarding whether it should give applicants the opportunity to provide additional information, such as individual article or photograph titles, as part of this group registration option. The Office will balance the public interest in creating a meaningful record (*i.e.*, collecting information regarding each individual contribution within the collective work) with the relative burden on applicants. We welcome comments regarding the impact on news publishers if they were permitted to provide granular information concerning the individual articles, photographs, and other component works for each group of news websites.

### B. Application Requirements

The Office plans to create a new application form for this group registration option in its next-generation registration system.<sup>54</sup> In the interim, it

<sup>53</sup> The *Grand Rapids Gazette* name and associated URL are fictitious and used merely to illustrate the proposed rule’s operation.

<sup>54</sup> See *Modernization*, U.S. Copyright Office, <https://copyright.gov/copyright-modernization/> (last

will use one of the current group registration application forms to process these claims in the registration system. As mentioned above, applicants will be required to submit their claims through the electronic registration system, and to use the application designated for a group of newspaper issues.<sup>55</sup> Further instructions on how to complete this application will be provided by the Office through traditional avenues, including its website, circulars, or Chapter 1100 of the *Compendium of U.S. Copyright Office Practices*.

Recently, the Office finalized new regulations and amended other regulations to require other group registration claims to be filed electronically, and the rationales for requiring electronic submission set forth in those rulemakings would apply equally here.<sup>56</sup> Publishers who create and publish these types of works will necessarily have access to the internet and will be capable of using the electronic registration system.<sup>57</sup> Given that the Office has required newspaper publishers to use the electronic registration system to register groups of newspapers since March 1, 2018, it does not anticipate objection to this requirement.<sup>58</sup>

### C. Deposit Requirement

The Office finds it necessary to modify the general complete-copy requirement to enable the registration of dynamic news websites. As noted

visited Dec. 21, 2023) (tracking the Office's work to develop and implement a new enterprise IT system, including a registration module).

<sup>55</sup> In appropriate circumstances, the Office may waive the online filing requirement, subject to the conditions the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose.

<sup>56</sup> See, e.g., 86 FR 10820, 10822 (Feb. 23, 2022) (final rule for group registration of works on an album of music); 85 FR 37341, 37345 (June 22, 2020) (final rule for group registration of short online literary works); 83 FR 61546, 61546–48 (Nov. 30, 2018) (final rule for group registration of newsletters and serials); 82 FR 29410, 29410–11 (June 29, 2017) (final rule for group registration of contributions to periodicals).

<sup>57</sup> Likewise, the online-filing requirement will apply to the “supplementary registration” procedure, which may be used to correct or amplify the information in an existing registration. The Office has announced that if it “move[s] registrations for other classes of works into the electronic registration system,” the procedure for correcting or amplifying those registrations would “be subject to this same [online filing] requirement.” 81 FR 86656, 86658 (Dec. 1, 2016). Thus, if an applicant needs to correct or amplify the information in a registration for a news website, that request will need to be submitted through the electronic registration system, instead of using a paper form. See 37 CFR 202.6(e)(1) (requiring a supplementary registration for a group of related works to be made using the online application).

<sup>58</sup> 37 CFR 202.4(e)(5); see also 83 FR 4144, 4144 (Jan. 30, 2018) (final rule for group registration of newspapers).

above, Congress provided the Office with the authority to create group registration options and to allow flexibility in the content of the deposit to foster registrations that otherwise would be unduly burdensome. Requiring applicants to provide complete deposits of each news website imposes a significant and even unachievable burden on applicants, discouraging registration and making the news content increasingly vulnerable to infringement.<sup>59</sup> While the Office is reluctant to depart from its general rule, which would require the entire contents of the website and each update, a different rule is appropriate here in a specific context where a need for flexibility in deposit requirements has been established. The proposed modification will also satisfy the public notice function of capturing, and making available for public inspection, a deposit that should be sufficient to identify the news website covered by the registration. To the extent the copyright owner may be required to prove to a court or to an alleged infringer the specific contents of a website at any particular point in time, it will need to preserve and maintain its own copy of the site and rely on its own recordkeeping to provide such proof.<sup>60</sup>

*Subject of Inquiry:* To further satisfy the public record and assist in later potential litigation efforts, the applicant may provide in the “Note to Office” field additional information regarding the contents of the work, such as archived URLs that capture the complete content of each collective work submitted for registration. Archived URLs preserve copies of web pages and display them as they appeared when captured. The Office seeks public comments on the availability and effectiveness of technological solutions for saving or archiving websites that could assist or supplement news websites’ recordkeeping efforts while also informing the public of the contents of the website and/or any updates registered.

Under the proposed rule, applicants will be required to submit a deposit that is sufficient to identify some of the updates that were made to the website. Specifically, applicants will need to

<sup>59</sup> See MPA—The Association of Magazine Media Comments at 1, 4; News Corporation Comments at 4–7.

<sup>60</sup> To be clear, each PDF will contain a representative example of what the home page looked like at a particular point on a particular date. The PDFs, however, will not show how the home page looked at any other point in time. Nor will the PDFs contain any of the content that appeared elsewhere on the website.

submit separate PDF files that each contain a complete copy of the home page for the site. Each PDF must show how the home page appeared at a specific point during each day of the calendar month when new updates were published on the site.<sup>61</sup> Up to thirty-one PDFs may be needed for each application since new updates could be published any day of the month. But each PDF would need to show only one of the updates that were published on those dates, not each and every update made.

In each case, the deposit must demonstrate that the home page contains a sufficient degree of selection, coordination, and/or arrangement to be registered as a collective work. If the Office determines that the home page does not contain sufficient collective work authorship, the examiner may request additional pages from the website.

As noted above, all claims registered under this option would be limited to the collective work authorship based on the selection, coordination, and/or arrangement of the individual component works, and all parts of the collective work will constitute one work for purposes of 17 U.S.C. 504(c)(1). If the Office registers the claim, the registration may cover the individual component works that the claimant owns. The certificate, however, will include an annotation confirming that the Office examined the home page for collective work authorship, but did not review any of the component works that appear in the deposit to determine if they are copyrightable or if they are owned by the claimant.

### D. Filing Fee

The filing fee for this option will be \$95, the same fee that currently applies to a claim in a group of newspapers.<sup>62</sup> As mentioned above, the Office does not have the ability at this time to charge differential prices based on the number of works in the group or the complexity of the claim. At least initially, the Office believes it is reasonable to charge the same fee for this new group registration option as for the group newspaper option, given the similarities in expected workflow associated with

<sup>61</sup> Applicants would be required to submit their deposits to the Office in PDF and assembled in an orderly form. Each copy of the home page must be contained in a separate electronic file, and the size of each file must not exceed 500 megabytes. If necessary, applicants may save the files in a .zip folder and upload it to the system, provided that all of the files within the folder are acceptable file types.

<sup>62</sup> See 37 CFR 201.3(c)(8) (listing registration fee for “a group of newspapers or a group of newsletters”).

examining these claims. With the benefit of additional data the Office will gather after this group registration option is launched, the Office will consider whether it would be appropriate to charge a different fee in its next-generation registration system.

III. Conclusion

The Office anticipates that the proposed rule will lead to broader participation in the registration system by facilitating the registration process for news publishers who frequently update news content published on the internet. To better inform the path forward, the Office seeks public comment on the proposed rule generally and the specific subjects of inquiry highlighted above.

List of Subjects

37 CFR Part 201

Copyright, General provisions.

37 CFR Part 202

Copyright, Copyright claims, preregistration and registration.

Proposed Regulations

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

PART 201—GENERAL PROVISIONS

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

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

■ 2. In § 201.3, amend table 1 to paragraph (c) by redesignating paragraphs (c)(12) through (c)(29) as (c)(13) through (c)(30), respectively, and adding a new paragraph (c)(12) to read as follows:

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

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

TABLE 1 TO PARAGRAPH (C)

Table with 2 columns: Registration, recordation, and related services; Fees (\$). Row (12) Registration of a group of updates to a news website: 95.

\* \* \* \* \*

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 adding paragraph (m) and revising paragraph (r) to read as follows:

§ 202.4 Group registration.

\* \* \* \* \*

(m) Group registration of updates to a news website. Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that a group of updates to a news website may be registered with one application, the required deposit, and the filing fee required by § 201.3 of this chapter, with each update being registered as a collective work, if the following conditions are met:

(1) Definitions. For the purposes of paragraph (m) of this section: (i) News website means a website that is designed to be a primary source of written information on current events, either local, national, or international in scope, that contains a broad range of news on all subjects and activities and is not limited to any specific subject matter.

(ii) Website means a web page or set of interconnected web pages that are accessed using a uniform resource locator ("URL") organized under a particular domain name.

(2) Requirements for collective works. Each update to the website must be a collective work, and the claim must be limited to the collective work.

(3) Author and claimant. Each collective work in the group must be a work made for hire, and the author and claimant for each collective work must be the same person or organization.

(4) Updates must be from one news website; time period covered. Each collective work in the group must be published on the same news website under the same URL, and they must be published within the same calendar month. The applicant must identify the earliest and latest date that the collective works were published.

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

(6) Deposit. (i) For each collective work within the group, the applicant must submit identifying material from the news website. For these purposes "identifying material" shall mean separate Portable Document Format

(PDF) files that each contain a complete copy of the home page of the website. Each PDF must show how the home page appeared at a specific point during each day of the calendar month when new updates were published on the website.

(ii) The identifying material must demonstrate that the home page contains sufficient selection, coordination, and arrangement authorship to be registered as a collective work. If the home page does not demonstrate sufficient compilation authorship, the deposit should include as many additional pages as necessary to demonstrate that the updates to the news website can be registered as a collective work.

(iii) The identifying material must be submitted through the electronic registration system, and all of the identifying material that was published on a particular date must be contained in the same electronic file. The files must be submitted in PDF format, they must be assembled in an orderly form, and each file must be uploaded to the electronic registration system as an individual electronic file (i.e., not .zip files). The file size for each uploaded file must not exceed 500 megabytes, but files may be compressed to comply with this requirement.

(7) Special relief. In an exceptional case, the Copyright Office may waive the online filing requirement set forth in paragraph (m)(5) of this section or may grant special relief from the deposit requirement under § 202.20(d) of this chapter, subject to such conditions as the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose on the applicant.

\* \* \* \* \*

(r) The scope of a group registration. When the Office issues a group registration under paragraph (d), (e), or (f) of this section, the registration covers each issue in the group and each issue is registered as a separate work or a separate collective work (as the case may be). When the Office issues a group registration under paragraph (c), (g), (h), (i), (j), (k), or (o) of this section, the registration covers each work in the group and each work is registered as a separate work. When the Office issues a group registration under paragraph (m) of this section, the registration covers each update in the group, and each update is registered as a separate collective work. For purposes of

registration, the group as a whole is not considered a compilation, a collective work, or a derivative work under section

101, 103(b), or 504(c)(1) of title 17 of the United States Code.  
\* \* \* \* \*

Dated: December 22, 2023.

**Suzanne Wilson,**  
*General Counsel and Associate Register of Copyrights.*

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