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LIBRARY OF CONGRESS

Copyright Office

Docket No. 2019-3

## **Public Draft of the Compendium of U.S. Copyright Office Practices, Third Edition**

### **Comments Submitted by the Graphic Artists Guild, Inc.**

The Graphic Artists Guild welcomes the opportunity to comment on the public draft of the third edition of the *Compendium of U.S. Copyright Office Practices*. The *Compendium* is an invaluable resource for copyright holders seeking guidance on copyrights and the registration/recording process. We appreciate the Office's efforts in seeking input from stakeholders, and your efforts to be transparent, as evidenced by the recent webinar on proposed changes to the *Compendium*.

The Graphic Artists Guild is a trade association representing the interests of graphic artists of all stripes: illustrators, graphic designers, animators, cartoonists, comic artists, web designers, surface and textile designers, production artists, and related professionals. We educate graphic artists on best practices, publish the recognized industry bible, *The Graphic Artists Guild Handbook: Pricing & Ethical Guidelines*, and advocate for graphic artists locally and nationally on a wide range of issues. Copyright has been and continues to be a cornerstone of our advocacy activity.

We are a member of the Copyright Alliance and share the concerns raised in the comments they have submitted on the *Compendium* draft. However, we would like to submit our own limited comments focused on specific concerns.

## Registration Specialist's Discretion in Refusing Applications

Throughout the draft *Compendium*, the text indicates that the registration specialist may either communicate with an applicant about errors in an application, or refuse the registration application, indicating that the specialist will have discretion in deciding which avenue to take. For example, this language occurs in Sections 603.2(C) (variances or deficiencies in the application), 625.1 (selection of the wrong form), 625.2 (errors or difficulties with the deposit copies), 1105.3 (group registration), and 1508.1 (electronic copies).

We feel that giving registration specialists discretion on whether to contact an applicant or simply refuse a registration application will result in the rejection of applications that could be resolved by simple communication. This will cause an undue burden on the copyright holder, who must then resubmit the application, most likely with little understanding of why the application was rejected to begin with.

Giving registration specialists this discretion where the instruction is difficult to understand or subject to interpretation, or where the registration option is new strikes us as fundamentally unfair. In particular, we are concerned that initially there will be a higher percentage of errors in registration applications in the new Group Registration of Unpublished Works (GRUW), as copyright holders accustom themselves to using this new option. As an example of where instruction is unclear, we'd like to highlight Section 1508.1. The draft *Compendium* states, *"The specialist... may refuse registration if the applicant submits separate files or folders containing unassembled content or elements that have been disassociated from the context where they originally appeared within the work as a whole."* A copyright registration applicant could easily misunderstand this sort of instruction, and the resulting error could be addressed by communication from the registration specialist.

As expressed in the Copyright Alliance's comments, creators and their advocates have repeatedly raised concerns with the number of refusals of registration applications. These are occurring as registration fees have steadily increased, and as pendency on applications remains lengthy. The duress copyright holders experience by lengthy pendency is exacerbated by the recent Supreme Court ruling in *Fourth Estate Public Benefit Corporation vs Wallstreet.com*, which held that copyright registration only occurs after the Copyright Office approves the registration. With the lengthy pendency being such a concern, we fear that, given the option, overburdened registration

specialists will be inclined to reject registration applications. While we're sympathetic to ongoing budgetary and staffing issues the Office faces, these can't be resolved to the detriment of copyright holders and creators.

### **Email Communications and Case Numbers/Service Request Numbers, and THREAD IDs**

In Section 605.4 of the draft *Compendium*, the registration applicant is requested to respond to communications from the registration specialist by hitting "Reply" or "Reply All." The intention is that the reply include the Case Numbers, Service Request Numbers, and Thread IDs which appear in the body of the email. Failure to do so will result in the claim being closed, since the elimination of the identifying number will prevent the email from being routed correctly and the application will be rejected for failure to respond.

This instruction fails to take into consideration the ease with which errors can occur in using email client software. For example, in Apple Mail, if a user inadvertently selects text in the body of an email to which they are responding, the program only includes the selected text in the reply. This is an easy error to make when rushing or when responding to email on a device with a touch screen.

The instruction on responding to email communications should take into account these real-world user experiences. We question whether the Case/Service Numbers and THREAD ID could be included in the subject line of the email communication; including it there would go far in ensuring that information is included in responses. If this isn't possible, we request instead that the applicant be given the option to either include the entire message, or the required Case/Service Numbers and THREAD ID. We also recommend that any communications from the Copyright Office should clearly state, preferably in bold type and at the top of the email, that the Case/Service Numbers and THREAD ID need to be included in email responses.

### **Clarification of Published versus Unpublished**

As the Copyright Office well knows by comments submitted previously by the us, the Copyright Alliance, and the Coalition of Visual Artists, we have long requested clarification of the distinction between published and unpublished, particularly in the online environment. In light of the ease with which copyright registration applications may be refused, as discussed above, it is particularly

important that visual artists have a good understanding of the distinction between published and unpublished. We hope that the Copyright Office will provide guidance in the future.

### **Unpublished Collection**

The draft *Compendium* includes a note in Section 1106 which advises users that the previous unlimited collections option has been replaced by the Group Registration of Unpublished Works option. Since the unpublished collection option was so widely used by visual artists other than photographers, we're concerned that users of the *Compendium* will be frustrated by a fruitless search for instruction on the unpublished collection option. We wonder if it would be possible to reformat the note regarding the retired unpublished collection as a Section, so that it would thus appear in the table of contents and bookmarks for *Chapter 11, Registration for Multiple Works*.

### **In Conclusion**

We thank the Copyright Office again for this opportunity to weigh in on the Third Edition of the *Compendium*. We hope to continue our dialogue on how best to meet the needs of copyright holders. Please feel free to contact us with any questions or concerns.

A handwritten signature in black ink, appearing to read 'Rebecca Blake', with a stylized, cursive script.

Rebecca Blake  
Advocacy Liaison  
Graphic Artists Guild