



American Intellectual Property Law Association

April 1, 2024

The Honorable Shira Perlmutter
Register of Copyrights and Director
U.S. Copyright Office
101 Independence Avenue, SE
Washington, DC 20559-6000

Re: Comments Submitted Pursuant to Notice of Proposed Rulemaking: Group Registration of Two-Dimensional Artwork, 89 Fed. Reg. 11789 (Feb. 15, 2024)

Dear Register Perlmutter:

The American Intellectual Property Law Association (AIPLA) is pleased to offer comments in response to the above-referenced U.S. Copyright Office Notice of Proposed Rulemaking (the “Notice”) related to group registration of two-dimensional artwork, referred to in the Notice as GR2D. We commend the Office for exploring opportunities to expand access to group registration options, and we support the overarching goals and purposes set forth in the Notice regarding the GR2D option.

AIPLA is a national bar association of approximately 7,000 members including professionals engaged in private or corporate practice, in government service, and in the academic community. AIPLA members represent a wide and diverse spectrum of individuals, companies, and institutions involved directly or indirectly in the practice of patent, trademark, copyright, trade secret, and unfair competition law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property. Our mission includes helping establish and maintain fair and effective laws and policies that stimulate and reward invention while balancing the public’s interest in healthy competition, reasonable costs, and basic fairness.

We support this new group registration proposal, and we offer comments that may further improve the proposal.

First, we note that the Office does not see an equivalent need to include three-dimensional works under this option for various reasons, including that three-dimensional works require more time to design and thus fewer are produced within the 30-day publication window contemplated by the proposal. Three-dimensional works are rapidly becoming easier to produce due to advances in technology. In particular, additive manufacturing, commonly known as “3D printing,” is now available to the general public, and consumers have access to a number of relatively inexpensive 3D printers, and easy-to-use authoring software. We encourage the office to revisit this issue in the future, as the need among creators for group registration options for three-dimensional works may change in the coming years.

Second, we note that the proposal includes a number of provisions by which the Office would, in response to non-compliant submissions, decide what to register or not register, and then issue a post-registration notice to the applicant. For example, if a GR2D application includes some works ineligible for the option, the Office will remove the ineligible works and register the remaining eligible works. Similarly, if an applicant submits more than the maximum of ten works in a single group registration, the Office will register the first ten and remove the rest from the registration. Also, if the file names do not include the title as required, the Office will omit the mismatched titles and files from the registration.

We have concerns about the Office taking unilateral action to register a different set of works than the applicant submitted without first communicating with the applicant, which could prejudice the applicant's substantive rights under the Copyright Act. Particularly where the applicant submits more than ten works, the applicant may have priorities regarding which of the works to register. For example, suppose an applicant publishes a collection of twenty images, and, shortly thereafter, two of the images are infringed. Suppose further the applicant applies for group registration under this option just within the three-month period provided by 17 U.S.C. § 412(2) for all twenty images, but, through happenstance, the two infringed images are not among the first ten. If the Office contacts the applicant and coordinates on which ten images to register, the Applicant can ensure the two infringed images are timely registered to preserve the right to statutory damages and attorney's fees under Sections 504 and 505. However, if the Office merely registers the first ten, the applicant will lose those rights.

Similarly, file name and title mismatches may be the simple byproduct of mistake or inadvertence, which might be readily clarified and corrected through routine correspondence. Such mistakes will likely occur. Part of the impetus for this change is to increase access to the registration system for visual artists, for whom filing individual registrations is uneconomical due to the typically low commercial value of individual works. Such applicants are also highly unlikely to secure counsel to assist with filings, and are thus more likely to make simple and routine mistakes of this nature. Again, if the Office contacts the applicant for clarification on such matters, the applicant may be able to preserve the effective registration date, whereas if the Office makes the unilateral decision to decline mismatched files, substantive rights could be prejudiced.

We thus recommend that, when an application is non-compliant, the Office contact the applicant, as it does now with other common mistakes, to give the applicant an opportunity to address correctable mistakes and/or make strategic decisions about which works to register. This communication would also improve the likelihood that the applicant fully appreciates that the resulting registration does not cover certain submitted works. This is particularly true for *pro se* applicants, who may not fully appreciate the implications of a post-registration communication explaining that certain works are not covered by the registration. We recognize that this may increase processing times, but we believe applicants would prefer longer processing times to the loss of critical substantive rights that could have been preserved through routine correspondence.

We also note that many of the regulatory requirements are related to the current capabilities of the Office's electronic registration systems, and that expanded functionality is

anticipated in the next-generation system. To the extent these proposed regulations reflect practical or technical limitations imposed by external factors unconnected to policy considerations, we encourage the Office to be proactive in revisiting these regulations in the future, and promptly removing any limitations later obviated by improvements to its technological framework.

AIPLA again commends the Office for seeking to expand group registration options, and meeting the needs of individual creators by increasing access to the registration system. We appreciate the opportunity to provide these comments and would be happy to answer questions they may raise.

Sincerely,

A handwritten signature in blue ink that reads "Ann M. Mueting". The signature is written in a cursive, flowing style.

Ann M. Mueting
President
American Intellectual Property Law Association