

**BEFORE THE COPYRIGHT OFFICE**  
**LIBRARY OF CONGRESS, Washington, D.C.**

<b>In the Matter of Registration Modernization: Notice and Request for Public Comment</b>
---

<b>Docket No. 2018-9</b>
------------------------------

**Comments of New Media Rights**

by Erika Lee, Alexandra Inman, and Art Neill

**I. Commenting Party**

New Media Rights is a non-profit program that provides preventative, one-to-one legal services to creators, entrepreneurs, and internet users whose projects require specialized internet, intellectual property, privacy, media, and communications law expertise. These legal services include counseling online video creators on copyright law and intellectual property matters. New Media Rights is an independently funded program of California Western School of Law, a 501(c)(3) non-profit. Further information regarding New Media Rights' mission and activities can be obtained at <https://www.newmediarights.org>.

**II. Comments**

These comments are based on our extensive work with online video creator clients who face unique challenges based on the current copyright registration requirements. These comments will be divided into three parts: Part I addresses key problems with the current prohibition on group registration of published videos and suggests the way creators currently make videos can be analogized with the works currently acceptable for group registration post-publication. Part II focuses on the digital copyright registration system itself, identifies specific interface issues and proposes solutions, where appropriate, with the goal of clarifying registration requirements and aligning the language of the registration application with statutory language. Part III addresses the usefulness of the available public copyright record for future creators.

Specifically, Part I (A) explores how current video registration options are ineffective and cost-prohibitive for online video creators because there is no group registration option for published videos. Part I (B) analyzes the current list of acceptable works for post-publication group registration and analogizes online video to those works to show that online video production and consumption follow the same trajectory as other works now able to be registered as a group post-publication. Next, Part I (C) petitions the Copyright Office for a rulemaking to establish group registration of published videos and further proposes ideas on how to eliminate unnecessary challenges for online video creators, including a discussion of adopting a dynamic pricing model to address the concerns raised throughout Part I.

Part II(A) discusses the important function that the electronic Copyright Office (eCO) Registration system serves, and discusses the need to update the system to harmonize with changing trends in video and other content production. Parts II(A)(1) and (A)(2) identify two specific issues that create significant confusion for applicants, and propose considerations to handling these issues, or potential solutions where appropriate.

Part III discusses the value to copyright holders and the public of allowing updating of the Rights and Permissions field on completed registrations, as well as better linking registration and recordation records information.

These comments are filed in response to the Notice of Inquiry issued by the U.S. Copyright Office on October 17, 2018, addressing several of the Subjects of Inquiry with regards to modernizing the copyright registration process. In accordance with the Office's requests, the subjects addressed will include questions 1, 4, 5, 9, and 13. Answers to these questions will be addressed within the main sections and subsections of this comment.

**Part I (NOI Question 4):**

**A. The current video registration options are unable to effectively provide online video creators with reasonable registration options**

Online video creators produce a large amount of copyrightable content. YouTube, the most popular online video host, has roughly 576,000 hours of video content uploaded daily.<sup>1</sup> This has allowed YouTube to amass billions of videos on its site.<sup>2</sup> YouTube is only one provider, however, and the universe of online video expands exponentially when you consider those who create short and long form video for other platforms like Instagram, Snapchat, Twitch, Twitter, Vimeo, Facebook, and more.

While it is true that online video creators could use the group registration of unpublished videos option for copyright registration, this is often practically unavailable due to the content of the videos and the need to publish before registering. In order to gain viewership and maintain cultural relevance, content creators must post or publish their videos online in a timely fashion. Many of the most popular online videos include new product reviews, game or film reviews, commentary on current events, and the newer trend of filming reactions to music, movies, or current events.<sup>3</sup> The timeliness of these videos is a key part of their value, and makes it practically impossible for creators to stockpile a group of unpublished videos to register. Not unlike the writers of short online literary content, if these online video creators are required to make daily registrations, it would be prohibitive in both time and money and would “render registration effectively unavailable.”<sup>4</sup>

---

<sup>1</sup> Kevin Tran, *Viewers find objectionable content on YouTube Kids*, Business Insider (Nov. 7, 2017), [https://www.businessinsider.com/viewers-find-objectionable-content-on-youtube-kids-2017-11?utm\\_source=feedly&utm\\_medium=referral](https://www.businessinsider.com/viewers-find-objectionable-content-on-youtube-kids-2017-11?utm_source=feedly&utm_medium=referral).

<sup>2</sup> YouTube by the Numbers: Stats, Demographics, & Fun Facts (Jan. 8, 2019), <https://www.omnicoreagency.com/youtube-statistics/>.

<sup>3</sup> YouTube Trending (Jan. 8, 2019), <https://www.youtube.com/feed/trending>.

<sup>4</sup> NWU et al., Comments and Petition for Rulemaking on Notice of Proposed Rulemaking: Group Registration of Contributions to Periodicals at 4 (Jan. 30, 2017), <https://www.regulations.gov/contentStreamer?documentId=COLC->

At New Media Rights, we deal directly with online video creator clients who face these hurdles in the registration process when seeking to protect their work. These creators have often heard of the benefits of copyright registration, but they soon discover that the system does not allow them to group register their videos post-publication. Many of these creators have hundreds or thousands of videos on their channels, and produce and publish multiple videos a week. However, because of the timeliness of the videos, they do not have the luxury of waiting to upload their content to an online video service until their group registration of unpublished videos has been filed (or approved).

Currently the only option these creators have is to register the videos individually after uploading. Since there is not an option for these creators to group register videos that have already been published, it can be time and cost prohibitive for a creator to register each video that they've uploaded to an online video service post-publication, especially if they produce mass quantities of videos. As a result, most video creators that we have worked with choose not to register all of their online videos, but rather choose to register select videos once they become popular or hit a certain viewership threshold. Video creators with fewer resources are left frustrated by this single-video registration process and struggle to determine how they can most effectively protect their work.

Ultimately, creators with fewer resources opt not to register some, most, or even all of their work. Lacking registration of their work, those same creators with fewer resources become second class copyright owners: they have less ability to enforce their rights against larger companies that infringe their copyrighted work in the future. Often, regardless of the strength of their case, when creators attempt to hire a copyright litigator in the case of blatant infringement where the work in question is not registered, they find litigators refuse to take their cases.

---

[2016-0013-0003&attachmentNumber=1&contentType=pdf](#) (noting that writers who create granular or frequently updated works distributed electronically face time and cost issues if they have to register each work individually).

**B. Online videos are similar to other works where published group registration is permitted, and should be afforded the same opportunity for group registration.**

Copyright law gives the Register discretion to allow “a single registration for a group of related works.”<sup>5</sup> Congress has further recognized that requiring all works to be registered in separate applications with separate fees will impose “unnecessary burdens and expenses.”<sup>6</sup> Considering these factors, the Copyright Office has allowed for the group registration of certain published works including: photographs,<sup>7</sup> serials,<sup>8</sup> newspapers,<sup>9</sup> and newsletters.<sup>10</sup> We will briefly discuss the history of published group registrations for each of these works below to show that online videos should follow a similar path. Since the trajectory of the production and consumption of online videos is very similar to these works that already receive published group registration options, online videos should be included in the works available for published group registration as a further adaptation of the law in order to keep pace with technological and cultural advances.

**1. Photographs**

Photographs are one of the types of works that were originally considered by Congress for group registration.<sup>11</sup> This is likely due, at least in part, to the fact that there were roughly 10 billion photographs taken each year in the 1970s.<sup>12</sup> With so many photographs being taken, people who wanted to protect their photos would not efficiently be able to do so while limited to a single registration system. Importantly, it was during the congressional hearings on the

---

<sup>5</sup> See 17 U.S.C. § 408(c)(1).

<sup>6</sup> H.R. Rep. No. 94-1476, at 154 (1976).

<sup>7</sup> Group Registration of Photographs, 83 F.R. 2542 (Jan. 18, 2018)

<sup>8</sup> Registration of Claims to Copyright: Group Registration of Serials, 55 F.R. 50556 (Dec. 7, 1990).

<sup>9</sup> Group Registration of Newspapers, 83 F.R. 25375 (June 1, 2018).

<sup>10</sup> Registration of Claims to Copyright; Group Registration of Daily Newsletters, 60 F.R. 15847 (Mar. 28, 1995).

<sup>11</sup> H.R. Rep. No. 94-1476, at 154 (1976).

<sup>12</sup> Jonathan Good, *How Many Photos Have Ever Been Taken?*, 1000 Memories Blog (Sep. 15, 2011), <https://web.archive.org/web/20130116130505/http://blog.1000memories.com/94-number-of-photos-ever-taken-digital-and-analog-in-shoebox>.

proposed Copyright Reform Act of 1993 that the frustrations of photographers made it clear that group registration could provide a significant benefit to creators who produce large quantities of works.<sup>13</sup> During the hearings, photographers argued that because they were unable to predict the popularity of their photographs, they would need to register each individual photograph to afford them the highest level of protection, and that this would be a burden.<sup>14</sup> Furthermore, testimony was offered that legal professionals found the system to be unjust because it failed to adequately offer protection, and saw that clients who could not register because of the obstacles they faced in relation to time and money were left without appropriate redress and often were unable to find lawyers to pursue their infringement claims.<sup>15</sup> Photographers argued that to follow the registration requirements would “require[] a tremendous amount of time and effort to submit a copy of each image that they wished to register and that registration was financially burdensome.”<sup>16</sup> Finally, in 2001 the Register allowed for the group registration of published photographs.<sup>17</sup> At this point in history, roughly 86 billion photographs were taken a year.<sup>18</sup> Most recently, the Copyright Office suggested and later set a limitation on the number of photographs that could be registered to 750, but allowed unpublished photographs to be included in the acceptable categories for group registration.<sup>19</sup>

## **2. Serials**

---

<sup>13</sup> Registration of Claims to Copyright, Group Registration of Photographs, 66 F.R. 37142, 37143 (July 17, 2001).

<sup>14</sup> See Copyright Reform Act of 1993: Hearings on H.R. 897 Before the Subcomm. On Intellectual Property and Judicial Administration of the House Comm. On the Judiciary, 103d Cong., 1st Sess. 384-85 (1993).

<sup>15</sup> See Copyright Reform Act of 1993: Hearings on H.R. 897 Before the Subcomm. On Intellectual Property and Judicial Administration of the House Comm. On the Judiciary, 103d Cong., 1st Sess. 620-22 (1993).

<sup>16</sup> Registration of Claims to Copyright, Group Registration of Photographs, 66 F.R. 37142, 37143 (July 17, 2001).

<sup>17</sup> Registration of Claims to Copyright, Group Registrations of Photographs, 66 F.R. 37142 (July 17, 2001).

<sup>18</sup> Jonathan Good, *How Many Photos Have Ever Been Taken?*, 1000 Memories Blog (Sep. 15, 2011), <https://web.archive.org/web/20130116130505/http://blog.1000memories.com/94-number-of-photos-ever-taken-digital-and-analog-in-shoebox>.

<sup>19</sup> Group Registration of Photographs, 83 F.R. 2542 (Jan. 18, 2018).

Serials are print or non-print publications that are issued in parts and are expected to continue indefinitely, such as a magazine.<sup>20</sup> In the early 1990s the Copyright Office adopted a rule that allowed for the group registration of serials.<sup>21</sup> They were limited to those serials which were published at intervals of a week or more, within a three-month period, and were within a year of their publication.<sup>22</sup> The request for this change was made by representatives of publishers who argued that the “costs in making separate registrations for each issue constitut[ed] a significant burden.”<sup>23</sup> More recently, this industry has faced declining sales due to a shift to digital advertising and the challenges associated with adapting to a digital platform.<sup>24</sup> Notwithstanding these industry concerns, the Copyright Office is still working to accommodate these creators by continuing to allow group registration and working to make it more efficient by proposing new rule changes.<sup>25</sup> Currently the Library of Congress maintains approximately 70,000 current serial publications in their reading room.<sup>26</sup>

### **3. Newsletters**

Newsletters are the middle ground between serials and newspapers because they are published at least two times per week.<sup>27</sup> In 1995, when the internet was in its infancy, the Copyright Office adopted a rule that allowed for the group registration of newsletters that were published within a month.<sup>28</sup> Not unlike newspapers and serials, the Copyright Office has amended this rule to accommodate newsletters as they have evolved, first by extending the

---

<sup>20</sup> Library of Congress, *ISSN is for Serials*, (Feb. 19, 2010), <https://www.loc.gov/issn/issnbro.html>.

<sup>21</sup> Registration of Claims to Copyright: Group Registration of Serials, 55 F.R. 50556 (Dec. 7, 1990).

<sup>22</sup> *Id.* at 50556 (Dec. 7, 1990).

<sup>23</sup> *Id.*

<sup>24</sup> See generally Justine Jordan, *According to a New Report, Last Year was a Very Bad Year for Print Magazines*, The Fashion Spot (Aug. 9, 2018), <https://www.thefashionspot.com/runway-news/799011-print-magazines-in-decline/>.

<sup>25</sup> See Group Registration of Serials, 83 F.R. 22896 (May 17, 2018).

<sup>26</sup> Library of Congress, *About the Serial and Government Publications Division* (May 27, 2016), <https://www.loc.gov/rr/news/brochure.html>.

<sup>27</sup> See Registration of Claims to Copyright; Group Registration of Daily Newsletters, 60 F.R. 15874, 15874 (Mar. 28, 1995).

<sup>28</sup> *Id.* at 15874-75.

period of publication to three months and most recently eliminating the deadline entirely.<sup>29</sup> In contrast to serials and newspapers, the market for newsletters has not declined and in fact has found more utility in the digital age.<sup>30</sup>

#### 4. Newspapers

Newspapers are another example of a work that was originally suggested by Congress as an acceptable work to register as a group.<sup>31</sup> As with serial publications, the Copyright Office has worked recently on refining the rules for the group registration of newspapers.<sup>32</sup> This rule specified that newspapers should be distinguished from daily newsletters or other serials in order to clarify these works as different groups for registration.<sup>33</sup> Not unlike magazines and other serials, the newspaper industry has suffered a decline on a number of fronts, and a varying degree of success to adapt to the digital age.<sup>34</sup> The current number of newspapers kept at the Library of Congress is approximately 1,000,000.<sup>35</sup> Regardless, the availability and maintenance of group registration continues to provide a benefit to the newspaper industry from which video creators would equally benefit.

Despite the challenges faced by each of the industries discussed above, the Office is still working toward maintaining a reasonable and efficient method of group registering published newspapers, newsletters, serials and photographs. Video creators, whose industry has changed so

---

<sup>29</sup> Group Registration of Newsletters, 83 F.R. 22902, 22903 (May 17, 2018).

<sup>30</sup> See Graham Winfrey, *Email Newsletters: Yes, They Still Rule*, Inc. (June 30, 2014), <https://www.inc.com/graham-winfrey/why-email-newsletters-are-king.html>; see also David Carr, *For Email Newsletters, a Death Greatly Exaggerated*, The New York Times (June 29, 2014), <https://www.nytimes.com/2014/06/30/business/media/for-email-a-death-greatly-exaggerated.html>.

<sup>31</sup> H.R. Rep No. 94-1476 at 154 (1976).

<sup>32</sup> Group Registration of Newspapers, 83 F.R. 4144 (Jan. 30, 2018).

<sup>33</sup> Group Registration of Newspapers, 82 F.R. 51369, 51371 (Nov. 6, 2017).

<sup>34</sup> See generally *Newspapers Fact Sheet*, Pew Research Center (June 13, 2018), <http://www.journalism.org/fact-sheet/newspapers/>.

<sup>35</sup> Library of Congress, *About the Serial and Government Publications Division* (May 27, 2016), <https://www.loc.gov/rr/news/brochure.html>.



much over the last few decades, deserve these same considerations to modernize the registration system.

**5. Group registration of published videos is appropriate for video creators because of market changes since the 1970s and similarities with existing categories of works where group registration of published works is allowed**

Video creation and consumption has changed dramatically over the last few decades. At the time of the passage of the 1978 Copyright Act, motion pictures and video tapes were not always available in “normal trade channels.”<sup>36</sup> The home video market was just beginning to take hold in the late 1970s thanks to the consumer availability of the video cassette.<sup>37</sup> Since the 1978 Copyright Act approval, and the approval of group registrations of photos, serials, newspapers, and newsletters in the 1990s and early 2000s, video production and consumption has boomed. In the 1980s and ‘90s video cameras and editing equipment became more widely available to the public, making video production outside of television and movie studios more common. This trend continued into the 2000s, with video recording and editing equipment becoming more accessible and affordable. The first video on YouTube was posted in 2005, and today over 576,000 hours of video are uploaded onto the site each day.<sup>38</sup> YouTube is the second most visited site in the United States.<sup>39</sup> They also boast over 1.8 billion logged-in visitors a month.<sup>40</sup> With these statistics, the ubiquity of recording devices through phones and other technology, and the many other services where individuals share video including Instagram,

---

<sup>36</sup> H.R. Rep No. 94-1476, at 152 (1976).

<sup>37</sup> See Priya Ganapati, *June 4, 1977: VHS Comes to America*, Wired (June 4, 2010), <https://www.wired.com/2010/06/0604vhs-ces/>.

<sup>38</sup> YouTube by the Numbers: Stats, Demographics, & Fun Facts (Jan. 8, 2019), <https://www.omnicoreagency.com/youtube-statistics/>.

<sup>39</sup> *The Top 500 Sites on the Web*, Alexa (Jan. 8, 2019), <https://www.alexa.com/topsites>.

<sup>40</sup> Ben Gilbert, *YouTube now has over 1.8 billion users every month, within spitting distance of Facebook’s 2 billion*, Business Insider (May 4, 2018), <https://www.businessinsider.com/youtube-user-statistics-2018-5>.

Snapchat, Twitch, Twitter, Vimeo, and Facebook, it is unlikely that the popularity of online video will slow anytime soon.

It's time to adapt and update our registration process for today's video production. With the bulk of videos being produced by individual creators, registering a single video at a time in one application is not efficient or cost effective. These individuals wear many hats, often writing, directing, producing, editing, and even starring in their videos. They also have to handle marketing, accounting, and other duties of a small business. An inefficient and expensive registration process is one more burden on their creative efforts.

Furthermore, any argument that the current option of registering a group of unpublished videos is an effective solution ignores the key element of timeliness. The requirement that the group of videos must be unpublished creates a large barrier for those creators who create videos that are of a viral or timely nature, such as political or cultural commentary that happens in real time on the internet. If the creator has to withhold a video (so that it is technically unpublished for the sake of group registration), then the video loses value for both the creator and the public. Allowing video creators to register groups of published videos removes that barrier for creators because it allows them to participate in active conversations.

Video creators should be afforded post-publication group registration similar to photos, newspapers, serials, and newsletters. Allowing published videos to be group registered will further the Copyright Office's goal of encouraging registration,<sup>41</sup> and level the playing field for creators with fewer resources by providing the ability to protect their work in a meaningful way.

C. **Considerations for modernizing the current system and undertaking future rulemakings**

---

<sup>41</sup> Group Registration of Newspapers, 83 F.R. 4144 (Jan. 30, 2018).

**1. Dynamic Pricing should be considered to make copyright registration more affordable for individual video creators**

Without more affordable and efficient registration options for videos, there is a two-tiered system that arises. Timely registration gives the copyright owner significant advantages with regard to statutory damages and attorneys' fees,<sup>42</sup> and is often critical to a copyright owner's ability to enforce their rights. Currently, although video creators are subject to the same registration rules and fees as major motion picture studios, the system puts them at a disadvantage. Movie studios and media companies might have the personnel and capital to protect each of their videos individually, but the emerging creator will likely be forced to selectively choose which videos to register, leaving many of their videos without the benefits of registration. As previously discussed, these online video creators cannot rely on their ability to register their videos as unpublished collections because of timeliness issues, and relying on submitting individual applications is a prohibitively expensive and time-consuming burden.

In addition to creating obstacles to registration, this system makes it significantly more challenging for these online video creators to enforce their copyrights. By setting fees that are more representative of the work, perhaps adjusting fees for feature films versus shorter online videos, it would make the system more inclusive and make it more likely for smaller channels to register their work. Take the example of an hour and forty minute feature film, versus twenty 5-minute videos. Under the current regime, an individual video creator that wants to register twenty 5-minute videos would pay twenty times as much as a film studio to register the same amount of video. The administrative burden for the Office to process the twenty short online videos versus the single feature film is not clearly twenty times as much. In fact, the feature film might contain many previously registered works, such as music, that will need to be disclaimed.

---

<sup>42</sup> 17 U.S.C. §§ 504-504.

At the same time, the online videos in this example might contain solely original content from a single creator. Factor in the disparity of resources between a film studio with legal counsel and large budgets, compared to many online video creators who lack counsel and significant resources, and you have significant arguments in favor of adaptive pricing that levels the playing field for individual video creators.

**2. Pricing should not be focused on the goal of producing income for the Copyright Office, or even recouping the costs, but on considerations of how to put creators on equal footing with regards to their rights to registration and enforcement**

New Media Rights supports the Copyright Office moving towards an all-digital registration, provided that it is adopted in a way that further accommodates those who have a desire to have their work protected, and puts individual creators on equal footing with large media companies. This is especially true if the digital system will help to reduce costs and make the registration system more affordable, which seems to be the case based on the Office's discussion of how costly and time-consuming administration of paper applications has been.<sup>43</sup> A dynamic pricing model that significantly reduces registration costs for online video creators who currently leave most work unregistered may even significantly increase the number of works being registered, offsetting the difference in any lost revenue while also ensuring individual creators receive the same protections as large media companies.

At the very least, we propose that further discussions with economists and stakeholders should take place to determine the appropriate pricing model for videos, because these experts could suggest price points that would best match the Office's competing goals of providing accessible registration while also generating income and recouping costs. Regardless of the model that is adopted, the Office should strongly consider a need-based fee reduction for those

---

<sup>43</sup> Registration Modernization, Notification of Inquiry, 83 F.R. 52336, 52338-39 (Oct. 17, 2018).

who can demonstrate they cannot afford the registration costs, but want the benefit of registration to protect their work. We have seen in practice emerging creators who have had their work infringed by much larger media companies, and are unable to fully enforce their rights against these companies due to failure to timely register their works.

**3. The Copyright Office should hold a rulemaking to consider adopting a group registration for published video content.**

Based on the discussion so far, we recommend that the Copyright Office open a rulemaking to adopt a group registration for published video content. Without an option to register a group of published video content, online video creators will continue to be deprived of the advantages of group registration and ultimately be neglected by the current boundaries of the copyright registration system. In responding to the proposed rule, New Media Rights petitions the Copyright Office for a rulemaking to adopt a new rule for a group registration option for published videos. It is our position that registration is effectively unavailable for online video creators because using the standard application to register each individual video, which is generally their only option, is cost prohibitive and burdensome given the volume of work produced and uploaded. As discussed, this is the most efficient method to accommodate the ever-growing needs of the online video community, encourage registration, and allow creators to exercise their statutory rights to enforce their copyright if they should find themselves in that position. This update to the registration system will better reflect the current technological and cultural reality.

**Part II (NOI Questions 1 and 5):**

**A. There are various issues with the Electronic Copyright Office (eCO) Registration System that either prevent self-registration or cause confusion: Responsive to Questions 1 and 5**

The Electronic Copyright Office (eCO) Registration system has allowed creators to register their works with more ease than by submitting via a paper application. However, New Media Rights has noticed that there are portions of the online standard application for motion pictures and audiovisual works that could lead an applicant to complete the application improperly, such as language that is inconsistent or unclear.

The current eCO registration system, and any future iterations of the system, would benefit from an update to some of the language and terms used to classify components of the work to be registered. New Media Rights has worked with video creators who register their videos, and while the system provides a significant benefit to those who want to register their works, there is room to improve the process to improve accuracy of registrations and to avoid crucial mistakes. We will identify a few of the key issues that we have noticed having used the system to assist our clients in registering audiovisual works, and propose solutions where appropriate.

1. **The Authors page needs clarification and an explanation of how it interacts with the Limitation of Claim page**

The Authors page is a two-part process: first, you must enter the name of the author and indicate whether the work is a work made for hire. Once those entries are saved, a sub-page appears and asks you to identify the author's contribution (screenshot below).

**Authors**

Check the appropriate box(es) to indicate the author's contribution.

\* Author Created

Entire Motion Picture [Help](#)

**OR**

Production [Help](#)       Direction [Help](#)       Script/Screenplay [Help](#)

Cinematography [Help](#)       Editing [Help](#)

Other:  [Click here for suggested "Other" text](#)

405-410 of title 17 of the United States Code authorize the Copyright Office to collect the personally identifying information requested on this form in order to process the application for copyright registration. By providing this information you are agreeing to routine uses of the information that is filed by 17 U.S.C. § 705. It will appear in the Office's online catalog. If you do not provide the information requested, registration may be refused or delayed, and you may not be entitled to certain relief, remedies, and benefits under the copyright law. [Take Our Survey!](#)

It is unclear why the Office would need to try to identify the author’s contribution in this way. When the author submits a work for registration, and disclaims all elements that are pre-existing, the universe of the work registered should be well-defined. Asking whether the author did “Production” or “Editing” can simply introduce confusion for the user, and we found created some confusion when advising a client. The Office should consider whether this is necessary or even useful data.

2. **The Limitation of Claim page is inconsistent with statutory language and does not account for motion pictures and videos that have multiple and varied components**

The Limitation of Claim page is an important part of the application, and tries to appropriately account for those elements of a work that are not able to be registered, such as works in the public domain or previously registered works. However, from the perspective of a video creator or a documentarian, one key difficulty in using this system of checkboxes is that there are often many components to the video that are difficult to classify.

For example, one of the exclusions that can be selected is “preexisting music.” This term poses some confusion because the music used in a video is made up of multiple parts, mainly the composition and sound recording. If a creator created a new sound recording of a pre-existing

composition (a cover song) that is included in their video, there is not really an effective way for the individual to note in the “Material Excluded” category that the composition is pre-existing, but the sound recording is new and original. In addition, if a video creator has used multiple musical works in their video, the video creator may need to disclaim some but not all of the music, which the current form does not handle well. To further clarify, some of the music included may be original works owned by the creator, and some may be pre-existing public domain works, such as the example of a children’s video that may contain both original and public domain songs. Users of the eCO service may just try to use the “other” category to disclaim all relevant materials, but that doesn’t allow for a very useful database record on the back end. The Office should either: (1) build a more appropriate system that can account for more surgical disclaiming of pre-existing works, as opposed to complete disclaiming of categories of works; or (2) consider allowing applicants to describe in a narrative fashion what they are *not* claiming, with the ability to provide relevant previous registration numbers where necessary. Having a more flexible, narrative categorization system instead of using checkboxes might reduce the user confusion that arises, but that said, a narrative option may provide a less searchable overall dataset.



**eCO Navigation Tips**

Links	Completed
Type of Work	✓
Titles	✓
Publication/Completion	
Authors	
Claimants	
Limitation of Claim	
Rights & Permissions	
Correspondent	
Mail Certificate	
Special Handling	
Certification	
Review Submission	

**Limitation of Claim**

<< Back ||| Continue >>      ||| Save For Later |||

Complete this screen to [limit your claim](#) if this work contains or is based on previously registered material, previously published material, material in the public domain or material not owned by this claimant. The purpose of this section is to exclude such material from the claim and identify the new material upon which the present claim is based.

**If your work does not contain any preexisting material, click "Continue" to proceed to the Rights and Permissions screen.**

**Material Excluded:**

Script/Screenplay

Preexisting music

Preexisting footage

Preexisting photograph(s)

Other

Click [here](#) for suggested 'Other'

**Previous Registration:**

1st Prev. Reg. #:

Year:

2nd Prev. Reg. #:

Year:

**New Material Included:**

All other cinematographic material

Production as a motion picture

Additional new footage

Revisions/additions to script

Other

Click [here](#) for suggested 'Other'

Privacy Act Notice: Sections 408-410 of title 17 of the United States Code authorize the Copyright Office to collect the personally identifying information requested on this form in order to process the application for copyright registration. By providing your copyright claim as required by 17 U.S.C. § 705, it will appear in the Office's online catalog. If you do not provide the information requested, registration may be refused or delayed, and you may not be entitled to certain relief, remedies, and benefits. [Take Our Survey!](#)

In addition to a narrative-style of disclaiming, the “New Material Included” category seems to be misplaced. If the user disclaims content, presumably the rest of the protectable audiovisual work is original content created by the author, so the “New Material Included” category does not seem necessary or relevant *unless* the work being registered is a new edition of a previously registered work (which is a very specific subset of content). If that is the intent of the “New Material Included” section, a better user process might be to simply prompt the user as to whether this is a new edition of a previously registered work, and then to ask those questions.

In summary, some filmmakers, particularly documentarians, might have a long list of material he or she needs to disclaim. Since there are multiple components to both documentary films and other types of audio-visual content, allowing an applicant to upload an organized list or spreadsheet of disclaimed material or providing a larger space to make a narrative disclaimer would be improvements to the application system.

Another specific issue with the disclaimer page is that there are certain terms that are not clearly defined, and might include terms that cross over with other definitions, making it difficult to determine how to classify disclaimed material. For example, under the “New Material Included” category, there is an option titled “All other cinematographic material.” The term

“cinematographic” is problematic because it is not clearly defined. An applicant must click through multiple help links on the page before they can even find the word “cinematography” and a definition of the term. In addition, using the word “cinematographic” to describe all other original material in the audiovisual work is concerning since “cinematography” or “cinematographic material” are not terms used in the Copyright Act or specifically identified subject matters eligible for copyright protection under 17 U.S.C. §§ 101-102.

The issues we have identified here are ones that can lead to missteps in the registration process. Our observations and suggestions above as to how the system could be improved can be applied to the current or future eCO registration system.

### **Part III (NOI Questions 9 & 13)**

The Office asks whether users should be able to update the Rights and Permissions field in completed registrations (Question 9), as well as whether and how registration and recordation records information should be better linked (Question 13). At New Media Rights, some of our most common questions are how to locate the owner of a decades-old copyrighted work. This often follows questions about whether the work was in the public domain. Even if a work may be in the public domain, it can be difficult to say with certainty that a work is in the public domain as we’ve pointed out in numerous proceedings.<sup>44</sup> Records for works registered before January 1, 1978 are not available online, so the only ways to gain access to these accurate and official records of copyright renewals are to either:

- (1) Go to the Copyright Office in person, in Washington D.C., and research their records using paper card catalogs; or

---

<sup>44</sup> See Comments of New Media Rights to the Request for Comments on Department of Commerce Green Paper, Copyright Policy, Creativity, and Innovation in the Digital Economy, Docket No. 130927852-3852-01 (November 13, 2013), <http://bit.ly/2FxoP2I>; see also New Media Rights letter to the Copyright Office on Digitization of Copyright Office Records, <http://bit.ly/2TNte5t>.

(2) Pay the Copyright Office hundreds of dollars an hour to search the copyright records for the original copyright and the renewal notice.

We continue to support increased digitization of records to fuel usage of public domain works, but also because it can allow new creative and licensing opportunities as well. Users benefit from increased information about ownership and chain of title because they can better identify whether they can reuse the work in the public domain, or if needed, track down and pay the copyright owner a licensing fee.

For example, making the Rights and Permissions field of the registration application publicly available would help potential licensees identify appropriate copyright owners through the online Copyright Public Records Catalog. One issue that arises when using the online public record to search for copyright owners is that the online public record currently does not list any public-facing contact information for the copyright owners. Rather, simply the name of the claimant or owner appears. If the Rights and Permissions field of the registration application were made publicly available, it would improve the record as a centralized location for potential licensees to find adequate information about who to contact for a license. At the very least, asking copyright owners to submit in their registration application an optional public-facing contact email or phone number for licensing purposes would improve the usefulness of the public copyright record for the average individual, and could even facilitate new licensing opportunities.

Another issue that arises when searching the public record is that the initial search results list is not clearly organized, and it can be confusing to a lay person to determine the type of works that are listed. If a user were to search for the title of a popular book without setting any filters, the catalog generates a list that might have more than 75 to 100 pages of works with similar titles or authors, which the user must then try to sift through to try to find the correct

work. Part of the reason this occurs is because it is not clear to the user at the outset that there are search filters available. In order to assist an individual using the search function to generate a more adequate list of works, the user should be able to set search filters upfront (without moving to a separate webpage). There is currently a method to set search filters by the item type (Text, Music, Motion Pictures, etc.), but to set these filters the user must (1) click a button located on the far right side of the original search page that navigates to a new webpage; (2) set the search filters by selecting the item type; and (3) click “set search limits,” which navigates the user back to the original page. Even after setting search limits, it is still unclear to the user whether the search filters were actually set because there is no indicator on the original page of any applied filters. Reducing the number of steps it takes to set these search filters would make it easier for the average individual to navigate the online public records catalog. De-cluttering the search homepage and making the search filters available on the original/initial search page (in a check box format or otherwise) would improve the usefulness of the public record because it would allow the user to generate a more narrow, focused list of the titles for which they are searching.

When users can more easily find and identify copyright owners, copyright owners are more likely to collect licensing fees, and creative projects are more likely to move forward. We have experience with projects that die on the vine because they can't figure out questions around ownership. Allowing copyright holders greater ability to update the Rights and Permissions field on completed registrations, and users access to more and better linked registration and recordation record information, will encourage new creative and licensing opportunities.

### **Conclusion**

Moving forward, efforts to modernize the registration system must focus on better meeting the needs of the individuals and entities that produce video content today, with an eye toward building a system that can adapt as video production and distribution continues to evolve.

Modernization should include permitting group registration of published videos, fixing current issues that exist with the eCO system, and enhancing the ability of copyright holders and users to create and access public information. The result will be a more equal playing field for copyright holders, a more usable registration system, and increased creative and licensing opportunities.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Erika Lee". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

---

Erika Lee, Alexandra Inman, and Art Neill | New Media Rights  
1855 1<sup>st</sup> Ave., Suite 102 | San Diego, CA 92101  
erika@newmediarights.org, art@newmediarights.org | [www.newmediarights.org](http://www.newmediarights.org)