

January 30, 2017

**Submitted By Online Submission Procedure**

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Group Registration of Photographs  
Submitted on behalf of The Coalition of Visual Artists

Response to Notice of Proposed Rulemaking (NPRM)  
(CFR: 37 CFR Parts 201, 202) (Docket No. 2016–10)  
Federal Register Number: 2016-28706, Vol. 81, No. 231 (December 1, 2016)

**1. INTRODUCTION**

The undersigned organizations and advocates representing visual artists including photographers, videographers, illustrators, artists and designers as well as their licensing representatives (collectively referred to as “The Coalition of Visual Artists”) would like to thank the Copyright Office for addressing the registration categories and rules for registration of visual works. We agree that procedures and rules for online registration need to be updated. Registration categories allowing visual creators to register multiple works in one registration are essential for us to make a public record of the ownership of our works and encourage us to register more works. The livelihoods of professional visual artists are being eroded through piracy. As registration is a requirement for the enforcement of copyright, registration practices that are adapted to



the unique way visual artists create works in contrast to other authors are essential. The Group Registration categories serve the needs of visual creators who often create large numbers of individual works for one project or client. We are grateful for this unique opportunity to offer our comments to the Notice of Proposed Rulemaking for Group Registration of Photographs.

We appreciate the new rulemaking documents and all of the updates and additional information now available on the website. We look forward to more changes and modernization that will better enable the Copyright Office to fulfill its directive to benefit all Americans, and improve the daily workflow and tasks of the staff. If the Copyright Office is making changes to the Group Registration category “to encourage broader participation in the registration system, increase the efficiency of the registration process, and create a more robust record of the claim,” we have a number of suggestions to achieve these goals and hopefully motivate more visual creators to register.

In order to address all of the topics and questions in the NPRM, we have sorted them into separate topics and included the applicable text from the NPRM. At the end of this document, we will offer our ideas and solutions separate from the particular rulemakings of the NPRM that will better serve visual creators working in today's marketplace.



The Coalition of Visual Artists is comprised of visual art organizations, including the American Photographic Artists (APA), American Society of Media Photographers (ASMP), Digital Media Licensing Association (DMLA), Graphic Artists Guild (GAG), North American Nature Photography Association (NANPA), National Press Photographers Association (NPPA), Professional Photographers of America (PPA), the PLUS Coalition (PLUS), and Shaftel & Schmelzer forming an ad hoc committee to work on these issues and other legislative issues of concern to visual creators. We share the common goal of working together to address the economic, legal and professional concerns of visual creators to improve the process of, and increase registration of visual works.

## **SUBJECTS OF NOTICE OF PROPOSED RULEMAKING**

Text in blue is excerpted from the Notice of Proposed Rulemaking

### **2. APPLICATION REQUIREMENT FOR PUBLISHED GRPPH AND UNPUBLISHED GRUPH; NEW GROUP REGISTRATION OPTION FOR UNPUBLISHED PHOTOGRAPHS**

(Online registration procedure for groups updated.)

*The Office is proposing to create, for the first time, an equivalent group registration option for unpublished photographs. This new procedure will be known as the “group option for unpublished photographs” or “GRUPH,” and it will replace the option that currently allows photographers to register their works as an unpublished collection.*



The photographic community applauds this proposed GRUPH change in group registration. The elimination of the term “Unpublished Collection” from the registration process clarifies to the courts and to the public that each image in a group registration has the same protection and remedies as an individually registered image.

We thank the Copyright Office for the establishment of the GRUPH option, and elimination of the term “Unpublished Collection.” This will attract many photographers and artists who may have been previously discouraged from registering works. Some Courts have misinterpreted the classification of an unpublished collection of works for the award of statutory damages, conflating the term “collection” with “collective work.” As a result, if multiple works in a collection were infringed, there might have been a lesser potential for recovery than if they had been registered separately.

Photographers need this GRUPH category of registration because the current market conditions under which they work, in many cases, demand that the photographer’s entire work output be delivered to the client immediately after creation, in some instances even before the photographer has reviewed the completed body of work. In addition to the nearly instantaneous delivery requirements of working in a digital environment, clients’ use of such delivered visual material may expand or change after delivery. Visual artists need the benefits of registration for their unpublished work in order to be fairly compensated if the works are used beyond agreed upon licensing terms.



The entire visual arts community favors this new registration change and welcomes it, but the Copyright Office needs to be reminded that illustrators, designers and other visual creators also work under the same or similar marketplace conditions as photographers. Preliminary concepts, layouts, drafts, fully realized images, and finished art are often delivered at different times to a client in the process of creating an assigned project, either in digital format or as finished art in traditional media during the working process of a job. The client returns some of these works to the creator, but many are retained by the client and are sometimes repurposed for different or unrelated projects. This leads to infringing usage whereby the creator needs those images protected in the same way that photographers will be protected by the GRUPH registration.

We also ask the Copyright Office to expand GRUPH and offer a group registration category to all visual works, including without limitation, illustrations, video clips, textile arts or visual art in any medium.

### **3. ELIMINATE PAPER REGISTRATION FOR GROUP REGISTRATION FORMS; MOVING FROM PAPER TO ONLINE**

*The proposed rule will require applicants to submit an online application, rather than a paper application.*

*The Office invites comment on this proposal, including whether it should eliminate the paper application for these group options, phase them out after a specified period of*



*time, or continue to offer them for photographers who prefer to use the paper-based system.*

The photographic and visual arts community endorses the move from paper to online copyright applications. Computers and electronic media have become an integral part of creation and delivery of photographic images as well as illustration, graphic arts, and decorative arts. Even those photographers and visual artists who work in a “traditional manner or use traditional materials or skills” at some point reproduce or scan and often deliver their work via electronic means. Delivering images via the internet has become the norm for the majority of photographers and other visual artists.

Mobile devices are now miniature computers that can access camera output and finished files, and transmit while on the move or from remote locations. In most instances, registration could also be accomplished using mobile devices. We encourage collaboration between the Copyright Office and third parties such as Adobe, (developers of software such as Photoshop, Illustrator, LightRoom and Bridge), to develop apps to make registration fit seamlessly with visual artists’ workflow. This will decrease the burden on the Copyright Office as the data needed for registration will be included in the deposit delivered. There are services available for individuals who don’t use computers and who could, for a fee, find assistance for online application and deposit delivery.



Since there are still creators with vast archives of works which are not digital, we recommend phasing out paper registration after a specified period of time—perhaps 2 years—to allow those creators time to catalog, archive and register their works. There should always be a process for certain artists to seek exceptions to digital registration based on particular needs and circumstances.

If it costs more for the Copyright Office to process paper applications than electronic applications, the Copyright Office could charge a higher fee for paper applications. The Copyright Office already charges a higher registration fee for single registrations submitted on paper by mail. A higher registration fee for paper submissions may possibly reduce the number of applicants who use paper registrations and act as an incentive for increased electronic filing.

*The new online application for GRPPH will replace the pilot program that allows applicants to register groups of published photographs with the “standard” online application. (The pilot program for photographic databases will remain in effect for the time being.)*

*Based on this experience, the Office issued an interim regulation in 2011 that established a pilot program allowing applicants to register groups of published photographs and photographic databases with the standard online application. (NPRM page 5)*



We support creating a new online application form developed especially for published groups GRPPH. We believe the creation of a new application form specifically designed for registration of images and listing the deposits is much needed. And the new form should address the current problem on the “Limitations of Claim” page. This page directs an applicant to identify “previously published material.” Once identified, the Copyright Office form directs that material to be excluded from registration. This is in error, as there is no basis on which to exclude material that has been published before registration so long as the applicant owns both. This error does not appear on the paper form.

The above issue is one among many. The current online application form has always been difficult for photographers and other visual creators to navigate primarily because it is an all-purpose form, and secondly because as the applicant proceeds through the screens in the eCO website, the applicant finds that previously filled-out pages do not mesh with later pages in the application. This creates confusion and forces an applicant to backtrack in the online form application. Improvements to the application could include a one or two page scroll that would not require backtracking in order to fill out the required information, or a form with fields that self-populate from an Excel spreadsheet or other database.

Once again we recommend that the group registration option be applicable to all forms of visual works, and not limited to photographs. Since all forms of visual art, whether





still, motion, illustration, or textile designs are submitted in digital format, it should not make any difference if the primary media is photography. Many visual art works now incorporate mixed media and having a registration procedure limited to still photographs is arbitrary and not in keeping with the way many visual artists work.

Simplifying and tailoring the application process for visual works would further increase participation in registration by all visual creators.

The pilot program has been successfully used by many individual members of the organizations in our Coalition and we encourage that it be open to all visual artists and made a permanent method of application.

Further, as noted in our response to Question 10, regarding Group Registration of databases, we disagree that all registrations should be limited to a GRPPH or GRUPH. As more fully outlined, there will always be a need for licensing representatives to protect the images that are widely distributed for potential use. Regardless of these changes in registration, visual artists will not begin registering material overnight. Since the database registrations that were devised by the Copyright Office on behalf of image libraries would exclude previously published visual works, those visual artists who register can elect not to include those works in the database registration. It makes sense to maintain this form of registration in tandem with the new group registrations because it has been so critical in giving many image libraries the ability to enforce



usage fees as a means of providing payment to individual creators from those who use their visual imagery without licensing. We believe any “discouragement” of database registration will only encourage those who systematically use images without permission to attack the validity of the database registration in order to avoid paying reasonable usage fees.

**4. SUPPLEMENTARY REGISTRATION RULEMAKING** (Complexity of registering and correcting registration.)

*Applicants will be required to submit an online application in order to correct or amplify a registration for a group of published photographs, unpublished photographs, or a photographic database.*

*This online-filing requirement will also apply when correcting or amplifying a basic registration for works registered under the pilot program for group registration option for photographic databases. Comments concerning this proposal should be submitted as part of the CA Rulemaking, and should not be submitted as part of this rulemaking on group registration of photographs.*

*The new group option for unpublished photographs will help mitigate this problem by encouraging early registration. The Office strongly encourages photographers to register their works before they are published (i.e., before any distributions have occurred), because this avoids much of the confusion concerning publication and the treatment of published works.*



We approve of allowing online corrections and amplifications of existing registrations.

However, early registration is not the solution for visual creators and will not necessarily reduce the need to file corrections. Early registration of unpublished works would include registering works that may be published in the future. If the creator has to change, revise or edit the works that are later chosen for publication it will necessitate submission of a correction for additional cost to reclassify the published works previously registered within that unpublished group as derivative published works. The end result will require at least two registrations. The Copyright Office is encouraging early registration as unpublished works so as to include all works for one job/project/client in one registration; this will result in an expensive correction fee (\$130) or second registration. A creator may not know when unpublished works will be published in the future, and may not even know if or when works actually are published. There could be weeks, months or even years between publishing dates. Implementing any Rule that would either intentionally or unintentionally necessitate filing one or more subsequent registrations or corrections would drive up the costs of registrations, consequently deterring visual creators from registering their works.

IP attorney Scott Alan Burroughs (Doniger/Burroughs, Venice, CA) represents textile designers, graphic artists, photographers, and animators. He reports that artists are severely burdened by the cost of defending technical errors in their registration during copyright infringement cases. He notes that perhaps 5%-10% of his clients receive a



notice from the Copyright Office regarding errors in their registrations. The common errors include the registrant's failure to check the box on the form indicating a derivative work, publication issues, misstating the name of the employee who created the work, and misstating the company name. These sorts of errors should not invalidate registrations, and shouldn't require subsequent filing or correction costs. Despite the fact that artists' registrations often contain only minor errors, infringers challenge those registrations in court in almost every case, seeking to exploit a technical error in a registration to evade liability for copyright infringement. This imposes a severe burden not only on the artist, who has to expend significant attorneys' fees to address these technicalities, but also the Copyright Office, who must address issues caused by Form CA in situations where the error is immaterial to the copyrightability. It would be of great benefit to artists for the Copyright Office to make clear in the instructions that technical errors (i.e., errors that do not go to originality or ownership) will not invalidate a registration or preclude an artist from pursuing a claim. This clarification would bring the Copyright Office instructions in line with the spirit and letter of the Copyright Act.

Specifically, Section 411 of the Copyright Act was amended under the Pro-IP Act of 2008 to ensure that an error in a registration does not necessarily disqualify the registration.<sup>1</sup> A court may not dismiss a case for invalid registration if the error was unintentional, or immaterial to copyrightability (i.e. originality or ownership).<sup>2</sup>

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<sup>1</sup> Pro-IP Act

(a) LIMITATION TO CIVIL ACTIONS; HARMLESS ERROR.—Section 411 of title 17, United States Code, is amended—



In some instances, copyright applicants may receive a new effective date of registration based on the last filing date, which may be a correction of technical errors in filing.

While a Form CA is supposed to supplement, and not replace the initial registration, this issue has created confusion in the courts. As discussed in Section III.C.1, the rights holder would have to file multiple corrections or supplementary registrations if the deposits were limited to 750 images for one registration. The proposed new rules would also require the supplementary registrations to also be separated by:

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“(b)(1) A certificate of registration satisfies the requirements of this section and section 412, regardless of whether the certificate contains any inaccurate information, unless—

“(A) the inaccurate information was included on the application for copyright registration with knowledge that it was inaccurate; and

“(B) the inaccuracy of the information, if known, would have caused the Register of Copyrights to refuse registration.

“(2) In any case in which inaccurate information described under paragraph (1) is alleged, the court shall request the Register of Copyrights to advise the court whether the inaccurate information, if known, would have caused the Register of Copyrights to refuse registration.

“(3) Nothing in this subsection shall affect any rights, obligations, or requirements of a person related to information contained in a registration certificate, except for the institution of and remedies in infringement actions under this section and section 412.”

<sup>2</sup> Corrective copyright registrations that eliminated certain errors in initial registration did not affect earlier date of initial registration, photographer's status as author, or protection of copyright in subject works; thus, original certificate could establish photographer's prima facie status as author and copyright holder, and subsequent corrective registrations related back to, and corrected, classification of images, registering them and protecting them as individual works as originally intended. *Gener-Villar v. Adcom Group, Inc.*, D.Puerto Rico 2008, 560 F.Supp.2d 112 . Copyrights And Intellectual Property 50.25



- Publication status
- Publication year
- The person or people who created the work
- Nation of first publication

Filing multiple corrections at \$130 each and/or new registrations at \$55 each would become extremely time consuming and costly for the visual creator, either as a sole proprietor, small business or even a large business forced to employ help to deal with multiple corrections.

If a creator registers a work or multiple works, and then later mistakenly or purposely registers it again, a court may find that the original effective date of registration is invalid and that the later date applies. This can invalidate the availability of statutory damages and attorney fees/costs if the effective date of registration is pushed to a date after infringement commenced. Some creators try to protect their works by registering early and unknowingly include a mix of published and unpublished works in an unpublished group because of their difficulty determining whether the work was published or not, as well as the requirement to separate works by year of first publication which they rarely know. Then, they later err on the side of caution by re-registering the published works.



This is not a deliberate error, but rather an attempt to satisfy the current registration requirements that don't apply to the actual business practices of image creation.<sup>3</sup>

Many photographers find it difficult to parse the published/unpublished dichotomy and simply register a group of works together. These groups often include a mix of published and unpublished works in an unpublished group, which should not be an issue given that the deposits for visual arts are the same regardless of their published status.

## 5. FILING FEE

*The filing fee for registering groups of published or unpublished photographs will be \$55, which is the amount the Office currently charges for a group of published photographs submitted with an online application under the pilot program. ... and the fee for submitting a paper application at \$65.*

*Once the Proposed Rule has been implemented, the Office will monitor the cost of processing groups of published and unpublished photographs to determine if future fee adjustments may be warranted. The Office will use this information in conducting its next fee study.*

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<sup>3</sup> Misrepresentation of dates of creation and publication in application by management consulting business did not invalidate copyright registration for 1998 version of survey, even if they were knowingly made, since survey would have been copyrightable regardless of when it was created and published. *Gallup, Inc. v. Kenexa Corp.*, C.A.3 (Pa.) 2005, 149 Fed.Appx. 94, 2005 WL 2271271, Unreported. Copyrights And Intellectual Property 50.20



We appreciate fees being kept at the \$55 level for online registration and \$65 for paper application for registering the GRPPH and GRUPH group; however it appears that the current fees are remaining the same because the Copyright Office intends to limit the number of images allowed in a GRUPH and GRPPH group registration to no more than 750. We feel that a 750 image limit would cause photographers an undue burden both financially as well as time spent registering images. A new image limit will cost considerably more money in registration fees and create an unnecessary and arbitrary impediment to registering works as part of a visual artist's natural workflow.

Currently, a news, wedding, stock, or event photographer may register a group of up to 7,500 images for a single event in a GRUPH registration. An assignment may require shooting images with no time to edit or limit the number of visual works before delivery to the client. Under the proposed rulemaking, the GRUPH application process would require ten registrations at \$55 each for the new prohibitive cost of \$550 for one assignment. A registration fee is not a budget item that can be passed on to the client; it must be absorbed by the photographer as an expense against profit. We strongly believe such a limitation will only serve to discourage rather than encourage registration.

While we can understand the concern about registration fees for large groups, the arbitrary cut off of 750 is unworkable and contrary to the way most photographers and some other visual artists work. We recommend that the Office monitor the actual cost of





processing registrations without imposing a 750 image limit to determine if there is any substantial increase in the workload of Office staff involved in the registration process. We believe that incremental differences in the number of works may not significantly increase that workload. Monitored processing might also indicate that paper registrations and deposits take considerably more time and effort to process than do online registrations with deposits that conform to Copyright Office software. We are willing to work with the Office to find ways to streamline applications by working with software systems and deposit sizes that will be more efficient.

Alternatives to a 750 image limit include tiered registration fees based on the number of images registered in each group. An internal audit could suggest lower fees for creators registering up to only 10, 25 or 50 images in a group registration. Rates for larger numbers of works in a group could be staggered at units of thousands or where numbers (from an internal audit) indicate a measurable increase in Office workload.

Another alternative is a sliding-scale subscription model for registering and processing large deposits of images, based on internal audits of processing costs.

By monitoring these group registration costs we hope the Office could expand group registration to other forms of visual works.

## 6. ELIGIBILITY REQUIREMENTS FOR GRPPH AND GRUPH, (Photographs that



may be included in the Group.)

**NUMBER OF IMAGES IN A GROUP REGISTRATION** (Proposed limit for photos to 750.)

*Applicants will be allowed to submit no more than 750 photographs with each claim that is submitted under GRPPH or GRUPH.*

*If the applicant chooses to provide publication information on Form GR/PPH/CON, the applicant may include up to 750 photographs in the claim. By contrast, if the applicant provides publication information using any other method, there is no limit on the number of photographs that may be submitted.*

*If the basic registration covers 750 photographs or fewer, the applicant will be able to correct or amplify the registration record with a single supplementary registration submitted through the online system. But if the basic registration was issued before the Proposed Rule goes into effect, and if that registration covers more than 750 photographs, multiple supplementary registrations may be needed to correct or amplify the record for those works.*

We are aware that the Copyright Office is seeking to reduce the cost of registration deposit examination time of Groups, which includes staff time necessary to examine and contact registrants regarding errors in statements or deposits.

Creators depend on a reasonable copyright registration system to protect their created works and to enable them to enforce their rights against infringement. However, no



registration regimen can succeed unless it takes into account the practices of each particular type of creator. In order to help the Office understand the way photographers create works, The Coalition of Visual Artists conducted a survey of professional photographers to collect data on numbers of photos shot per job or assignment, as well as their registering habits and the numbers of photographs that they would typically include in a registration. **The results of that survey are added at the end of this document.**

The results from our survey clearly indicate that the limit of 750 images is unworkable for the majority of photographers, and presently 75.69% of photographers responding to our survey do not currently register their work. It would be unrealistic for photographers to register groups limited to 750 images at 3-month intervals as recommended by the Copyright Office, considering the average quantity of images produced by photographers during that time period is closer to 9000 (Survey Question 6, the largest response for monthly images created @3000 x 3 months). For many photographers, even a single shoot would exceed that limit, which undermines the purpose of the group registration options (Survey Question 4).

Photographers stated clearly in our survey that they would like to register all images created for a particular job/project or client together, and that the number of images created for one job/project normally exceeds 750. The proposed limitation would require



numerous filings for each wedding, news or event, sports, lifestyle or stock shoot and other commercial assignment or project.

"With the current definitions and registration process, the idea of limiting registration to 750 images is completely unworkable. I just completed my registrations for the 4<sup>th</sup> quarter and had shoots on four days on three separate weekends with more than 1500 images on a single day and more than 750 of those images were published. The number actually creating revenue is much smaller, and in one case the proceeds went to charity, but they were still published and still needed copyright registration. The new process has potential to require at least four registrations for the same quarter's work rather than a single registration due to the proposed limit change." —Eric Bowles Bowles Images, nature photographer and NANPA member.

"It's been well established that the overly complicated process of registering photographs has led the majority of professionals to shy away from taking advantage of the nation's copyright law. That is unfortunate and, quite frankly, needs to change. As an educator and photographer, I suggest a straight forward simplification of the registration process. Most notably, there should not be any limit on the number of photographs that can be registered as part of a group registration. By limiting group registration to 750 images, you will be driving up the costs associated with registering a large volume of work and that will only



serve as a further deterrent to registration. Based on the volume of imagery I produce on my assignments this is an arbitrarily low number that does not map to my work reality. Additionally, I feel strongly (as do many of my colleagues) that any changes to the copyright law should take into account the elimination of “published” and “unpublished” categories. Since all the images are offered the same protection under the law once they are registered, I see no logical reason why there needs to be a distinction. Eliminating the distinction will serve as an impetus for photographers to register their work.” —Todd Bigelow, ASMP Member and Educator

“I have always tried to set an example by having good business practices. Those business practices include regular group registration of unpublished images before they are published. Limiting the number of images to 750 in a registration would be devastating since I can shoot 5,000 images in a week. It would create a situation where I and many photographers would not be able to register our work anymore.” —Michael Grecco [michaelgrecco.com](http://michaelgrecco.com), director and photographer, APA member

Based on the data and the comments we collected, it is clear that limiting the number of images in a registration will not have the desired effect of increasing registration. We suggest that the Office consider other alternatives that will encourage registration while at the same time not make unreasonable demands on the registration examiners.



Other than the objection to the arbitrary 750 image limit, we also have suggestions on how to improve the GR/PPh/CON form, to make the registration process more efficient for both the registrant and examiners.

The GR/PPh/CON form is outdated, and should be updated and modernized along with the GRPPH and GRUPH group registration forms to reflect the current needs of photographers. We urge the Copyright Office to create an entirely new form for listing the deposit files. A simple industry standard file format such as a list of comma-separated values [CSV] could easily be assimilated into the Copyright Office Database. Many common software applications are capable of reading and writing CSV files. For example, Microsoft Excel is a common and easily accessible program that can import and export CSV files. The Copyright Office could create a formatted Excel spreadsheet with columns for all the necessary information about each image file, including publication status and publication information. This would not only simplify registration, it would also simplify processing the application within the Copyright Office. Visual creators could download the Copyright Office-formatted Excel spreadsheet; and complete it before initiating an application on eCo and then upload the Excel file during the registration process. This would standardize the information provided and reduce errors by registrants. Any other registration information could be downloaded from the Copyright Office website along with the Excel file, and the registrant could complete all of the necessary registration information offline before uploading it all to eCO.



Standardization of forms and easily corrected forms would increase both the Copyright Office and registrants' efficiency, and those efficiencies would translate into saving time and money for both, as well as fewer and less cumbersome corrections.

In the Filing Fee topic, we addressed the problem of arriving at an equitable fee schedule for large deposits that would not only satisfy the expense of the Copyright Office's processing of images, but also maintain a fee schedule that is reasonable to rights holders.

The results of our survey suggest that a sliding-scale subscription pricing model on either a quarterly or annual basis would be a welcomed and more useful method for both photographers and the Copyright Office. This would be more useful in photographers' business practices and would likely decrease the volume of deposits submitted in each application.

For example:

When queried (Survey Question 8), "How often do you register your work with the U.S. Copyright Office?" we received this information:

1.26% After each shoot

0.23% Weekly

2.92% Monthly



7.57% Quarterly

4.07% Bi-annually

8.26% Annually

75.69% I don't register my work

Then, when queried (Survey Question 15), "If you could purchase a monthly, quarterly or annual subscription for submitting copyright registrations, rather than separately paying for each registration, would you register more often?" 56.08% of photographers participating in our survey responded YES, 39.85% responded NOT SURE, and only 4.07% responded NO.

In addition, other visual artists would be more inclined to register works if they had the option of a subscription based fee. For instance, the textile design industry would like to register their copyrights quarterly, because their production cycle is based on seasonal introduction of designs.

The proposal to limit the number of images in a single application to 750 would create a disincentive for companies to develop technology solutions for photographers and other visual artists to include registration of unpublished photographs as part of their workflow if all works created for one project could not be included in a single application.

For example, photographers who process their images with a software application like Adobe LightRoom could process a registration of unpublished images before delivering





the images to their client to avoid the serious problem of differentiating published from unpublished works.

We further recommend including group registration, form changes, processing and data collection changes, and fee changes be offered to other forms of visual material registrations.

**7. AUTHORSHIP AND OWNERSHIP** (Group must be only one creator or copyright owner)

*Another key requirement is that all the photographs in the group must be taken by the same photographer. Applicants will not be allowed to submit groups of photographs taken by different photographers.*

*...the Office will not accept applications claiming that two or more individuals jointly created each photograph in the group as a joint work. These requirements are consistent with the regulation that currently governs GRPPH.*

*In all cases, the claim will be limited to “photographs” and that term will be added automatically to the application by the electronic system. Specifically, the registrant must be the author of all the photographs in the group, or the copyright owner that owns all the exclusive rights in those photographs.*

*Applicants will be allowed to register a group of photographs if the registrant obtained all the exclusive rights in those works through a transfer of ownership. Likewise, applicants*



*will be allowed to register a group of photographs as works made for hire (i) if all the photographs are identified in the application as works made for hire, (ii) if all the photographs were created by the same individual for the same employer, and (iii) if the photographer and the employer are both listed in the name of author field (e.g., “Advertising Agency LLC, employer for hire of John Smith”). However, the Office will not allow applicants to combine works made for hire with works obtained through a transfer of ownership. Similarly, the electronic system will not allow works created by one photographer to be combined with works created by a different photographer (even if those works are owned by the same registrant).*

The stringent requirements regarding a single registrant with no joint authorship in the work ignores the practices of many commercial studios. Some photographers work as a team with both partners owning each work jointly. Photographers often have an employee or assistants work on shoots. Those images created by these entities or teams would not be eligible for the proposed group, or the registrations would be vulnerable to challenge by an infringer in court to invalidate the registration. There are no workable registration options for any of these scenarios.

For example, photographers may work with different assistants on different days for the same job or client. Segregating images depending upon who worked with the photographer on which images is impractical if not impossible given the way



photographers work, and would necessitate multiple registrations for one job/client, both time consuming and expensive.

These restrictions affect the textile and surface design industry as well. Designers often license or buy source art directly from studios and then incorporate the source material into a series of new works (at times employing multiple pieces of source art by multiple other artists). Sometimes the original art isn't ready for reproduction and must be prepared in-house to create a repeating pattern or make other necessary adaptations, creating what would be considered derivative works. Textile companies typically reproduce designs created by independent contractors, seasonal freelancers, and in-house artists. Sorting out who the legal author is for each final production-ready design for the purposes of registration (presently as a collection) is impractical at best and impossible at worst.

The registration requirement of one legal author, separated either by a Work Made For Hire (WMFH) agreement or a full buyout (transfer) of rights, is likely to motivate clients such as publishers, advertising agencies, marketing companies and manufacturers to demand WMFH terms for all images produced by independent contractor creatives and refuse to allow the creator to own the copyrights to their work by eliminating licensing. This would have the marketplace effect of eliminating the long-standing customary industry practice of licensing images for specific usage, robbing the visual creator of future income from his/her work.



Further, as noted in Section 10 below the database registration requires image libraries to register images transferred to the image libraries and will always include works created by multiple authors. Consequently, this database procedure is a necessary option for image libraries as a method of protecting widely distributed commercial images that are highly likely to be infringed. Image libraries have made significant investments in establishing contracts and procedures for collecting fees for creators based on the database process. We encourage the Office to retain this registration as a viable option.

**8. PUBLICATION AND TITLES** (Published or unpublished, preserve presumption of copyrightability.)

*The group options for published and unpublished photographs are designed to be mutually exclusive of each other. Under the Proposed Rule, an applicant will be allowed to register a group of unpublished photographs if all the photographs are unpublished, and will be allowed to register a group of published photographs if all the photographs are published. Applicants will not be allowed to combine published and unpublished photographs in the same claim.*

*The new group option for unpublished photographs will help mitigate this problem by encouraging early registration. The Office strongly encourages photographers to register their works before they are published (i.e., before any distributions have*



*occurred), because this avoids much of the confusion concerning publication and the treatment of published works.*

We understand the Copyright Office’s need to separate unpublished from published work according to the Copyright Act. The Compendium released in 2014 is very helpful in describing the definition of “publication” and “the public,” including the specific examples of how the Office applies these definitions to photographs and other types of works. It would be even more helpful if this document was available within the eCO registration as an introduction to group and collection categories.

As stated in the NPRM, *“The Office’s decision to offer a group option for photographers is entirely discretionary, and Congress gave the Office broad authority to set the requirements for these types of claims.”* The Copyright Office has the authority to determine the registration rules for a “group” and create necessary registration forms appropriate to list deposit copies, as well as what information is required on the list of deposit copies. Visual creators request that while the Copyright Office is establishing new rules for the group registration category and moving to online registration only, that the Office create an entirely new form for deposit copies that better serves the class of creators using it.

Separating unpublished from published work in separate registrations is not a natural way for visual creators to aggregate images together; especially in this digital age when



there is such a premium on instantaneous distribution of images after initial creation.

Our survey of photographers asked the question (Survey Question 10), “When registering a group of images, which of the below options is better for your workflow and would encourage you to register more often? (check as many as apply)”

Responses indicated that:

5.73% Separately register unpublished and published images. (This is the current requirement)

30.45% Register all images for one job/project together as one group, including both unpublished and published images

20.24% Register all images of multiple jobs/projects for one client together as one group, including both unpublished and published images

74.37% Register all images created within a specific time frame together as one group, including both unpublished and published images (For example, once a month or quarterly.)

Clearly, the overwhelming majority of photographers surveyed indicate that they would prefer to register both unpublished and published works together in one registration. It would be more practical if a new deposit form was designed to include each work’s publication status.



When asked (Survey Question 11) "If the U.S. Copyright Office's process for group registration of copyrights was simpler, would you register more often?" 72.08% responded YES.

Given this response, we have some suggestions to improve the deposit requirement:

Early registration before publication is not practical based on the creative process for a job/client. This is further described in the "When Should a Group Registration Be Filed" section of this Comment. Creators want to register all works for one job/project/client in one registration. This also is helpful to our members when licensing images to the same client for additional usage.

Allow published and unpublished works to be included on a single registration form, for a single fee, provided that the registrant identifies each image as either published or unpublished. Section 409 of the Copyright Act states *registration shall be on a form made...* and requirement of what must be on the form, including "published" or "unpublished." The Copyright Office could change the registration form to permit the group registrations that include both published and unpublished works in situations where the deposit requirement for each is the same.

The publication entry on the registration application form arguably causes more confusion than any other section, and there is no real basis to separate unpublished from published works. Indeed, it runs contrary to the way business is done in many



industries that rely on visual art. For example, if a fashion designer creates 20 new fabric designs for their Spring 2018 collection, and sells only 5 of those designs, selling each on a different date, she will have to file six registrations for one collection— one each for each design sold, and another for the 15 designs not sold. This is overly burdensome and provides no real benefit. These 20 designs should be able to be registered as a group regardless of the publication status of each constituent design.

*In addition, in the case of published photographs, all the works must be published within the same nation and within the same calendar year (e.g., January 1 through December 31, 2016).*

This would require creators to separately register their work published in foreign magazines, foreign books, foreign newspapers, ads, etc. However, with respect to work first published on foreign websites, there is case law holding that when a work is first published to a website based anywhere in the world, it is also first published in the USA. This case law relates to the registration timing requirements for foreign citizens but might be relevant to American citizens in this situation.

*In addition, applicants will be encouraged—but not required—to provide title and publication information in the online application itself. The Office will provide instructions on its Web site that will explain how to copy this information from the numbered list into the appropriate fields in the online application.*





*Although applicants will not be required to provide title and publication information in the online application, there are certain advantages to doing so. If the applicant includes the titles in the online application, they will appear on the certificate of registration and in the Office’s online database. This will improve the quality of the registration record by making the information more accessible to the public. If this information appears on the certificate, and if the certificate is issued within five years after the publication of a particular photograph, the certificate will create a legal presumption that the work was published in the month and year specified on the certificate. See 17 U.S.C. 410(c).*

*By contrast, if the applicant provides title and publication information in the numbered list, but does not include that information in the online application itself, the titles and publication dates will not appear on the certificate of registration or the Office’s online database (although the Office will keep a copy of the numbered list in its files). In such cases, the Office will add an annotation to the record, such as “Regarding title: deposit contains complete list of titles that correspond to the individual photographs included in this group.”*

This is an interesting proposition that may have unintended challenges, including the inability of a creator to determine where a work is first published, and we believe it needs further study. While the option to include publication information in the record



may be beneficial, it should be optional and should not result in a faulty registration if it has errors.

The Copyright Office is requiring the registrant to supply two separate file lists for published groups. This is burdensome and unnecessary, and will result in errors. The current website is burdensome; it limits the registrant to enter only one work at a time, which is too time consuming.

We recommend replacing the current contents title feature with a feature that will allow the registrant to upload a list of all content titles in a format specified by the Office, such as a CSV file as we have already suggested.

**9. DEPOSIT REQUIREMENTS FOR DIGITAL SUBMISSIONS** (Need for workable standardized group deposits, preserve presumption of copyrightability. Digital only, specs for list, file size.)

*Applicants will be required to submit their photographs in digital form, regardless of whether they are seeking to register a group of published photographs, unpublished photographs, or a photographic database. Applicants may upload the images to the electronic system or submit them on a physical disc. Prints, slides, contact sheets or other physical formats will no longer be permitted.*



At this point in time, it is reasonable to require visual creators to submit deposit images in digital format only, particularly photographs. We approve of the file formats and submission options proposed. Concise instructions for visual creators about deposit requirements for digital submissions will be necessary to help creators prepare proper deposits and reduce the Copyright Office staff time dealing with errors. We offer some suggestions for standardization of deposit formats:

In addition to specifying the file format of digital deposits, the Copyright Office should also establish specifications for image size (dimensions) and maximum file size for each image. This will reduce the total file size of VA deposits. The Copyright Office knows what parameters work best for the software used in the examination process.

As a suggestion, the Copyright Office could require applicants to upload a zipped folder containing JPEG files at a maximum 6 inches (432 pixels) in longest dimension at 72ppi resolution, medium JPEG compression. This would allow for approximately 20,000 image files to be included in a 500mb zipped file; the maximum size that can be uploaded to the Copyright Office system. This would facilitate smaller overall file size of deposits and a standardization of formats.

When determining specifications, and taking into consideration the way in which digital cameras typically create metadata, we would suggest that the Office permit registrants



to combine the image and identifier name and number in one file which would replace the need for a separate sheet with the names and numbers.

Looking forward, the Office should consider permitting registration through APIs developed that allow photographers to register directly from workflow based on metadata from the camera or from image editing and organizing software. As the Office is redefining rules for group registration, we recommend that it crafts regulations that encourage future technologies, and does not discourage future developments.

## 10. DEPOSIT REQUIREMENTS FOR PHOTOGRAPHIC DATABASES

*The Proposed Rule will impose the same deposit requirements on a database that consists predominantly of photographs...*

*Third, the Office is proposing to update the deposit requirements for the group options for published photographs and photographic databases by requiring applicants to submit a digital copy of each photograph that is included in the group, and a separate document containing a sequentially numbered list that provides the title and file name for each photograph in the group.*

### Group Registration for Photographic Databases

*In the late 1990s, some stock photography companies began using this option to register databases that contain large numbers of photographs. After consulting with representatives from the industry, the Office concluded that the database option could*



*potentially be used to register a photographic database if certain requirements have been met.*

*Briefly stated, an applicant may register the updates or revisions that were made to a database over a period of three months if the updates and revisions are owned by the same registrant and if the general content and organization of the updates and revisions are similar. The applicant may submit the photographs in digital or physical form, but all the photographs must be submitted in the same format.*

*A registration for a photographic database covers the authorship involved in selecting, coordinating, and arranging the content of the database as a whole. It also may cover the individual photographs that are included within the database if the photographers transferred the exclusive rights in their respective works to the owner of the database, and if the selection, coordination, and/or arrangement of those photographs is sufficiently creative. That said, the Office has questioned whether this practice should be revised to limit the examination of a database to the authorship involved in creating the selection, coordination, and arrangement of the database as a whole and to exclude examination (and thus, the prima facie validity) of a claim in the component elements of the database.*

*The Office generally discourages photographers from registering their works as part of a photographic database and instead encourages them to use one of the other options discussed in this section, in part, because they provide a better registration record for claims in the individual component works within a database, as opposed to a claim in*



*the database itself as a compilation of data. Moreover, registering photographs as part of a photographic database may limit the copyright owner's ability to seek certain remedies in an infringement action.*

## DMLA AUTOMATED DATABASE RESPONSE

Automated database registrations are primarily relied upon by members of the Digital Media Licensing Association (DMLA) formerly Picture Archive Council of America ("PACA"). Members of this association consist of the largest visual content licensors, such as Getty Images, Shutterstock and Adobe as well as numerous general and specialty image libraries, that in total represent for potential licensing the visual content of thousands of image creators and millions of still images, videos, illustration and other visual content to publishers, advertisers and other image users.

We are concerned that the Copyright Office might be suggesting that this form of registration should be discouraged. However, it serves an important function in protecting the most licensable images from piracy, and consequently protects the licensing model crucial to the livelihood of individual creators and their licensing representatives. In fact, this form of registration was specifically designed for PACA to address challenges that were brought to the attention of the Copyright Office around 1995 when image libraries distributed large glossy catalogs to their customers, and there was concern that these published images could be easily scanned and used without proper licensing. It was acknowledged at the time that in a perfect world,



photographers would register images directly before submission to an image library—however, this was not the case in 1995 and is still not the case today. Most photographers do not register their images, and the images distributed for licensing purposes are the ones most at risk of being used without consent.

When physical delivery of images for licensing stopped being the industry practice, and image libraries began developing digital platforms with sophisticated search tools and databases, the Copyright Office revised its application procedures for image libraries to accommodate the new practice and offered image libraries the opportunity to license the individual images, provided certain conditions were met using a database registration. The purpose of this registration process was to protect the individual images included in the database and not the entire database itself since it is highly unlikely that a user would copy an entire database of a stock image collection which may include millions of images.

As a result, some PACA (now DMLA) members have been utilizing this registration procedure for more than 20 years. Members have helped thousands of photographers and illustrators register millions of images based on specific contracts and procedures that were put into place based on instructions from the Copyright Office. The creators represented by these member image libraries greatly benefit as many of them, and in particular foreign contributors, may not be aware of the requirements to register images in order to be entitled to certain rights and remedies under the U.S. Copyright Act, which



are unique to the United States. These photographers and illustrators rely on their representatives to protect their rights through their expertise and knowledge, an important part of which includes copyright registration. This is particularly important in the digital age where image misappropriation is rampant and many users find it easier to “right click” to acquire an image rather than license it through the appropriate channels. Members who have taken advantage of the database registration practice have been very effective in monitoring online image usage through utilizing image recognition technology and implementing enforcement programs that have helped support the livelihood of creators by collecting fees for unauthorized image uses that should have been licensed. Undermining this well-established method of copyright registration through discouraging its use and imposing seemingly arbitrary image limits [750] that are significantly lower than the typical automated database registrations currently handled by the Copyright Office will make it more difficult for creators and their authorized representatives to protect their rights and be fairly compensated for unauthorized uses.

In addition to the response in (Section 33 above) to the 750 image limit, the proposed limit of 750 images for automated database registrations will significantly increase the cost to members of DMLA to prepare and submit substantially more copyright registration applications than what they are currently submitting to the Copyright Office. For example, one longstanding DMLA member, Masterfile Corporation (“Masterfile”), has submitted automated database applications to the Copyright Office through the





process developed by DMLA and the Copyright Office since the year 2000. The initial application that Masterfile submitted in July 2000 as an automated database included 24,575 images, which would require 44 separate registrations (at 44 times the cost) under the proposed requirements. The Copyright Office issued a Certificate of Registration for this initial application, along with all of the other Masterfile applications submitted to the Copyright Office as automated database registrations since 2000.

In more recent years, Masterfile has submitted copyright registrations to the Copyright Office on a bi-monthly basis pursuant to a well-established process that has been supervised for many years by a dedicated employee at the Copyright Office who has developed significant expertise in handling these registrations and working directly with stock photography agencies. At no time was Masterfile aware of any extra “burden” to the Copyright Office based on these applications.

In terms of more recent applications, Masterfile reports that it has registered 57,040 images in 29 bi-monthly applications (all of which were issued registration by the Copyright Office) since 2012 with an average of 1,966 images per registration. Based on the 750-image limit, Masterfile would have had to prepare 77 registrations during this time period instead of 29 registrations.

Along with the additional application fees for the increased number of number of applications, there is also the cost of human resources in having to spend significantly



more time to prepare more registrations. This potential increase comes at a time when many image libraries are struggling to survive because of reduced license fees due to the proliferation of images online and rampant copyright infringement on the Internet. Indeed, restricting the volume of images for copyright registrations will discourage DMLA members and photographers from registering images, making it impossible to recover important remedies such as statutory damages and attorneys' fees and making it easier for infringers to freely use visual content without permission. If anything, in view of constantly improving technology, it should be easier for the Copyright Office, photographers and image libraries to handle applications with a higher volume of images rather than imposing new restrictions on the number of images per application.

The Copyright Office justifies “discouraging” automated database registrations (and imposing numerical limits) by referencing a decision by the United States Court of Appeals for the Ninth Circuit in *Alaska Stock, LLC v. Houghton Mifflin Harcourt Publishing Co.*, 747 F.3d 673 (9<sup>th</sup> Cir. 2014) (“*Alaska Stock*”). Specifically, the Copyright Office states that *Alaska Stock* stands for the principle that “when a group of photographs is registered as a database the copyright owner may be entitled to seek *only one award of statutory damages for the database as a whole—rather than a separate award for each photograph—even if the defendant infringed all the photographs that are covered by the registration.*” (FR, Vol. 81, No. 231 at 86654 (emphasis added), citing *Alaska Stock*). In reality, *Alaska Stock* stands for the exact opposite proposition—that the automated database registration includes protection for



the collection as a whole *and the individual images within the registration*: “Whereas here, the photographers have assigned their ownership of copyrights in their images to the stock agency, and the stock agency registers the collection, both the collection as whole and the individual images are registered.” *Id.* at 682.

In *Alaska Stock*, the plaintiff stock photography agency (Alaska Stock) used the same form of automated database registration that is at issue. *Id.* at 675-78. The publisher defendant challenged the form of registration used by the plaintiff and the District Court held that the registration was invalid in registering individual images because it did not identify the title and author of each work included in the registration. *Id.* at 675-76. The Ninth Circuit decision to reverse the District Court’s decision was largely based on deferring to the Copyright Office’s endorsement of this registration procedure that allows for the registration of the entire collection and the individual works included within the collection. *Id.* at 684-85. Indeed, the United States submitted an *amicus* brief in support of Alaska Stock and the automated database registrations endorsed and approved by the Copyright Office. *Id.* at 677. The Court found “the Copyright Office’s interpretation (to be) persuasive” and concluded that “Alaska Stock successfully registered the copyright both to its collections *and to the individual images contained therein.*” *Id.* at 685.

In reaching its decision, the Court also described the vital role of stock photography agencies in this process:



Stock agencies relieve the photographers of some of the burden of managing the commercial end of their business, so that they can focus more on making images, and they relieve publishers of the burden of locating photographers and purchasing rights to use the images they want. *A particularly important task the stock agencies may perform is at issue here: registering copyrights, to deter pirating. That is what Alaska Stock did for the many photographers whose images are affected by this case. Id. at 676 (emphasis added).*

The Court concluded its decision, which at first blush appears to be an esoteric decision addressing copyright registration formalities, by emphasizing the practical importance of *Alaska Stock* to stock photography agencies and the creators they represent:

We are not performing a mere verbal, abstract task when we construe the *Copyright Act*. We are affecting the fortunes of people, many of whose fortunes are small. The stock agencies through their trade association worked out what they should do to register images with the Register of Copyrights, the Copyright Office established a clear procedure and the stock agencies followed it. The Copyright Office has maintained its procedure for *three* decades, spanning multiple administrations. The livelihoods of photographers and stock agencies have long been founded on their compliance with the Register's reasonable interpretation of the statute. Their reliance and longstanding administrative interpretation should be honored. Denying the fruits of reliance by citizens on a



longstanding administrative practice reasonably construing a statute is unjust. *Id.* at 686 (emphasis in original).

Accordingly, DMLA and the associations representing the individual creators would respectfully request that the Copyright Office consider the implications of this proposed regulation and reconsider its stand on discouraging a vital form or registration that protects the licensing income of individual creators and their representatives, in line with the critical constitutional incentives to authors the *Copyright Act* is designed to encourage. We also request that the individual images are treated in the same way as the proposed group registration and that databases not be considered compilations.

#### **11. WHEN SHOULD A GROUP REGISTRATION BE FILED** (Early registration.)

*In the case of published photographs, the Office encourages photographers to submit their claims every three months (instead of filing on an annual or semi-annual basis), and in each case, to file the claim within three months after the earliest date of publication specified in the application.*

*In the case of unpublished photographs, the Office strongly encourages photographers to register their works before sharing them with any other party.*

As addressed in the Publication Titles topic, early registration before publication is not always a viable solution for several reasons.



First, registration before sharing work with others is usually not possible because of the way photographers are required to work with their clients to meet quick production deadlines. Turn-around and production deadlines for print publication used to be a week or more, but in this current digital environment with 24 hour news cycles, clients require instant delivery of visual artists' work, often immediately after creation and before the visual creator would be able to file a registration application. The requirement to identify the published works becomes more problematic as often the visual creator will not know which images are published and may never know if or when they are published.

With respect to illustrators and graphic artists, they too submit digital files of working sketches and drafts electronically to clients all along the design creation process; and clients retain digital files of unpublished work. Even if the contract only permits the client to use the final work product, clients may use preliminary designs or works outside the design project's description. It is neither practical nor possible for a visual creator to register every version, every iteration and revision of an image before sharing it with a client.

Textile designers typically show their new seasonal designs as collections in a showrooms open to buyers or on sales trips. (See the example above in Topic 7. Authorship And Ownership) makes clear the issues that face fashion designers in registering their collections. The collection of designs shown may include constituent



works that are released to buyers on certain dates, bought on certain dates (or not at all), or sampled for further review. Given the different dates of sales, the lack of sales, and the sampling (it is unclear whether this is a publication), fashion designers make frequent mistakes in the publication section of their registrations. For example, their collections, which include both unpublished and published patterns, and are offered together as a collection to the public, are included on one registration. This, though, has been deemed an error by the Copyright Office. It would be of great benefit to revise the instructions so that registrations that include both unpublished and published works as part of the same collections are not considered erroneous.

Piracy and knock-offs are a huge problem in the textile and fashion industry, and it is not unusual for a person to visit a showroom or convention and photograph the textiles, which are then sent to a production facility for copying. Or, the person obtains samples of new works and knocks those off before the work is sold legitimately. The rights holder most likely will not have registered at this time. Or, even if they have, the artist may have done a redesign at the request of a customer, which may create a totally new design that needs to be protected.

Whereas copyright protection is granted for a 3 month period after publication prior to the registration of published works, unpublished work created within 3 months of registration are not protected in the same way as published works. There is no advantage or protection for the creator to wait for 3 months to register an unpublished



work. Waiting 3 months—as suggested by the Copyright Office in this NPRM—to register unpublished works allows a period of time for the works to be infringed before registration.

Our suggestion for a solution would be to allow the same 3 month window of registration protection for unpublished work (from the date of creation or 3 months prior to the date of registration, whichever can be documented) as there is for published works (from the date of publication).

Our recent survey of photographers indicates that registering unpublished work separately from published work and before the final images for publication are chosen is impractical for their workflow and their business. The overwhelming majority of photographers indicated that they would like to register unpublished and published works together in one group registration (Survey Question 10). Asked to check all options that applied to their needs, only 5.73% stated that they want to separately register unpublished and published images. (This is the current requirement). 30.45% of photographers stated that they would like to register all of the images created for one job/project together—both unpublished and published—in one registration. 20.24% stated they would like to register all images of multiple jobs/projects for one client together as one group, including both unpublished and published images. Significantly, 74.37% stated they would like to register all images created within a specific time frame





together as one group, including both unpublished and published images. (For example, registering once a month or quarterly.)

This brings us back to the seemingly arbitrary distinction between the legal protection of unpublished photographs registered as an unpublished group, and all other visual work registered as an unpublished collection. If the Copyright Office is establishing a new registration category for multiple unpublished images, we request that the unpublished group category be opened to all visual works, and not just photographs.

**12. THE SCOPE OF A GROUP REGISTRATION. GROUP REGISTRATION OF PUBLISHED AND UNPUBLISHED PHOTOGRAPHS DISTINGUISHED FROM OTHER REGISTRATION OPTIONS** (What's included in the group. Not a compilation or collective work.)

*For similar reasons, the Proposed Rule also clarifies that when a group of photographs is registered under GRPPH or GRUPH, the group as a whole is not considered a compilation or a collective work under sections 101, 103(b), or 504(c)(1) of the Copyright Act.*

*The proposed rule confirms that a registration issued under GRPPH or GRUPH covers each photograph in the group, that each photograph is registered as a separate work, and that the group as a whole is not considered a compilation, a collective work, or a derivative work.*



*In other words, when a number of photographs are registered as an unpublished collective work, the copyright owner would be entitled to seek only one award of statutory damages in an infringement action, rather than a separate award for each photograph.*

*For purposes of registration, the group as a whole is not considered a collective work or compilation, and thus, the individual photographs within the group would not be subject to the limitation on statutory damages set forth in section 504(c)(1). Instead, a registration for a group of unpublished photographs is treated as a separate registration for each photograph that is included within the group.*

*For similar reasons, the Proposed Rule also clarifies that when a group of photographs is registered under GRPPH or GRUPH, the group as a whole is not considered a compilation or a collective work under sections 101, 103(b), or 504(c)(1) of the Copyright Act.*

We appreciate the clarification and broadening of the protection that the GRPPH and GRUPH registration options offer photographers for their individual images, and as we have mentioned before, the options should encourage and increase photographer participation in the copyright registration process. The only negative aspect of this change would be the 750 image limit placed on both of these categories.



*The Office's decision to offer a group option for photographers is entirely discretionary, and Congress gave the Office broad authority to set the requirements for these types of claims.*

Additionally, in view of this statement, we would hope similar group categories would become available to all visual images. Illustrations, fine art and other graphic visual materials do not necessarily qualify as compilations or collective works. Currently, these visual materials can only be registered as unpublished collections and in effect these images may be held to a lesser valuation for damages due to their status as a part of a collection rather than being granted the legal status of individual pieces of visual art.

For example, multiple graphic artworks, textile designs, and surface designs can only be registered as unpublished collections. Published designs must be registered individually. For these reasons, two-dimensional artworks often are not registered at all. The unpublished collection registered before production does not provide adequate legal protection to the works included. It is too costly and time consuming to file registrations for each published design. These works do not qualify as either compilation or periodicals. If the group registration categories were opened to include all visual works, the Copyright Office would see a dramatic increase in the registration of two-dimensional artwork. Consider the painter who paints two new works every day for a thirty-day month, picking one of the two daily works to ship to his customers each day. At the end of the month, the painter would have to file 30 registrations for the published



works (one for each day) and another registration for the 30 unpublished works. This is inefficient and onerous to the artist.

### 13. GROUP REGISTRATION OF PUBLISHED PHOTOGRAPHS VS. GROUP REGISTRATION FOR CONTRIBUTIONS TO PERIODICALS

*While a group of published photographs may include no more than 750 images, there is no limit on the number of photographs that may be included within a group of contributions to periodicals.*

We have previously stated that the 750 number limit on deposits of unpublished photographs creates problems for news, wedding, event, stock, and other photographers who often times create thousands of images in one project or assignment.

Similarly, a 750 limit on a group of published photographs and no comparable limit for contributions to periodicals creates confusion. We are concerned that some photographers may make the mistake of incorrectly registering multiple published photographs in the periodical category in an attempt to circumvent the 750 image limit.

### 14. GROUP REGISTRATION OF PHOTOGRAPHS VS. GROUP REGISTRATION FOR PHOTOGRAPHIC DATABASES



*As noted above, the Proposed Rule makes certain modifications to the deposit requirement for databases that predominantly consist of photographs. The Proposed Rule will not change any of the other requirements for these types of claims.*

See comments to Group Registration of Databases in topic 10 above.

## **15. HOW WE DISTRIBUTE OUR WORK (OUTPUT)**

*In the future, the Office intends to develop a portal on its Web site that will provide photographers with pertinent information on a wide range of copyright issues. In developing these resources it would be helpful to learn more about the specific methods that photographers use to distribute their works to their customers and the general public. The Office previously asked for written comments on this issue in the Visual Works Inquiry, and it welcomes additional input as part of this rulemaking.*

We welcome any and all instruction from the Copyright Office in helping educate visual creators regarding copyright and registration. We would appreciate more thorough instructions to assist us in filling out new registration forms, help in reducing errors in claims, and making proper deposits.

As mentioned in previous remarks, output and distribution of our images, some photographers are required to submit all images from a shoot directly to the client or publisher, sometimes directly from workflow. The photographer may have no



information as to what images might be published, nor do they have time to register before giving the images to the client.

Illustrators and designers typically provide clients with many original or digitized preliminary sketches, drafts and layouts before early registration is possible. It's not unusual for these preliminary works to be infringed by the client, or even later published by the client or someone else.

Other examples of distribution methods include:

- The photographer's or visual artist's portfolio websites
- Other portfolio sites: Images submitted to one or more third party websites
- Printed Sourcebooks (one or more), produced and distributed by publishers to market our images
- Stock Image Libraries (submission to one or more, domestic or international, stock vs syndication)
- Self-managed personal stock image libraries such as Photoshelter.
- Embargoed images (When a publisher requires the artist/photographer to withhold an image from other publications for a specified period of days, weeks or months, so that the initial publisher has the equivalent of a temporary exclusive on the image. For example; the first publication of the magazine is in the UK and the second is in the US. etc.) In these circumstances, the artist often delivers the image before the embargo expires, so as to allow the secondary



publishers time to prepare for publication after the embargo. This type of distribution method – distributing to multiple parties with the understanding that some of them must delay their publication

- Private website galleries for specific clients or all clients
- Delivery to clients at a shoot: DVD, CD, USB, FTP, Large file delivery service, hard drive, Dropbox (and similar)
- Delivery to clients after a shoot: DVD, CD, USB, FTP, Large file delivery service, hard drive, load-and-leave, Dropbox (and similar).
- Self-promotional pieces; printed and handed to people or mailed
- Self-promotional email campaigns
- Distribution within licensed uses by our clients
- Proof prints delivered to clients for review
- Proof sheets delivered to clients for review (electronic or printed)
- PDFs delivered to clients for review
- Albums of photographs ordered by clients
- Prints ordered by clients
- Prints made for speculative sale
- Gallery exhibitions
- Social Media and company websites
- Social Media general distribution
- Wireless or other instantaneous transmission to our clients during production
- Screen sharing with clients



- Delivery of film (some people still shoot film)
- Other offerings to secondary clients after the initial license to the initial client

Our visual arts organizations are happy to help collect and provide input from our membership as to specific requirements they must fulfill in the course of doing projects and assignments for their clients.

## **16. OUR SUGGESTIONS TO ENCOURAGE REGISTRATION, ALTERNATIVE SOLUTIONS TO PROPOSED RULEMAKINGS**

We'd like to expand on some of the suggestions already made.

This change in rules for the group registration category and deposit requirements for photographers is an opportunity for the Office to improve the registration requirements and process for including multiple images in one registration for all visual material. In addition to the proposed rulemakings by the Copyright Office, we urge the Office to address the needs of the visual creative community in order to encourage registration of visual works. We have some suggestions for changes to the group registration category that we respectfully ask the Copyright Office to consider at this time.

We are aware that the Copyright Office has difficulty with the way in which some registrants use the eCO registration. Some registrants leave a registration application open for months and continue to add more images to it before completing their





application. The Office can resolve this issue by merely changing the website coding so that the window times-out and notifies the applicants on the website. In our survey (Survey Question 12), we asked photographers if they would be “able to complete a group registration within 72 hours from start to finish, or do you need more time?”

One-size-fits-all may not be the most effective approach for registration of multiple visual works if deposits of particular types of visual works require more examination time to determine copyrightability than others. The Office could establish separate online registration forms, deposit requirement and fee structures for various visual works.

We would also like to propose an expedited examination option for deposits that a registrant could elect:

- a. The registrant could pay a higher fee to have each image examined or a lower fee for fewer images examined, which would suspend the presumption of copyrightability at the time of registration for those unexamined images.
- b. The registrant could request a "deferred examination" for a group registration of a large group. Under a deferred examination application, the photographer would submit all of the ordinary materials they presently submit with their filing fee. Registrations would become effective at the time the materials were submitted, even if not approved until a later time.



Under the deferred examination, the photographer would pay an additional fee for examination if the photographer requests it at later time, such when they discover an infringement of a work in the group. The Office would not have to examine each work in the group for originality until that request was made, which would significantly reduce the Office's workload to only cases where a registrant learns of an infringement. The Copyright Office would not have to approve the group application until the exam is conducted and examiners determine the requisite originality is present. The Office could then comply with the existing examination approval paradigm; the last step would simply be deferred. Until that happens the application would have a provisional status (similar to a provisional patent for patents, or intent to use registration for trademarks).

IP attorney Scott Alan Burroughs notes that the Copyright Office's current policy in regard to group registrations is to review the entire group when considering whether a group is protectable. The registration will issue so long as the group is protectable and will advise the applicant that while the group is protectable, certain works within the group may not be protectable on their own. Software registrations are addressed similarly—the Copyright Office reviews a representative sample and issues a registration on that basis.



When the application for deferred examination is approved, the effective date of the registration will date back to when the materials were filed, as is the present establishment of date of registration. The claims for statutory damages and attorney's fees and the presumption of copyrightability should still stand.

- c. The Copyright Office could use a specified sampling of images in the deposit for examination, e.g. a percentage of the total images in the group for the "deferred examination" of all images in a group registration as described in b. above, or
- d. The Copyright Office could create tiered registration fees for specific quantities of images included in a group registration. This would require less staff time to examine and address errors in applications of fewer works.

The Copyright Office is proposing charging a registrant who registers a small group of work the same registration fee as a registrant who registers 750. A visual creator who registers all images created for one job/project or client in a year and creates more than 750 works would be required to file multiple registrations for that one job/project or client. In effect, the Copyright Office is seeking to establish a tiered fee of \$55 for 2-750 images, with each additional 750 images costing an additional \$55.

We are aware that the Copyright Office cannot eliminate the unpublished or published distinctions without amending the Copyright Act. We would like to suggest some



solutions that do not require amending the Act and which would encourage visual artists to register:

- e. Allow group registration for all two-dimensional artworks (visual works).
- f. Allow unpublished and published work to be registered in one group registration, and have the registrant designate the publication status of each work in the registration if possible (on the list of works). Or have two entries on the same collective registration—one for those works in the collection that have been published, one for those works that have not. This would greatly reduce confusion and encourage more registration.
- g. Change the deposit copy requirement for published works:
  - i. Require a digital image (of whatever file specs and image size showing the work at least X inches by Y inches, like the old paper deposit requirement) that clearly and accurately shows the work in its “published” form, if it is not possible to submit a “best edition” of a printed piece.<sup>4</sup>
  - ii. The deposit image could be the actual digital file of the image, a screenshot, or a photograph of the work.
  - iii. Many visual artists who do not work in print are confused about the current

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<sup>4</sup> A “copy”, for purposes of deposit under this title, may be made in any medium whatsoever, so long as the work can be perceived from it. *Midway Mfg. Co. v. Artic Intern., Inc.*, N.D.Ill.1982, 547 F.Supp. 999, 216 U.S.P.Q. 413 , affirmed 704 F.2d 1009, 218 U.S.P.Q. 791 , certiorari denied 104 S.Ct. 90, 464 U.S. 823, 78 L.Ed.2d 98, 220 U.S.P.Q. 480 . Copyrights And Intellectual Property 50.10



requirement for deposits of published works, and this prevents them from registering.<sup>5</sup> This is especially the case in textile and surface design, where new designs are shown to buyers in showrooms and sample books.

- iv. The only way an artist or designer can provide a "deposit copy" of a published 3-dimensional work is to submit a photographic image of the work, and this doesn't meet the requirement of two copies of the best published edition.

## 17. CONCLUSION

We are surrounded by photography, illustration, design and art every moment of the day. Images are used to communicate with us, to inform and instruct us, to identify objects and their contents, to record and document people, places and events, to create memories, and to decorate every type of surface. Visual creators work in every field, in every industry, in every business sector, and in every location around the world.

Because visual works are so integral to the American economy, the image industry is uniquely vulnerable to copyright infringement. Protecting the creative works of visual artists should be a vital, necessary, integral part of U.S. law.

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<sup>5</sup> Given bulkiness and cost of actual video game, video tape of audiovisual presentation in game was reasonable alternative identifying material, within meaning of Copyright Office regulation, allowing Register of Copyrights to permit deposit of only one copy or "alternative identifying material." Atari, Inc. v. Amusement World, Inc., D.C.Md.1981, 547 F.Supp. 222, 215 U.S.P.Q. 929 . Copyrights And Intellectual Property 50.10



Respectfully submitted,

**The Coalition of Visual Artists, including:**

**American Photographic Artists**

**American Society of Media Photographers**

**Digital Media Licensing Association**

**Graphic Artists Guild**

**National Press Photographers Association**

**North American Nature Photography Association**

**Professional Photographers of America**

**PLUS Coalition**

**Shaftel & Schmelzer**

**Doniger / Burroughs**

(If the Copyright Office needs citation for authorship of this Comment, cite The Coalition of Visual Artists.)



## INFORMATION ABOUT THE ORGANIZATIONS

### American Photographic Artists

American Photographic Artists (“APA”) is a 501(c)(6) not-for-profit association for professional photographers. Recognized for its broad industry reach, APA works to champion the rights of photographers and image-makers worldwide. APA is a leading national organization run by and for professional photographers, providing essential business resources to help its members achieve their professional and artistic goals.

### American Society of Media Photographers

The American Society of Media Photographers (“ASMP”) is a 501(c)(6) not-for-profit trade association, established in 1944 to protect and promote the interests of professional photographers who earn their living by making photographs intended for publication. There are more than 6900 members of ASMP, organized into 39 local chapters across the United States, with members representing literally every genre of professional publication photography. ASMP photographers work in still and motion formats, providing visual imagery to clients in print, broadcasting, and digital media across the world. ASMP is the leader in promoting photographers' rights, providing education in better business practices, producing business publications for photographers, and helping to connect professional photographers with clients.



## Digital Media Licensing Association

For over 60 year the Digital Media Licensing Association (“DMLA”), formerly known as PACA, has developed business standards, promoted ethical business practices and actively advocated copyright protection on behalf of its members. DMLA membership includes more than 100 companies representing the world of digital content licensing. DMLA educates and informs its members on issues including technology, tools, and changes in the marketplace.

## Graphic Artists Guild

The Graphic Artists Guild is a professional organization for graphic artists that embraces creators at all levels of skill and expertise, who create art intended for presentation as originals or reproductions. The mission of the Guild is to promote and protect the economic interests of its members, to improve conditions for all creators and to raise standards for the entire industry. Since its founding in 1967, the Guild has established itself as the leading advocate for the rights of graphic artists on a wide range of economic and legislative issues, from copyright to tax law.

## National Press Photographers Association

The National Press Photographers Association (“NPPA”) is a 501(c)(6) non-profit organization dedicated to the advancement of photojournalism in its creation, editing and distribution. NPPA’s approximately 6,000 members include television and still photographers, editors, students and representatives of businesses that serve the visual





journalism community. Since its founding in 1946, the NPPA has been the Voice of Visual Journalists, vigorously promoting the constitutional rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism.

### **North American Nature Photography Association**

Since its founding in 1994, the North American Nature Photography Association (“NANPA”) has been North America’s preeminent national nature photography organization. NANPA promotes responsible nature photography as an artistic medium for the documentation, celebration, and protection of our natural world and is a critical advocate for the rights of nature photographers on a wide range of issues, from intellectual property to public land access for nature photographers.

### **Professional Photographers of America**

Founded in 1869, Professional Photographers of America (“PPA”) is the world’s oldest and largest association for professional photographers. PPA’s membership consists of more than 29,000 direct members and an additional 20,000 affiliated members from more than 130 affiliated organizations. In total, PPA’s membership reach includes some 50,000 professional photographers. For more than 140 years, PPA has dedicated its efforts to protecting the rights of photographers and to creating an environment in which these members can reach their full business and creative potential.



## Shaftel & Schmelzer

Shaftel & Schmelzer is a consulting firm established in 2016, focused on serving the needs of artists' organizations to engage in advocacy on behalf of their membership.

Shaftel & Schmelzer's mission is to advocate for the protection of economic and professional interests of visual artists through advocacy and education.

## Doniger / Burroughs

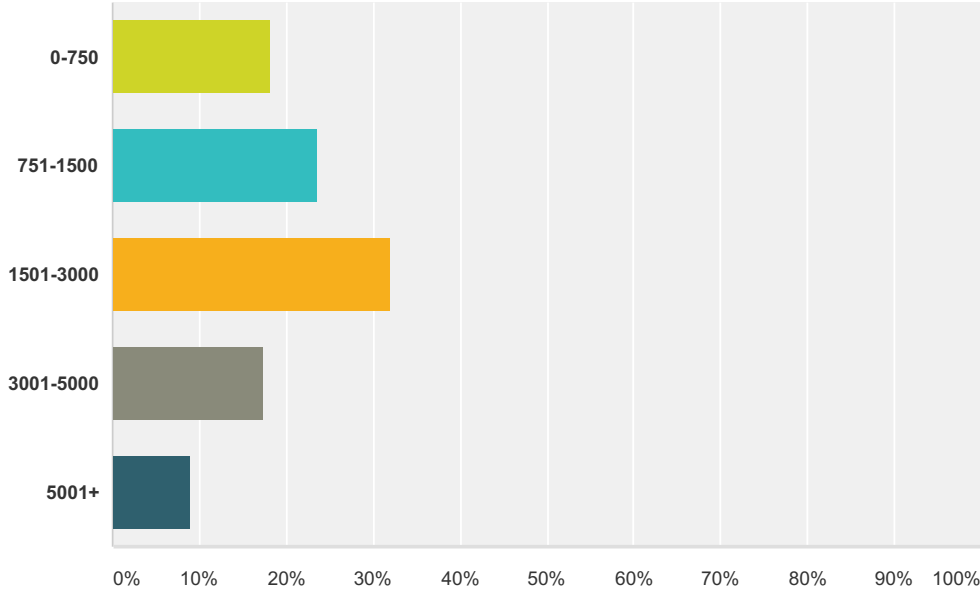
Doniger / Burroughs is the United States' top creative arts law practice. The firm has resolved more than 1,500 copyright disputes over its 20 years of providing counsel, and has litigated and created law on numerous cutting-edge copyright issues. The firm is committed to representing artists and content creators, and its partners speak and write often on art and copyright law issues.

LFS/JPS



### Q1 What is the greatest number of images that you have created in a single day during your career?

Answered: 1,744 Skipped: 0

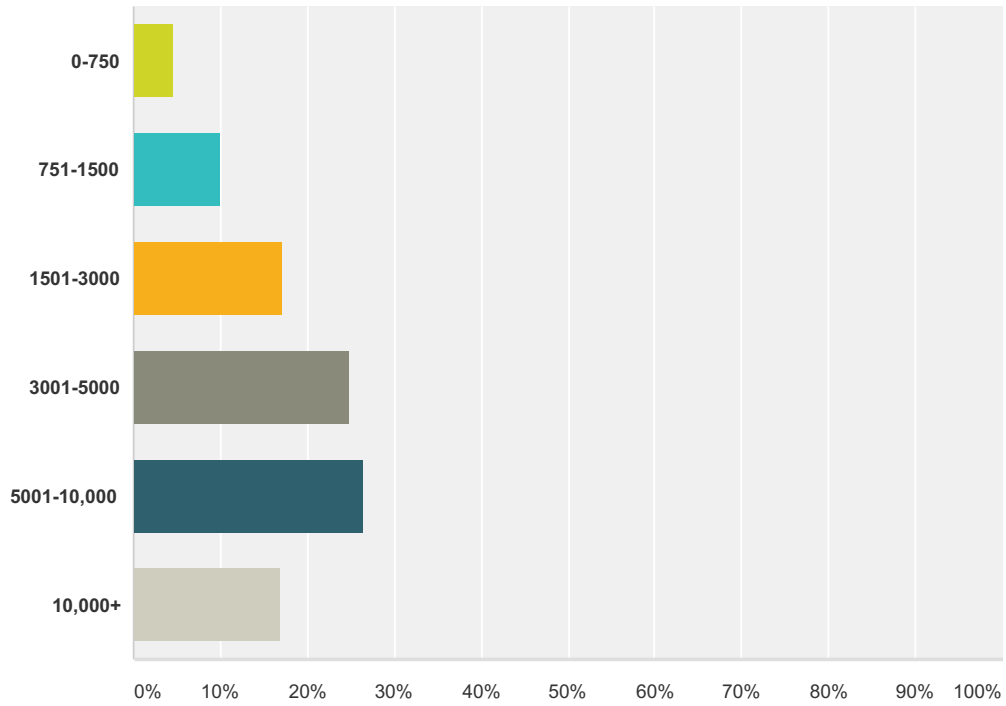


Answer Choices	Responses
0-750	18.12% 316
751-1500	23.57% 411
1501-3000	31.88% 556
3001-5000	17.43% 304
5001+	9.00% 157
<b>Total</b>	<b>1,744</b>

### Q2 What is the greatest number of images that you have created in a single week during your career?

Answered: 1,744 Skipped: 0

Survey of Photographers for U.S. Copyright Office NOPR Group Registration 2017

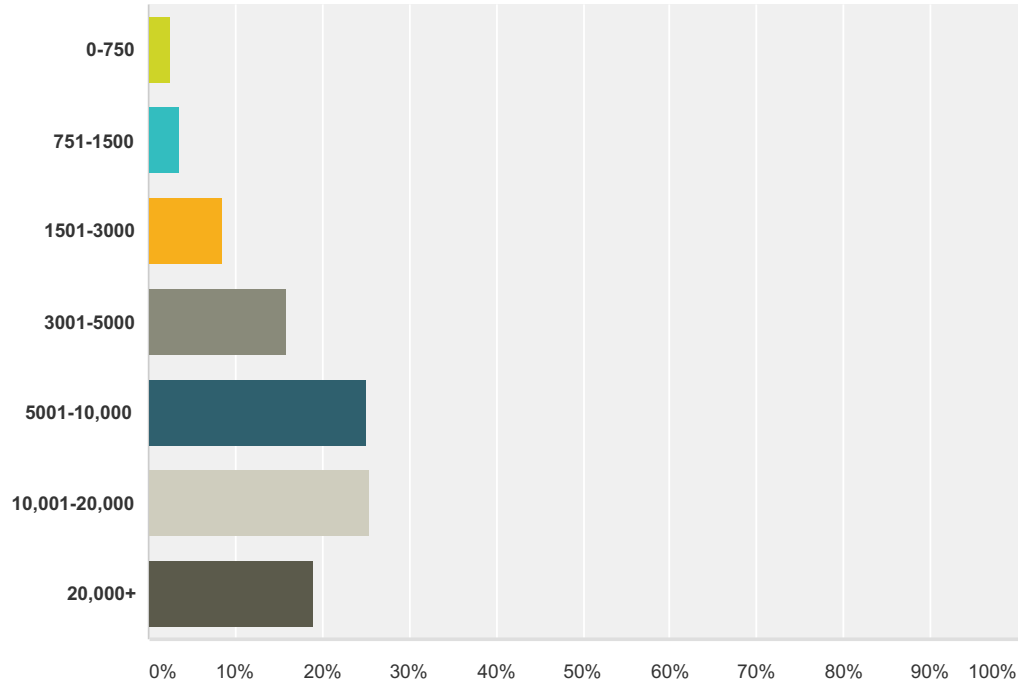


Answer Choices	Responses
0-750	4.53% 79
751-1500	9.98% 174
1501-3000	17.14% 299
3001-5000	24.89% 434
5001-10,000	26.55% 463
10,000+	16.92% 295
<b>Total</b>	<b>1,744</b>

**Q3 What is the greatest number of images that you have created in a single month during your career?**

Answered: 1,744 Skipped: 0

Survey of Photographers for U.S. Copyright Office NOPR Group Registration 2017

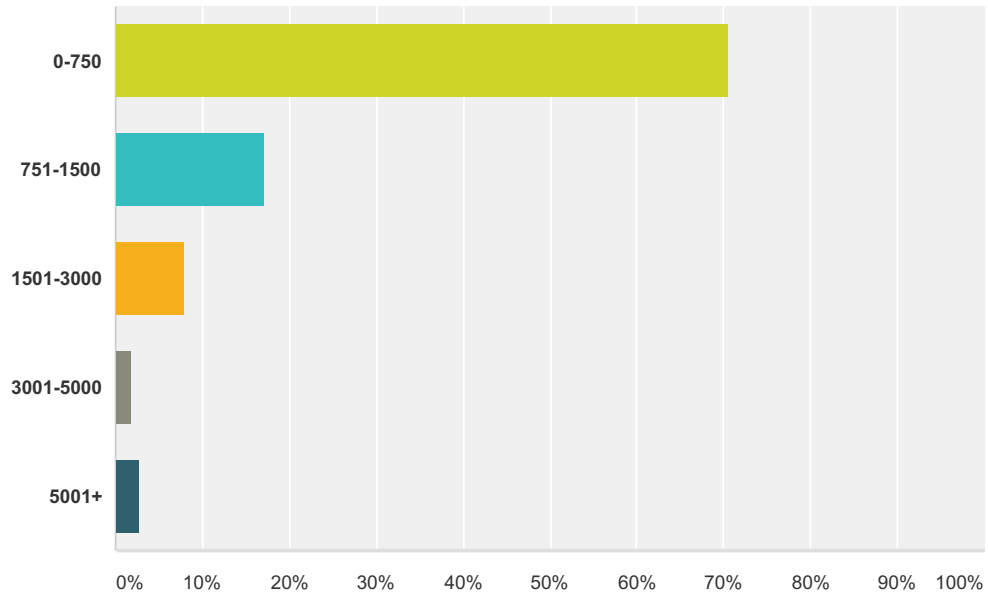


Answer Choices	Responses
0-750	2.41% 42
751-1500	3.61% 63
1501-3000	8.66% 151
3001-5000	15.83% 276
5001-10,000	25.06% 437
10,001-20,000	25.46% 444
20,000+	18.98% 331
<b>Total</b>	<b>1,744</b>

**Q4 During an average year, what is the average number of images that you may create in a single day?**

Answered: 1,744 Skipped: 0

Survey of Photographers for U.S. Copyright Office NOPR Group Registration 2017

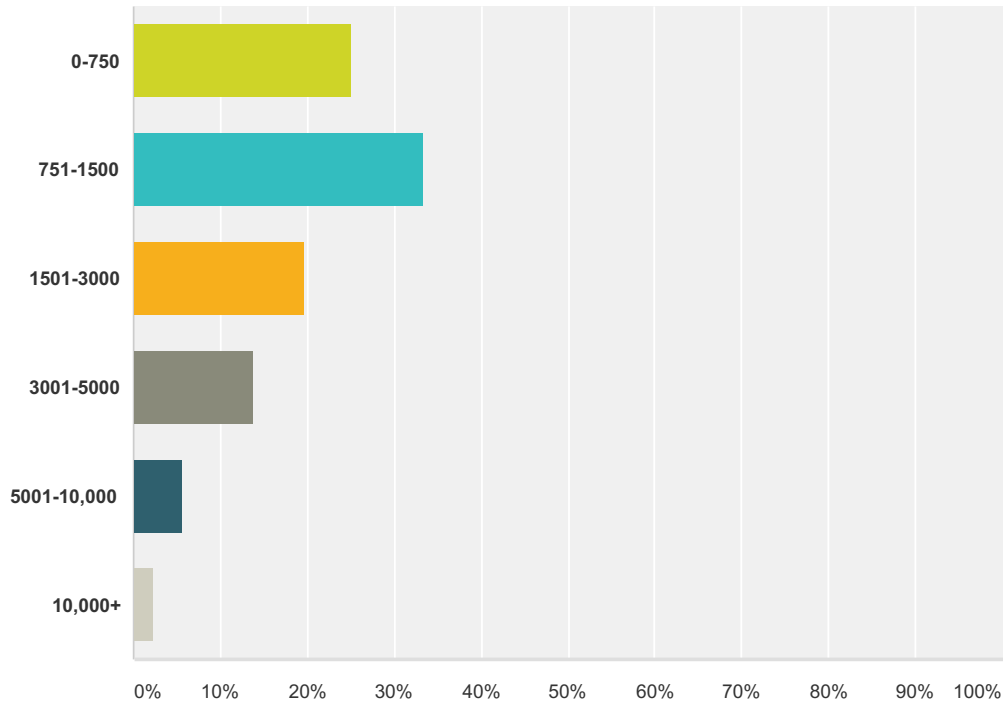


Answer Choices	Responses	Count
0-750	70.47%	1,229
751-1500	17.03%	297
1501-3000	7.91%	138
3001-5000	1.83%	32
5001+	2.75%	48
<b>Total</b>		<b>1,744</b>

**Q5 During an average year, what is the average number of images that you may create in a single week of shooting?**

Answered: 1,744 Skipped: 0

Survey of Photographers for U.S. Copyright Office NOPR Group Registration 2017

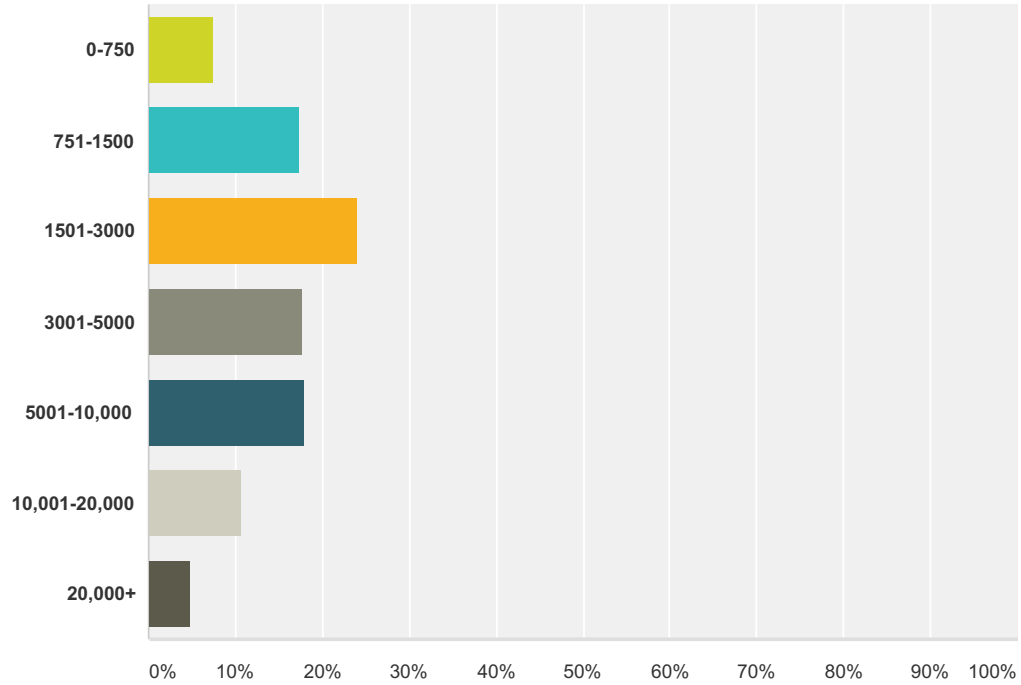


Answer Choices	Responses	Count
0-750	25.11%	438
751-1500	33.31%	581
1501-3000	19.72%	344
3001-5000	13.82%	241
5001-10,000	5.68%	99
10,000+	2.35%	41
<b>Total</b>		<b>1,744</b>

**Q6 During an average year, what is the average number of images that you may create in a single month of shooting?**

Answered: 1,744 Skipped: 0

Survey of Photographers for U.S. Copyright Office NOPR Group Registration 2017



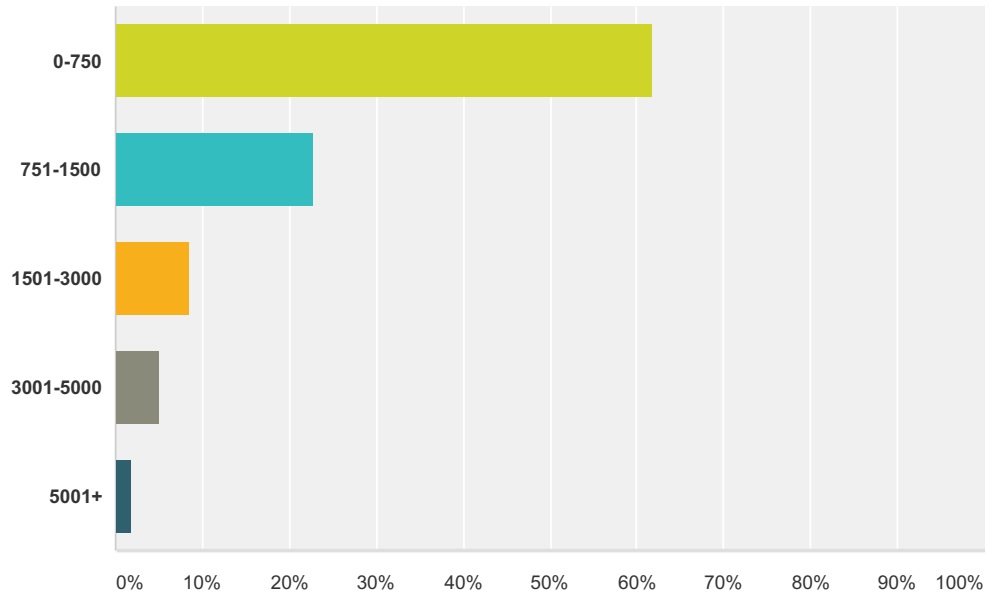
Answer Choices	Responses	Count
0-750	7.45%	130
751-1500	17.43%	304
1501-3000	23.91%	417
3001-5000	17.83%	311
5001-10,000	18.00%	314
10,001-20,000	10.67%	186
20,000+	4.70%	82
<b>Total</b>		<b>1,744</b>

**Q7 During a slow period, what is the average number of images that you may create in a month?**

Answered: 1,744 Skipped: 0



Survey of Photographers for U.S. Copyright Office NOPR Group Registration 2017

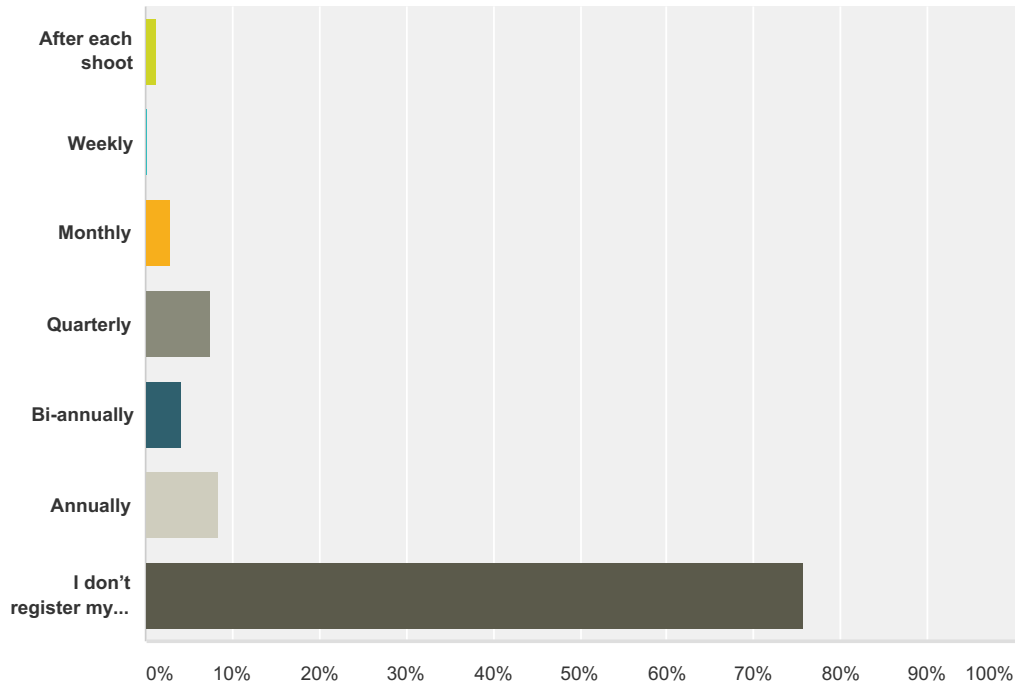


Answer Choices	Responses
0-750	61.70% 1,076
751-1500	22.82% 398
1501-3000	8.49% 148
3001-5000	5.10% 89
5001+	1.89% 33
<b>Total</b>	<b>1,744</b>

**Q8 How often do you register your work with the U.S. Copyright Office?**

Answered: 1,744 Skipped: 0

Survey of Photographers for U.S. Copyright Office NOPR Group Registration 2017

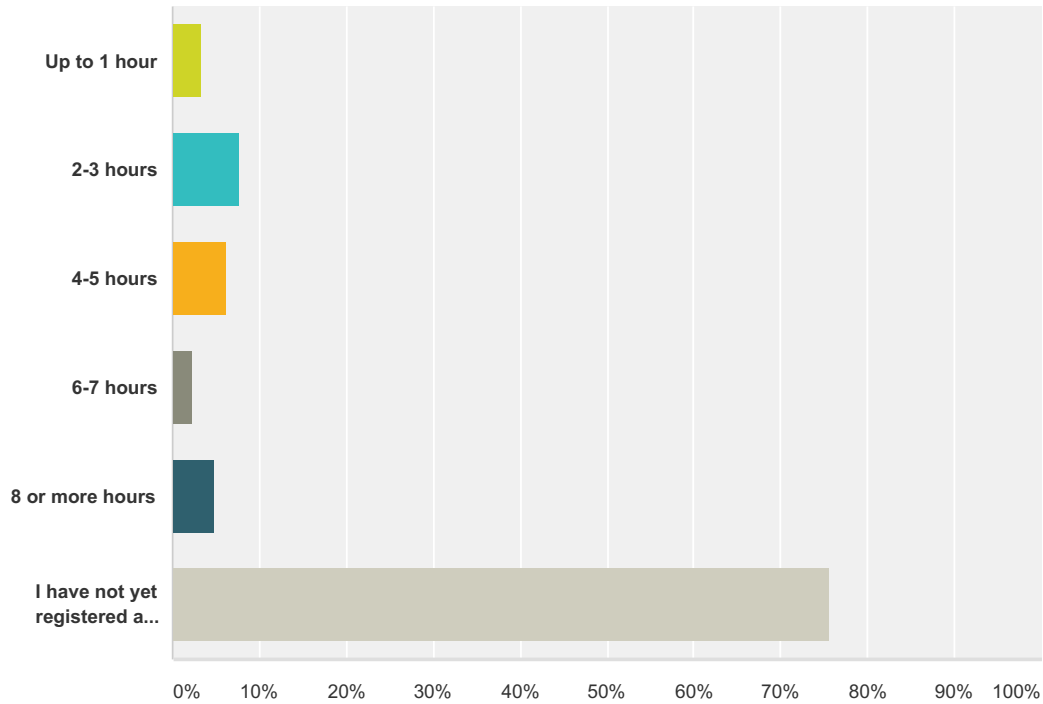


Answer Choices	Responses	Count
After each shoot	1.26%	22
Weekly	0.23%	4
Monthly	2.92%	51
Quarterly	7.57%	132
Bi-annually	4.07%	71
Annually	8.26%	144
I don't register my work	75.69%	1,320
<b>Total</b>		<b>1,744</b>

**Q9 When registering multiple images on a single registration, approximately how much time do you spend on one registration, from collecting and preparing the images, to collecting information, to filling out and submitting the form?**

Answered: 1,744 Skipped: 0

Survey of Photographers for U.S. Copyright Office NOPR Group Registration 2017

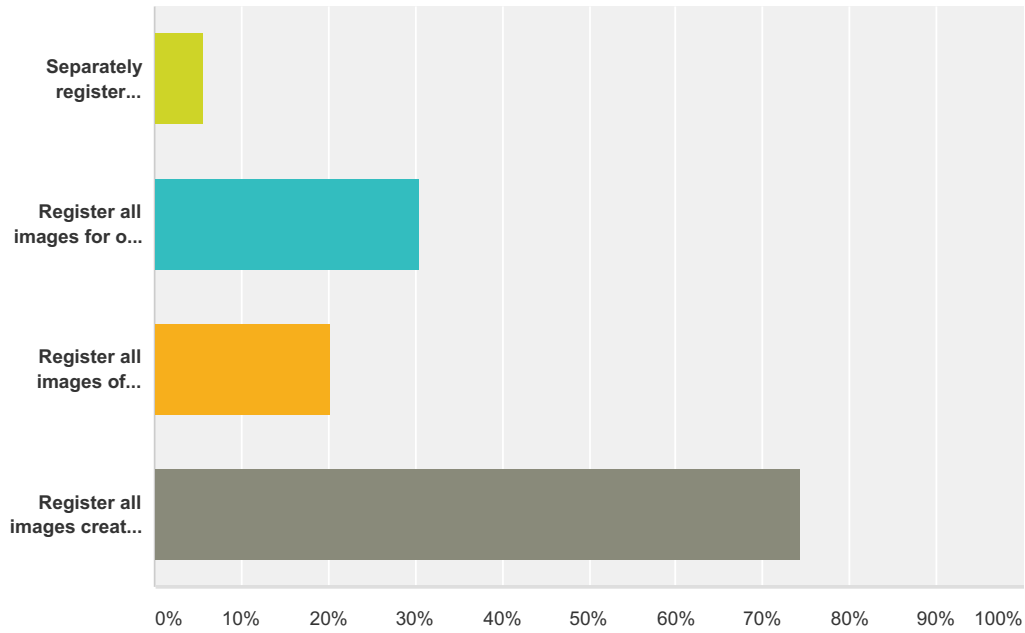


Answer Choices	Responses	Count
Up to 1 hour	3.33%	58
2-3 hours	7.68%	134
4-5 hours	6.25%	109
6-7 hours	2.29%	40
8 or more hours	4.87%	85
I have not yet registered a group of images	75.57%	1,318
<b>Total</b>		<b>1,744</b>

**Q10 The U.S. Copyright Office is finalizing revisions of the rules governing group registration. When registering groups of images, which of the below options is better for your workflow and would encourage you to register more often? check as many as apply**

Answered: 1,744 Skipped: 0

## Survey of Photographers for U.S. Copyright Office NOPR Group Registration 2017

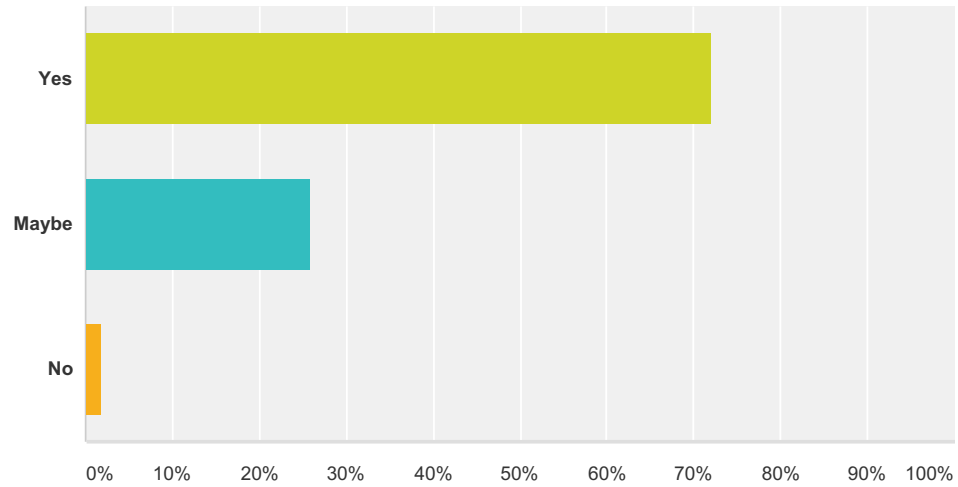


Answer Choices	Responses
Separately register unpublished and published images. (This is the current requirement)	5.73% 100
Register all images for one job/project together as one group, including both unpublished and published images.	30.45% 531
Register all images of multiple jobs/projects for one client together as one group, including both unpublished and published images.	20.24% 353
Register all images created within a specific time frame together as one group, including both unpublished and published images. (For example, once a month or quarterly)	74.37% 1,297
<b>Total Respondents: 1,744</b>	

### Q11 If the U.S. Copyright Office's process for group registration of copyrights was simpler, would you register more often?

Answered: 1,744 Skipped: 0

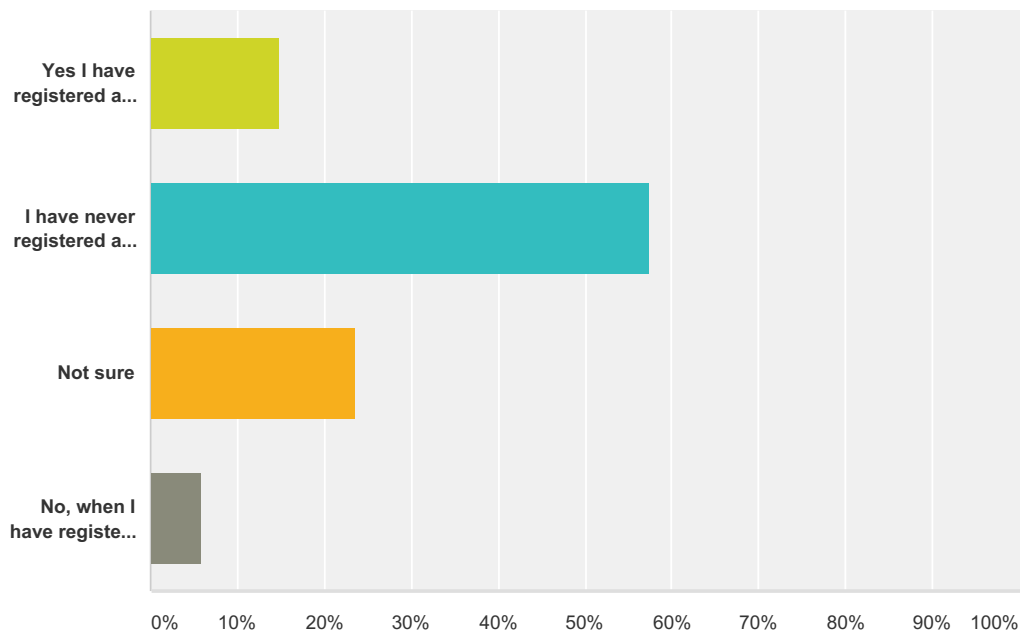
Survey of Photographers for U.S. Copyright Office NOPR Group Registration 2017



Answer Choices	Responses	Count
Yes	72.08%	1,257
Maybe	25.97%	453
No	1.95%	34
<b>Total</b>		<b>1,744</b>

**Q12 When using the Copyright Office’s online eCO registration system, are you able to complete a group registration within 72 hours from start to finish, or do you need more time?**

Answered: 1,744 Skipped: 0



## Survey of Photographers for U.S. Copyright Office NOPR Group Registration 2017

Answer Choices	Responses
Yes I have registered a group of images and 72 hours is plenty of time.	14.91% 260
I have never registered a group of images	57.45% 1,002
Not sure	23.68% 413
No, when I have registered a group of images online, I have found that I need more than 72 hours to complete a registration.	5.79% 101
<b>Total Respondents: 1,744</b>	

#	If no, please explain	Date
1	<b>use 3rd party service</b> I only register unpublished work through eCO. For published work, I register through Image Rights because their system is easier to use.	1/23/2017 2:20 PM
2	too busy to do it right away.	1/23/2017 10:05 AM
3	<b>volume of images</b> Collecting images and rendering an archive takes days if not weeks..25K plus images per run	1/22/2017 4:57 PM
4	<b>too complicated</b> Filing a copyright for your photo's can be a cumbersome process	1/20/2017 9:24 PM
5	<b>volume of images</b> would like to register them. I have 200,000 images are more. Both RAW and .jpg	1/20/2017 7:27 PM
6	<b>too complicated</b> it takes way too long	1/20/2017 2:48 PM
7	Was only 4 images from IPC entries	1/20/2017 1:31 PM
8	<b>don't register</b> Not familiar with process or cost	1/20/2017 1:29 PM
9	<b>too complicated</b> I can't dedicate a computer to only registration while registering, and I have more to do than just register copyrights as it doesn't add value. It protects value but doesn't make it.	1/20/2017 12:25 PM
10	<b>too complicated</b> it takes so much time, I end up giving up	1/20/2017 11:36 AM
11	<b>don't register</b> It takes way to much time, effort and energy. I am a very small business in a small town making little money for my work to begin with, I don't have the time or money to register.	1/20/2017 9:22 AM
12	<b>make mistakes</b> Often have to go back and revise as the rules are very confusing	1/20/2017 8:02 AM
13	<b>tech problems</b> When I checked I could not use Apple Computer to upload for registration.	1/19/2017 11:28 PM
14	<b>tech problems</b> The online system can't handle the number of images I'm registering at one time, I always have to mail in a thumb drive.	1/19/2017 10:08 PM
15	<b>make mistakes</b> We always call to confirm that the registration has gone through and to address any new questions, because submitting is to tedious and confusion. Getting a call back from the office usually takes a week or so.	1/19/2017 7:10 PM
16	<b>tech problems</b> Uploading takes forever	1/19/2017 4:57 PM
17	<b>tech problems</b> When I tried, I was unable to upload my images, so I sent the images in on a CD.	1/19/2017 2:10 PM
18	too slow process	1/19/2017 1:28 PM
19	<b>too complicated</b> I have found the process complicated, to the point it makes me feel like only large staffed companies have the resources to complete the task.	1/19/2017 12:54 PM
20	<b>don't register</b> Have not used the registration process as of this time but want to get involved and register.	1/19/2017 12:09 PM
21	<b>tech problems</b> Network and website issues	1/19/2017 10:08 AM
22	<b>too complicated</b> registration is too time consuming, I only register published work.	1/18/2017 9:19 PM
23	<b>too confusing</b> Not sure, just don't really know how to	1/18/2017 8:00 PM
24	<b>too complicated</b> Workflow does not allow sufficient time at present.	1/18/2017 7:54 PM
25	<b>too complicated</b> The interface is cumbersome!	1/18/2017 5:25 PM
26	<b>too confusing</b> It is confusing and difficult to understand the rules. I cannot remember what was published or not, nor exactly when they were published on some images.	1/18/2017 5:00 PM
27	<b>too complicated</b> too complicated, publicated?!	1/18/2017 4:09 PM

## Survey of Photographers for U.S. Copyright Office NOPR Group Registration 2017

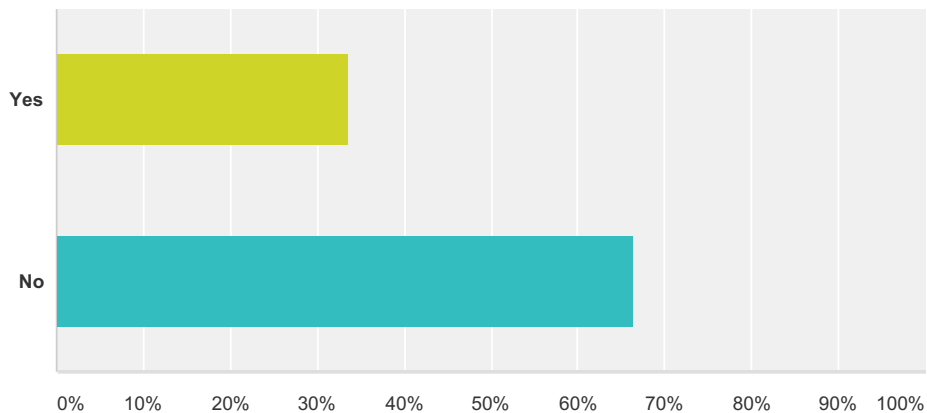
28	<b>don't register</b> I have never registered any of my photos. It is my understanding there is a fee to do this. Assuming I am correct the cost is not that high. My finances just do not allow for much of that right now. In my case I have looked at registering, but never have thus far.	1/18/2017 3:35 PM
29	<b>too complicated</b> I only registered one group and found it was taxing to get it done - plus I also lots iphone photographs	1/18/2017 2:39 PM
30	Some events we do take place over multiple days or weeks. If we start registration we may need to wait to finish it until the last part of the event.	1/18/2017 11:59 AM
31	<b>don't register</b> FYI, the primary reason I don't register my images as the cost to fight a copyright case is prohibitive.	1/18/2017 11:53 AM
32	<b>tech problems</b> Uploading takes awhile.	1/18/2017 11:07 AM
33	Not enough information or access provided to me	1/18/2017 11:03 AM
34	<b>too complicated</b> I have not been able to complete registration in under 72 hours, so I have not completed the process.	1/18/2017 10:59 AM
35	<b>too complicated</b> It takes part of one day to process images for the CO, that is, convert each image to jog, long edge no more than 250 pixels, 72 dpi and rename and number them sequentially so I dont have to type the complete name hundreds of times.	1/18/2017 10:55 AM
36	<b>don't register</b> Never though I need to register	1/18/2017 10:38 AM
37	The Supreme Court passed a ruling a few years ago, that images are copyrighted at the second of creation. I do have a copyright attorney.	1/18/2017 10:22 AM
38	When I start registering my images, I'm sure I will need a little more than 72 hours.	1/18/2017 10:08 AM
39	O	1/18/2017 9:35 AM
40	<b>make mistakes</b> There always seem to be some details that I missed while preparing my group of images for registration, so I then have to go back and find where I made the errors.	1/18/2017 9:33 AM
41	I know I need more time to registe because when I have to do things al the work flow day to day 72 hour frame is not enough.	1/18/2017 7:53 AM
42	<b>use 3rd party service</b> I use Legal Zoom, not the Copyright Office's interface.	1/13/2017 12:17 PM
43	<b>mail/paper</b> I still use paper registrations for groups of images	1/13/2017 12:58 AM
44	<b>too confusing</b> I wish images were easier to send digitally. All of the choices are also highly confusing and there is inadequate help.	1/12/2017 10:20 PM
45	<b>mail/paper</b> I live in Washington DC, I hand deliver images to the copyright office	1/12/2017 8:08 PM
46	<b>too complicated</b> The file size limitations on the pdf I can upload is cumbersome.	1/12/2017 7:34 PM
47	<b>mail/paper</b> Last time I registered, it was using the mail. Took so much time & litigation was prohibitive, so I quit doing it.	1/12/2017 5:20 PM
48	<b>don't register</b> never have	1/12/2017 5:12 PM
49	<b>tech problems</b> The time completing all areas and upload seems to lag and I often need additional time for notations	1/12/2017 4:43 PM
50	<b>mail/paper</b> I have never done online, just by mail. I have my work in numerous books which have been copyrighted separately. I don't waste shots.	1/12/2017 4:05 PM
51	<b>too complicated</b> I have only registered a small group of images (12), and it was hard enough, I haven't tried registering a larger group for that reason.	1/12/2017 3:39 PM
52	<b>too complicated</b> it is too complicated for me wish it were different.	1/12/2017 3:10 PM
53	<b>tech problems</b> Uploading images is slow due to internet connectivity	1/12/2017 1:37 PM
54	<b>tech problems</b> Work on it in segments.	1/12/2017 1:04 PM
55	<b>volume of images</b> It takes time to upload the images. I offer register more than 5000 at a time.	1/12/2017 12:46 PM
56	I have never registered electronically	1/12/2017 12:34 PM
57	small staff and other daily tasks often interpret the process	1/12/2017 12:04 PM
58	I have all data and images ready before starting	1/12/2017 12:01 PM
59	<b>too confusing</b> Fee for registration is too high. The definition of publication is vague.	1/12/2017 11:58 AM

## Survey of Photographers for U.S. Copyright Office NOPR Group Registration 2017

60	<b>tech problems</b> Sometimes the online connection is slow	1/12/2017 11:44 AM
61	I have not used the system yet.	1/12/2017 11:29 AM
62	<b>mail/paper</b> I have mailed in my CDs with thousands of images in each registration	1/12/2017 11:26 AM
63	<b>too complicated</b> I did begin a registration process last year, but turned it over to a colleague to finalize. It was not quite as easy as I thought it would be, though not impossible.	1/12/2017 11:25 AM
64	IDK	1/12/2017 11:25 AM
65	<b>don't register</b> I don't know how to	1/12/2017 11:23 AM
66	<b>too complicated</b> Your requirements and software are cumbersome. Making title sheets or entering each file name is a burden.	1/12/2017 11:23 AM
67	more time would be helpful in situations where you have to have your images to a client asap	1/12/2017 11:22 AM
68	<b>too confusing</b> it's an old fucked up process that is worded poorly and the site is nearly to unusable due to it's poor layout and lack of clear consise explanation.	1/12/2017 11:17 AM
69	<b>use 3rd party service</b> I use third party registers as I find the USCO website antiquated, confusing and NOT user friendly.	1/11/2017 9:21 PM

### Q13 Do you believe that you understand the US Copyright Act's definition of "publication" enough to determine which of your images are "published" and which are "unpublished" for registration purposes?

Answered: 1,744 Skipped: 0



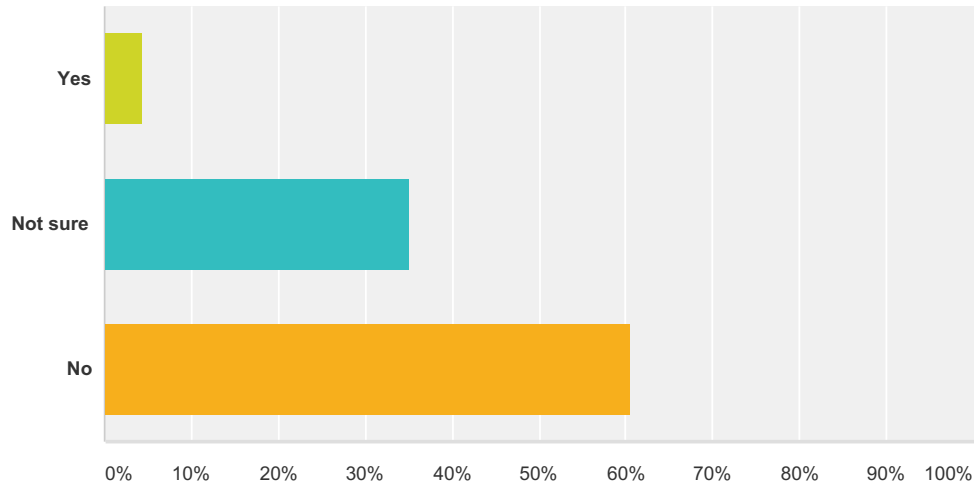
Answer Choices	Responses
Yes	33.66% 587
No	66.34% 1,157
<b>Total</b>	<b>1,744</b>

### Q14 Is the U.S. Copyright Office's requirement that you register unpublished and published images on separate registrations practical for your business and workflow?



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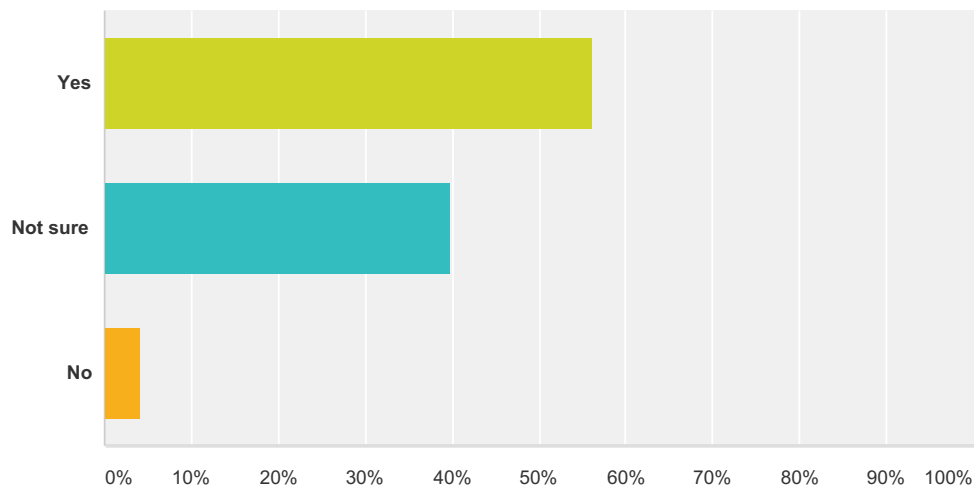
Answered: 1,744 Skipped: 0



Answer Choices	Responses
Yes	4.30% 75
Not sure	35.09% 612
No	60.61% 1,057
<b>Total</b>	<b>1,744</b>

**Q15 If you could purchase a monthly, quarterly or annual subscription for submitting copyright registrations, rather than separately paying for each registration, would you register more often?**

Answered: 1,744 Skipped: 0



Answer Choices	Responses
Yes	56.08% 978

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Not sure	39.85%	695
No	4.07%	71
<b>Total</b>		<b>1,744</b>