NEWSMEDIA ALLIANCE

January 15, 2019

Ms. Karyn Temple
Acting Register of Copyrights and Director of the U.S. Copyright Office
Library of Congress
Copyright Office
101 Independence Avenue SE
Washington, DC 20559-6000

Re: **News Media Alliance Comments Regarding Registration Modernization, Docket No. 2018-9.**

Dear Ms. Temple:

The News Media Alliance (the "Alliance") is a nonprofit organization that represents the interests of more than 2,000 news media organizations in the United States and around the world. The Alliance diligently advocates for newspapers before the federal government on issues that affect today's media organizations, including protecting newspapers' intellectual property.

The Alliance welcomes the opportunity to provide these comments to the United States Copyright Office ("USCO" or the "Copyright Office") in response to the Notification of Inquiry on *Registration Modernization*, Docket No. 2018-9, 83 Fed. Reg. 52,336 (October 17, 2018).

News organizations play an important role in the U.S. economy and democracy. The news media industry generates $28.9 billion in total revenue and employs approximately 174,000 people in the United States.[1] These journalists and others who rely on newspapers for their living create

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[1] Michael Barthel, "*Despite Subscription Surges for Largest U.S. Newspapers, Circulation and Revenue Fall for Industry Overall*", Jun. 1, 2017, http://www.pewresearch.org/fact-tank/2017/06/01/circulation-and-revenue-fall-for-newspaper-industry/; United States Department of Labor, Bureau of Labor Statistics, *Newspaper Publishers Lose*

content that reaches 136 million adults in the United States each week, representing 54 percent of the country's adult population.[2] Online, news organizations receive over 200 million unique visits and 6.7 billion page views per month, while 44 percent of the news media audience relies exclusive on print publications.[3] News organizations also ensure the health of our local communities, with most local news media companies reaching more adults in their local markets than any other local media.[4]

Although newspapers are so integral to our society, and some publications have witnessed large increases in digital subscriptions, both overall print and digital newspaper circulation dropped by approximately 10 and 9 percent between 2016 and 2017, respectively.[5] At the same time, however, digital audience for newspapers increased 21% from 2015 to 2016 and remained the same from 2016 to 2017.[6] While this considerable increase in audience has led to increased digital advertising revenues, they are often not enough to offset the reduced print advertising and digital and print subscription revenues.

In order to survive in the changed environment – and to ensure the sustainability of high-quality journalism – news organizations need strong copyright protections and an efficient copyright registration system. Many news organizations see copyright registration as beneficial to their business and opt to register their works using the Office's group registration option. An efficient electronic registration system is particularly important for large publishers with multiple properties. These large publishers register hundreds of editions from multiple properties every year and experience the inefficiencies in the current system most acutely. Less than 1.5 percent of the Alliance member properties are published by a single-paper publisher, while 96 percent of the Alliance dailies are published by multi-property publishers.

Over Half Their Employment from January 2001 to September 2016, Apr. 3, 2017, https://www.bls.gov/opub/ted/2017/newspaper-publishers-lose-over-half-their-employment-from-january-2001-to-september-2016.htm.

[2] News Media Alliance, News Advertising Panorama 2018.

[3] News Media Alliance, News Advertising Panorama 2018.

[4] News Media Alliance, News Advertising Panorama 2018.

[5] Pew Research Center, *Newspaper Fact Sheet*, http://www.journalism.org/fact-sheet/newspapers/.

[6] Id.

Over the years, the Alliance has engaged with the Library of Congress (the "Library") and the Copyright Office to develop the registration system to better respond to the needs of the news publishers and the creative community as a whole. While the Office has made considerable progress in developing its registration system, a lot remains to be done, and we appreciate this opportunity to provide comments on some of the most pressing issues to news publishers. Below, we have addressed the questions in the Notice of Inquiry most relevant to news organizations, and we look forward to working together with the Office to further develop its registration system in the future.

Application Process

Electronic Applications and Payments: Should the Office mandate the use of electronic applications and payments, and eliminate the paper application and payment options via check or money order?

The Alliance supports the Office's proposal to eliminate the paper application and payment options, particularly if they lead to lower user fees and other registration costs as well as to more efficient and expedient processing of registration applications.

While an electronic system has the capability to provide such efficiencies, the Office should be cautious when devising technical standards by which users will have to abide. With regards to electronic registration applications, the Office should ensure that any electronic registration system takes into account the technical requirements and processes utilized by copyright registrants. As discussed below in more detail, the electronic registration system should integrate well with such existing processes in order to minimize the costs and burden placed on copyright owners.

As for the electronic payment options, the Alliance believes that while modernizing the Copyright Office inevitably requires the adoption of electronic payments, the Office should make sure that it supports a variety of payment options, including credit and debit cards, PayPal,

and other commonly used payment methods. Limiting the payment options could have a severe debilitating impact on the ability of some copyright owners to register their works.

Electronic Certificates: Should the Office issue electronic certificates and offer paper certificates for an additional fee?

The Alliance supports the issuance of electronic certificates, particularly if it would expedite the application process and the resulting savings are used to offset costs to the registrants.

Dynamic Pricing Models: Should the Office replace the Single, Standard, and group applications with a dynamic pricing model that scales fees based on the number and type of works submitted for registration?

While the Alliance understands the benefits a dynamic pricing model would represent to some stakeholder groups, it should only be considered as long as it does not lead to higher average costs for creators currently utilizing the group registration option, either due to the number of works or the page count of an edition registered in one application. Dynamic pricing models should be used to make the registration process more cost-efficient for creators with a large number of registrations, without disadvantaging others and reducing their incentives to register their works.

In addition to dynamic pricing models, the Office could consider other pricing models, including a subscription service that would allow registrants to pay a reduced periodic fee covering all their registrations during that period. Furthermore, the Office should consider models that would offer discounted fees to small businesses, including small news publishers, and for registrants whose works are less time-consuming and burdensome to examine than others. For example, a newspaper registration assumedly requires considerably less time to examine than a film or an interactive computer game. These savings should be reflected in the respective registration fees.

Application Information

Authorship Statements: Should the Office eliminate the Author Created and Nature of Authorship sections of the application, and instead, require the applicant to identify the work being submitted for registration, rather than the elements of authorship contained in the work?

The Alliance believes that it would be ill-advised for the Office to eliminate the Author Created and Nature of Authorship sections of the application and requiring the applicant to identify the work being submitted for registration, rather than the elements of authorship contained in the work. On the other hand, eliminating these sections and allowing the examiner to add a statement that appropriately describes the work submitted for registration should be considered as long as it would not lead to increased workload for the examiner and, therefore, increased user fees or longer processing times. News publishers already often provide the required information in the metadata accompanying their electronic registration deposits. Creating a searchable, crowdsourced list of terms that could be used to describe the work, similar to the United States Patent and Trademark Office's Trademark ID Manual, would be of limited use to news publishers.

The Rights and Permissions Field: Should the Office allow authorized users to make changes to the Rights and Permissions field in a completed registration?

The Alliance supports the proposal to allow authorized users to make changes to the Rights and Permissions field in a completed registration. There should be no fee associated with such changes. Allowing such changes would arguably make the public record more comprehensive as it would lower the threshold to make such changes.

Additional Data: What additional data should the Office collect on applications for registration? For example, should ISBNs or other unique identifiers be mandatory? Should the Office accept other optional data?

While the Office could allow applicants to include additional information on the applications for registration, such as International Standard Serial Numbers (ISSNs) or International Standard Book Numbers (ISBNs), the inclusion of such information should not be mandatory, even if such a number has been assigned to the work concerned. The Office modernization should be aimed at streamlining the registration process and requiring registrants, some of whom are registering multiple works at a time, to provide more information for minimal public record gain, would be detrimental to such efforts.

Application Programming Interfaces: What considerations should the Office take into account in developing APIs for the electronic registration system?

The Alliance has long strongly supported the development of a registration deposit system that would allow news publishers to submit electronic deposits in batches. Although the development of Application Programming Interfaces (APIs) would be a positive step forward, allowing publishers to submit deposits using a File Transfer Protocol (FTP) or a Secure File Transfer Protocol (SFTP) would be preferable due to its lower costs to registrants.

In the last ten years, news publishers and the Alliance have worked together with the Office and the Library to modernize the formatting requirements to register and deposit newspapers. The effort was intended to replace costly and diminishing supplies of microfilm with Portable Document Formats (PDFs). Following two pilot projects – the first completed in 2009 and the second in March 2017 – the news publishers and the Library identified formatting specifications for PDFs that could be used to satisfy both the copyright registration and mandatory deposit requirements. During the second Pilot, the news publishers were able to submit their deposits using an FTP upload option that was largely automated and integrated well with the publishers' existing workflows. It was assumed that this option would be preserved in the final rule that would be promulgated by the Copyright Office at a later date.

However, when the Copyright Office's Final Rule on Group Registrations of Newspapers (83 Fed. Reg. 4,144) went into effect on March 1, 2018, the group registration option did not include the option of submitting deposits using an FTP upload. News publishers of all sizes rely on highly automated processes with minimal human interaction, and an FTP upload option would be beneficial particularly to large publishers with multiple properties and hundreds of uploads. These publishers would benefit greatly from an option to submit deposits using automated systems that their workflows already support. While the Copyright Office's current registration deposit system provides a bulk upload process, allowing the submission of multiple editions as separate files in one submission, this solution still presents the publishers with an option that is very involved, highly manual, and time-consuming, and does not meet the benefits of an automated batch upload option.

While the Alliance fully supports allowing "companies to build a registration workflow into their normal business processes," an FTP upload option would be preferable to APIs as it would minimize the resources news publishers would have to extend to developing systems that would bridge the gap between their processes and the Copyright Office's registration system. In many cases, this may require publishers to contract external vendors to build an interface from their systems to send files to the Office. Publishers already struggle with diminished resources to produce high-quality journalism that supports local communities and an informed democracy. Imposing further costs upon them would hamper their financial sustainability while also undermining the benefits the modernization efforts are supposed to provide for the registrants. In addition to higher costs, an API-only approach, without an accompanying FTP upload option, would lead to potentially considerable delays as news publishers would not be able to start developing their interfaces until after the Office has published the technical specifications for its new registration system. An FTP upload option, meanwhile, would be relatively quick and easy to adopt and implement.

News publishers could comply with the Office's deposit information requirements when utilizing an FTP upload option by embedding the required metadata either within the filename or in the PDF file itself. While an FTP upload option would potentially leave publisher deposits and the

registration system vulnerable to abuse if the publisher's credentials were compromised, the benefits to the registrants would outweigh these risks. Although an API would likely provide a feedback loop on receipt of content, registrants utilizing the FTP upload option could, as the Office suggests, designate "an email address for receiving correspondence concerning applications for registration."

The Alliance commends the Office for considering automatic batch upload options as such options would create efficiencies and minimize costs to both the Office and the registrants. Even if the Office decides to develop APIs, it should not mean that an FTP upload option, or another automated batch submission method, should not be introduced as well. A fully automated registration process may encourage more news publishers to register their copyrights, and the Alliance welcomes the opportunity to work with the Office to develop an automated registration deposit system that integrates with the registrants' existing processes and encourages news publishers to protect their content for years to come.

Public Record

> ***Unified Case Numbers:*** *Should the Office issue one case number to track and identify a work or groups of works through the registration and appeal process?*

The Alliance believes that the introduction of Unified Case Numbers may be beneficial to registrants in general, although it may be of limited utility to news publishers.

> ***Digital First Strategy:*** *Should the Office require only electronic and identifying material for all deposits for registration, thereby eliminating the need to submit physical deposits for purposes of registration?*

The Alliance supports eliminating the requirement to submit physical deposits for purposes of registration in order to make the registration system more efficient and to lower costs to the Office and the registrants, as long as the Office ensures the security of electronic deposits.

Further, as discussed above in response to the Office's question about Application Programming Interfaces, the Digital First Strategy must include an option to submit registration deposits in batches, preferably via FTP upload option or another automated and resource-efficient way of integrating the registration process with the news publishers' existing processes.

The Alliance has been working closely with the Library of Congress and the Office on the group registration of newspapers requirements both before and after the Office published its final rule on the issue in March of 2018. With microfilms having become largely unavailable to news publishers at the end of 2018, and the Office requiring electronic group registrations, it is vital that the Office address the remaining concerns news publishers have regarding the group registration option, including the batch submission option. These concerns should be addressed as soon as possible, especially considering that the Office will stop accepting microfilms as backup deposits in December 2019. Already, some multi-property publishers have ceased to register their works due to the impracticability of the current system – thereby diminishing the utility of the public record the registration system is supposed to support.

When developing its Digital First Strategy, the Office needs to take into account the registrants' operational requirements. This includes making sure that the future deposit system does not impose undue costs or burdens on registrants, including news publishers, and that the registration system is as accessible to the registrants as possible. Failing that, the Office risks the registrants not seeing the benefits of the modernized registration system, and further decline in the number of registration applications.

> ***Digital Deposit Security:*** *The Office requests comment on the current and future state of the Office's deposit security as well as any additional approaches to this issue.*

When developing batch upload options – particularly those not involving APIs – the Office should ensure the integrity of the upload process so that unauthorized users are unable to upload content on behalf of content creators, whether that content is legitimate or not. This form of abuse could likely, to an extent, be addressed by adopting an SFTP upload option instead of allowing registrants to submit deposits via FTP.
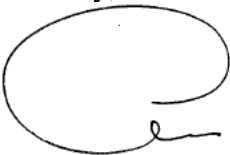
The Office could also consider requiring the users to change their passwords or other credentials at regular intervals. If the Office were to do so, it should provide registrants with sufficient notice every time such changes are needed. This would minimize the chance for accidentally expired credentials, and therefore the resulting time and effort spent to contact the Office to reset such credentials.

Conclusion

The Alliance commends the Office for its modernization efforts and, particularly, for its commitment to creating a copyright deposit system that allows news publishers to submit deposits in batches using a system that integrates well with their existing processes. Such automatic systems that relieve the burden on registrants and the Office are key to any successful registration modernization.

The Alliance welcomes this opportunity to submit these comments to the Office regarding its registration modernization efforts and looks forward to working with the Office to discuss these comments in more detail and to develop a registration system that works better for all creators.

Sincerely,

David Chavern
President & CEO
News Media Alliance