

**Oversight Hearing of the U.S. Copyright Office
Held by the
Subcommittee on Intellectual Property
Committee on the Judiciary of the U.S. Senate
On November 13, 2024**

Responses of
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To Questions for the Record
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Questions from Senator Tillis

For years, photographers have expressed three main concerns that make the U.S. copyright system unworkable for them:

- 1. *Deposits:* To make it simple, let's focus on wedding photography for a moment. Photographers shoot on average about 2000 images at a wedding. With the current limitation of 750 images per registration, is it realistic to expect them to sort and submit three registrations to fully protect their work? You addressed this topic briefly at the hearing, but if there is any further detail you can provide, it would be appreciated.**

In the new ECS Registration System, the Copyright Office intends to significantly expand the number of photographs that may be submitted in a group registration application. The development of the eDeposit uploader for the new system has been designed to accommodate the upload of up to 2,000 images by applicants and rendered to examiners in an efficient manner. The Office is initiating a limited pilot to test a functional prototype of the uploader by the end of the year. Test participants, including many photographers, will be able to upload up to 2,000 .jpg files during the test session and provide feedback on this new functionality.

2. ***Sorting images as published or unpublished:*** Addressing the statutory requirement to sort images as published or unpublished, a step that is time consuming and easy to get wrong. And a step that many photographers say has no meaning or purpose in today's world and one that photographers consider a roadblock that stands between them and their copyrights. Would you support legislation to make sorting images optional based on the needs and desires of the creator? Could this be accomplished through non-legislative means?

We are aware of photographers' interest in this issue, and have been discussing it with their representative organizations.

As the Committee is aware, the Copyright Act contains numerous provisions that are based on the publication status of a work. Many of these provisions are relevant to registration and are interdependent. For example, the statute requires a creation date for every unpublished work and a creation and publication date for published works, as well as the nation of the work's first publication.¹ The availability of statutory damages and/or attorney's fees depends on the date of publication in relation to the date of registration.² The statute also establishes different deposit requirements depending on whether a work is published, with many published works requiring best edition copies.³ The evidentiary presumption of the validity of the copyright that results from a certificate of registration in judicial proceedings depends on the relationship between the date of first publication and the effective date of registration.⁴ The retention period for deposits also varies depending on publication status.⁵

In addition to statutory amendments, extensive changes would also be required to the Office's regulations, technological systems, and deposit retention policies.

Due to the number of ways that publication is used in the statute and the complexity of amending Title 17, we have explored other solutions to the concerns raised by photographers. As I stated in my testimony, the Office and the Library of Congress's Office of the Chief Information Officer plan to develop application programming interfaces (APIs) for the ECS registration system. This will allow hardware companies, software companies, and other third-parties to establish direct

¹ 17 USC § 409(7) and (8).

² 17 USC § 412.

³ 17 USC § 408(b).

⁴ 17 USC § 410(c).

⁵ 17 USC § 704(d).

connections with the new system. In this way, applicants should be able to customize their user experience to meet their specific needs and integrate the registration functions into their workstreams.

This should be beneficial for photographers. Among other things, it would allow them to upload photos to the ECS registration system in an automatic and systematic way, allowing them to register before they share their photos with anyone else. This would obviate the need to separate published and unpublished works from each other or the need to designate a publication date for photos that may be subsequently sent to a client or other member of the public.

Although APIs will not be available immediately when the new registration system is introduced to the public, this will be one of our first priorities once the system is up and running. At this time, we do not see any need for legislative change to enable the Office to pursue this goal.

- 3. *One size fits all registration system:* A photographer is faced with the need to pay for multiple \$55 registrations to protect relatively low-value work, compared for instance, with an extremely high-value motion picture that requires a single \$55 registration. Would you support a fee structure akin to the USPTO that has a lower cost to for registering patents under their small and micro entity system?**

The Office is aware that there is public interest, particularly from photographers, in tiered fee structures and other fee flexibilities. We are committed to making sure that our fee structures do not impose undue barriers to access. We generally conduct a fee study roughly every five years, and we plan to initiate a new one in 2025. That process will begin with a public notice of proposed rulemaking, when we will invite public comments and assess the viability and impact of various fee structures.

We have already engaged in preparatory work for this study. Our Chief Economist's office has been conducting research both on the demand side, including applicants' price sensitivity, and on the cost side, looking at operating costs associated with different services given the types and volumes of submissions. This work, in coordination with cost analysts, will help us assess if and how a tiered fee structure, dynamic pricing, or subscription pricing plans would impact stakeholders and the Office.

I note that all of these approaches would require new system capabilities. We expect to achieve these capabilities in the new ECS registration system, although not immediately when it is initially made available for public use. Once the new registration system is launched, we will implement additional functionalities based on the feedback we receive from the public and other stakeholders, as well as Office priorities.