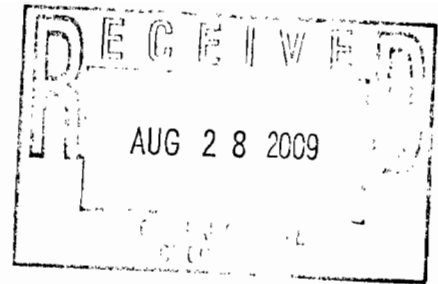


**PPA.**

Professional Photographers  
of America

DOCKET NO.
RM 2009-3
COMMENT NO <u>6</u>



**Professional Photographers of America Response to the  
U.S. Copyright Office Request for Comment  
Regarding Proposed Revisions to the  
Mandatory Deposit Requirement of Online-only Works**

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On behalf of Professional Photographers of America (PPA), Commercial Photographers International, the Society of Sport & Event Photographers, the Student Photographic Society, and Evidence Photographers International Council, we write to offer our thoughts on the proposed rules amendment granting a mandatory deposit exemption to electronic works (or “depositless registration”) published in the United States and available only online. Together with our allied and affiliated organizations, we represent some 44,000 professional photographers engaged in all facets of photography and image making.

In addition to commenting on the proposed rules change, we also wish to commend the Copyright Office for engaging in a study of depositless registration. The concept of depositless registration is one that PPA has proposed and advocated for over the course of the last decade. We believe the opportunity to submit images upon request would prove advantageous for photographers and remove one of the major hurdles faced when completing the registration process.

It is important to note that as a class of copyright owners, professional photographers produce among the highest volume of creative works. A professional photographer working at a 1-3 person studio will produce hundreds, if not thousands, of images during the course of a week. Creating such a high volume of work, accompanied with the time spent in post-production, means photographers work on average 50-60 hour work weeks. For this reason, the burden of cataloguing their work for deposit, much less determining its publication status, is itself a deterrent to registration.

The exemption as proposed is of great concern as it does not apply to works published in both physical and online formats. While we recognize works distributed in both formats are also excluded under the exemption originally carved out in 1989; as described this exemption continues to exclude one of the largest classes of copyright holders; professional photographers, from attaining any benefit from such a change.

As a result, we believe there is a need for the Copyright Office to revisit two points as they relate to the proposed rule. The first is providing clarity to the definitions of “published” and “unpublished” works. The second is the exemption of photographic works from mandatory deposit.

### **Definition of “Published” and “Unpublished” Works**

It has been our experience that confusion over the publication issue can suppress or eliminate a photographer’s desire to attempt to register their work. In fact, only 1% of all professional photographers elect to register their work. On this end, we want to again urge the Copyright Office to provide registrants with additional guidance in determining the publication status of their work.

Photographers choosing not to register their work often cite the fees associated with submission as a reason for not completing the process. However, a much greater deterrent is preparing the image deposit, including discerning publication status, as it represents a cost far greater than the registration fee. A photographer only makes money when he is working with clients. If forced to choose between generating revenue and being protected by copyright law, the average photographer trying to scratch out a living will be forced to choose the former. We believe it is unfortunate that they must make such a choice.

In many instances, particularly in the realm of visual arts, the distinction between what is published and unpublished is anything but clear. Photographers especially, continue to have questions in regard to when a work should be considered published and who, exactly, constitutes “the public” for purposes of the statute. In addition to dampening any enthusiasm a photographer might have for registering their work, failure to appropriately determine the status of a work could deem their registration invalid. A mistake of this nature unfairly compromises their eligibility to collect statutory damages, the opportunity of which greatly impacts their ability to engage in an infringement suit.

We hope the Copyright Office will seize this opportunity to provide the photographic and larger visual arts communities with clarity as to how they might classify works being deposited. Providing such guidance is one step towards easing the overall burden of the copyright registration process.

### **Exemption of Photographic Works from Mandatory Deposit**

We believe it is imperative that the Copyright Office review its decision to photographic works among those exempt from mandatory deposit. Allowing photographers to prepare a deposit of works upon request as outlined in the proposed rule creates an opportunity for photographers to register their work in a timely manner and ensure the accuracy of their deposit. We anticipate that such an exception would likely increase the number of registration applications received from the photographic community, effectively giving them a seat at the table of copyright protection.

Thanks to advances in digital photographic technology and graphic design, the vast majority of professional photographers are now delivering works to their clients in an electronic format. While this primarily applies to those operating in the commercial photography niche, many consumers who obtain the services of a professional now receive their images digitally.

Now that photographers are delivering images via file transfer protocols (FTP), providing clients with online proof galleries, or on a digital storage device, it is more important than ever they ensure they have access to all legal remedies available under the law. As a result, copyright registration for photographers is crucial. Unfortunately, per the proposed and the 1989 exemptions photographic works would not be eligible for deposit upon request as they are also circulated in a physical format. Due to the distribution of photographic works in both formats, their exclusion from this exemption appears to penalize the copyright holder due to the clients' expectations of receiving a physical copy of a work they commissioned.

Affording professional photographers the opportunity to provide a deposit of works at a later date, regardless of the publication status, will greatly reduce the burden of completing the registration process. Having to handle the application-only registration of photographic works should improve the efficiency by which their application is certified garnering them the much needed advantage of gaining access to statutory damages. A subsequent advantage to the Copyright Office is that the responsibility to archive these works is placed on the photographer – something many already do for clients.

In closing, PPA and its affiliated organizations appreciate this opportunity to offer our thoughts on the topic of depositless registration behalf of our member photographers. We hope that you will take our comments into consideration before such rules changes are implemented and look forward to engaging the Copyright Office in an open dialogue to further explore the possibility of incorporating these changes into the registration system.