

Science Fiction and Fantasy Writers of America, Inc.
P.O. Box 3238
Enfield, CT 06083-3238
EMail: LegalAffairs@SFWA.ORG

**Comments Concerning Group Registration of Short Online Literary Works
Notice of proposed rulemaking**

TO: Regan A. Smith,
General Counsel and Associate Register of Copyrights
Robert J. Kasunic,
Associate Register of Copyrights and Director of Registration Policy and
Practice

*via electronic submission to
<https://www.regulations.gov/comment?D=COLC-2017-0009-0002>*

RE: Notice of Proposed Rulemaking (83 Fed. Reg. 65612, Dec. 21, 2018)
Group Registration of Short Online Literary Works
Copyright Office Docket No. 2018-12

Science Fiction and Fantasy Writers of America respectfully submit the following comments concerning the Copyright Office's Notice of Proposed Rulemaking.

Statements of Interest

Science Fiction and Fantasy Writers of America, Inc., (SFWA) is the national organization for professional authors of science fiction, fantasy, and related genres. Founded in 1965, SFWA is a California 501(c)(3) member organization. SFWA has nearly 2,000 members, the majority of whom are professional freelance authors of novels and/or short fiction. SFWA members publish works of prose, dramatic scripts for film and television, and games related to science fiction and fantasy. Of particular note, SFWA's membership includes writers publishing with traditional book and magazine publishers and in online short fiction venues, as well as writers who self-publish their works in print and electronic form.

SFWA is not a subsidiary of any other entity, and is entirely owned by its membership. SFWA has no subsidiaries or other ownership interest in any other organization that may be affected by this submission. SFWA members run their own small businesses, whose product is the written word.

SFWA thanks the Copyright Office for listening to writers and developing the new group registration option for "short online literary works" to be known as

“GRTX.” We believe it will be very useful.

III. The Proposed Rule

A. Eligibility Requirements

1. Works that may be included in the group

As we have remarked previously, the science fiction and fantasy genres currently enjoy a unique, very robust marketplace for works of short fiction. There are more professional paying venues for science fiction and fantasy than ever before. Since the days of the pulp magazines of the early 20th Century, short fiction has been the heart of the science fiction literature -- the wellspring from which its ideas take shape. SFWA is in a position to directly observe and analyze where professional short fiction writers publish their literary works and the kinds of works they publish.

The Copyright Office is correct that the current group registration options do not adequately cover the range of potential publishing venues in which our members publish their short literary works. Although a small number of the many magazines publishing science fiction and fantasy meet the limited definition of "periodicals", most do not. Online publication has become commonplace. SFWA presents the Nebula Awards for best short story, novelette and novella published in every calendar year and, for a number of years running, the majority of the nominees and winners have been published in online venues and do not fall under the "periodical" option.

A downside to the market for short fiction in science fiction and fantasy is that payment rates are still relatively low, so the registration fee can be a hefty percentage of payment for a short story. As a result, the vast majority of those science fiction and fantasy short works do not have their copyright registered now. Group registration will undoubtedly increase the number of stories being registered, as the cost per work drops.

We were pleased to see that the proposed rule would rely, to some extent, on SFWA's word counts regarding the various sub-categories of short fiction. However, we disagree with the proposal to lump novellas and novels together for purposes of copyright registration. Novellas of up to 40,000 words are most definitely a form of short fiction, distinct from novels in both length and content. Moreover, novellas are frequently published in the same venues and in the same manner as the other forms of short fiction, whereas novels are nearly always published as stand-alone books. Registration is generally handled differently for novellas as well: most traditional novels published as books are registered in the authors' names by the publishers, whereas the registration of novellas is left up to the authors themselves, as it is for other short literary works. Consequently, drawing an arbitrary line between the treatment of novellas and other forms of short fiction is likely to create confusion for both authors and publishers. Lastly, we note that for certain literary awards such as

the Theodore Sturgeon Award and the Flannery O'Connor Award for Short Fiction, novellas are treated as a form of short fiction.

We would also point out that poems often fall below the suggested 100 word limit. Some of the most famous poems in the English language, including ones by Robert Frost and Emily Dickinson, are shorter than 100 words. While we suggest that a lower mark would be better, we do not feel this is as crucial as including novellas as part of this group option.

We have an important question about what the Office will consider an "online" literary work. Publication in an online magazine that is either viewable on a publisher's website or downloadable as a file from that website would obviously be included, whether or not there was a payment. What about short literary works that are published as part of an ebook or e-magazine that is available on Amazon.com or another online book seller? Aside from online magazines, short science fiction and fantasy literary works are often published in anthologies, some of which have simultaneous print (physical form) publication and some of which do not. We favor the inclusion of publication in these ebook anthologies in the GRTX

2. Number of works that may be included in the group

The limit of 50 works in a three-month period is reasonable for the short fiction literary works referred to above. An author would have to be very prolific indeed to produce that many works in such a short period. However, we must point out that many of our members also blog extensively, and would like to include these blog essays in their group registration. Considering that, and assuming one blog post a day, a limit of 100 works seems fairer and more likely to represent the output of an average professional writer/blogger. We understand that more than one application can be submitted, and if the fee is reasonable, that would to some extent address this concern.

3. Title Information

No comment.

4. Author and claimant

We do anticipate a problem with the rule as proposed for long-standing collaborations between (usually) two or more authors. We understand that all authors own copyright to these collaborations, and that might create difficulties, but we suggest that as long as all works show all collaborators as part of the copyright notice, they should be allowed to register their collaborations as GRTX.

We agree that works made for hire should not be registrable as GRTX. In general, to the best of our knowledge most science fiction and fantasy works in which the copyright has been transferred are registered in the name of the

owner, not the author. We are opposed to allowing corporate authors to use GRTX unless the corporation is explicitly the property of the author.

B. Application Requirements.

We understand that it will be difficult or impossible to modify the current group registration system, and encourage the Office to meet with stakeholders to discuss how the next-generation system will work with group registrations of every kind.

C. Deposit Requirements.

We have no objections to the deposit requirements.

D. Filing Fee.

We believe that the filing fee should stay at \$55. It is extremely likely that any increase in the fee will dissuade many writers from registering their works and will thus be counterproductive to the purpose of registration.

IV. Conclusion

We agree with the Copyright Office that the proposed rule should result in many of the short literary works published online having their copyrights registered.

SFWA Addendum: If the present GRTX group registration proposal is approved, which we strongly favor, there will come into existence a hodge-podge of mutually exclusive text group registration categories. Most importantly, short literary works that are published in physical, print anthologies that do not have ebook editions will be excluded. A typical SFWA member who writes short fiction does not choose a specific type of publication in which to publish. The nature of free-lance writing is to seek out and publish in a wide variety of venues, generally seeking the highest rate of pay and the greatest visibility. Thus, during a three month period, a prolific short fiction writer may have their work published in "periodicals", print anthologies, ebook anthologies, and websites. What SFWA looks forward to, perhaps only when the next-generation registration system comes online, is a group category that encompasses all of the above. The distinctions, especially with the approval of GRTX, have become increasingly arbitrary. We look forward to discussing this further with the CO.

In addition to the comments above, SFWA also endorses the comments of the Authors Guild and the comments of the National Writers Union, which we feel are in many ways complementary to our submission.

Respectfully submitted for SFWA,

James W. Fiscus, Co-Chair,
SFWA Legal Affairs Committee,
Author, Past Director, SFWA

Michael Capobianco, Co-Chair,
SFWA Legal Affairs Committee
Author, Past President, SFWA