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## Protecting Producers' Copyrights: A Proposal for Group Registration of Non-Sample-Based Musical Beats

Matthew Roomberg

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### Cover Page Footnote

\* J.D. Candidate, 2023, Fordham University School of Law; B.M., 2018, Berklee College of Music. I would like to thank Professor Courtney Cox for her invaluable guidance, my good friend Jonathan Garcia for his assistance with Part I, and the Fordham IPLJ for their thorough review. I am deeply grateful to my family, friends, and mentors for their years of unwavering support and encouragement.

# Protecting Producers' Copyrights: A Proposal for Group Registration of Non-Sample-Based Musical Beats

Matthew Roomberg\*

*“Beats” are the instrumental tracks that form the foundation of hip-hop, pop, and EDM songs. The authors who create them, often called producers or beatmakers, make hundreds or thousands of new distinct beats each year to raise their chance of attaining commercial success. But wholesale pirating of original beats has become rampant, and authors face significant obstacles in the search for remedies. One such obstacle is the great difficulty and expense of registering the copyrights associated with hundreds or thousands of original beats.*

*Registration with the U.S. Copyright Office is a critical step to obtaining most of the remedies available to a copyright owner. In particular, an owner cannot sue for copyright infringement unless the work has been registered. Registration of each individual work requires an application and filing fee. For a prolific author like a beatmaker, the time and money required to register each work quickly becomes exorbitant. The Copyright Office has promulgated several group registration options, which allow an applicant to register multiple works with a single application and filing fee, but none of the existing options adequately address beatmakers' predicament.*

*This Note submits that the Register of Copyrights create a new group registration option for non-sample-based musical beats.*

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*While group registration options undoubtedly come with administrative challenges, this Note addresses those challenges head on and proposes a solution that both promotes the registration of beats and is administratively feasible.*

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## INTRODUCTION

According to his Complaint, music producer Assil Youssef, who goes by the name “Yo Asel,” composed and recorded a beat called *Sleep85* in 2014.<sup>1</sup> This was one of many beats he created with the dream that one would be used in a hit rap song.<sup>2</sup> In 2015, Youssef reached out to famous hip-hop artist French Montana hoping to collaborate.<sup>3</sup> He sent Montana an email with several of his beats attached, one of which was *Sleep85*.<sup>4</sup> At the time, neither the sound recording nor musical work associated with *Sleep85* were registered with the U.S. Copyright Office.<sup>5</sup> Montana responded to Youssef, “Send more,” but nothing transpired thereafter.<sup>6</sup> Months later, Youssef became aware of a new song by Montana and rapper Kodak Black entitled *Lockjaw*.<sup>7</sup> He was shocked to learn that *Sleep85* was used as the beat in Montana’s new song.<sup>8</sup> Youssef quickly contacted Montana about the use of his beat without permission; Montana then

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<sup>1</sup> Complaint for Copyright Infringement Under 17 U.S.C. § 101, at 1, Youssef v. Cocaine City Records, LLC, No. 1:17-cv-09603 (S.D.N.Y. Dec. 17, 2017). The statements accompanying notes 1–9 are alleged as facts in the Complaint, none of which were conceded by Montana or his co-defendants.

<sup>2</sup> *See id.*

<sup>3</sup> *See id.* at 2.

<sup>4</sup> *See id.*

<sup>5</sup> *See id.* at 7.

<sup>6</sup> *See id.* at 2.

<sup>7</sup> *See id.*

<sup>8</sup> *See id.*

blocked Youssef on all social media platforms.<sup>9</sup> *Lockjaw* became an RIAA-certified platinum single and was featured in the soundtrack for the video game *WWE 2K17*.<sup>10</sup> In late 2017, Youssef registered the sound recording and musical work copyrights in *Sleep85* and filed suit for copyright infringement.<sup>11</sup> The parties eventually settled<sup>12</sup> and Youssef is now credited as a writer and producer of *Lockjaw*.<sup>13</sup>

This story is exemplary<sup>14</sup> of a significant copyright-related dilemma that “beatmakers”—those who create the instrumental tracks that are the foundation of hip-hop, pop, and EDM songs—face: registration of all their works is so impractical that it is essentially impossible. The nature of the market for beats necessitates that professional and aspiring beatmakers create hundreds or thousands of new distinct beats every year to increase the likelihood of commercial success.<sup>15</sup> In the copyright context, each beat will usually constitute a protectable sound recording and musical work—two separate works.<sup>16</sup> As a general rule, the Copyright Office will register only one work per application for registration, and each application requires a filing fee.<sup>17</sup> So if a beatmaker creates 1,000 new beats per

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<sup>9</sup> *See id.*

<sup>10</sup> *Gold & Platinum*, RECORDING INDUS. ASS'N OF AM., <https://www.riaa.com/gold-platinum/> [<https://perma.cc/2DW9-ZZWF>] (search for “Lockjaw”); *WWE 2K17 Music Credits*, 2K, [https://www.2k.com/wwe2k17/credits/ps3\\_xbox360.html](https://www.2k.com/wwe2k17/credits/ps3_xbox360.html) [<https://perma.cc/B9JD-M7X9>].

<sup>11</sup> Complaint, *Youssef v. Cocaine City Records*, *supra* note 1, at 7.

<sup>12</sup> *See* Order Closing Case, *Youssef v. Cocaine City Records, LLC*, No. 1:17-cv-09603 (S.D.N.Y. Mar. 26, 2021); C. Vernon Coleman II, *French Montana Settles Lawsuit Over “Lockjaw” Track*, *XXL* (Dec. 22, 2018), <https://www.xxlmag.com/french-montana-settles-lawsuit-over-lockjaw-track/> [<https://perma.cc/FX8M-U256/>].

<sup>13</sup> *See* FRENCH MONTANA, *Lockjaw (feat. Kodak Black)*, SPOTIFY, <https://open.spotify.com/album/6qXEgcKJDnTLbPKnEX3vPz> [<https://perma.cc/VX7X-RCFR>] (hover the cursor over the track title, click the “. . .” to the right of the track duration, click “Show credits”).

<sup>14</sup> *See also* Complaint for Copyright Infringement, *Mims v. Kirk*, No. 2:22-cv-14410 (S.D. Fla. Dec. 9, 2022). Craig Mims, professionally known as “Juju Beatz,” alleges that the song *Rockstar*, a #1 hit on the Billboard Hot 100, by DaBaby and Roddy Ricch derives from Mims’ beat entitled *Selena* without his permission. *Rockstar* was released on April 17, 2020. *Selena* was registered September 26, 2020.

<sup>15</sup> *See infra* notes 56–58 and accompanying text.

<sup>16</sup> *See infra* Section I.C.

<sup>17</sup> *See infra* Section II.C.1.

year and each beat consists of two copyrighted works, he would need to file 2,000 applications and pay 2,000 filing fees to register all of his works, which is untenable for any author.<sup>18</sup> The Copyright Office has created exceptions to this rule in the form of group registration options—that is, the ability to register multiple works with a single application and filing fee if certain conditions are met.<sup>19</sup> But none of the current group registration options adequately address this particular issue.<sup>20</sup>

Registration of a work is not a requirement for obtaining copyright; however, registration offers a number of extremely important benefits to the copyright holder.<sup>21</sup> First, registration is a prerequisite to filing a lawsuit for copyright infringement.<sup>22</sup> Second, in an action for infringement, the copyright holder must have registered the work before the infringing conduct began in order to be eligible for an award of statutory damages and attorney's fees.<sup>23</sup> Third, registration may constitute *prima facie* evidence of the validity of the owner's copyright.<sup>24</sup> These and other benefits are discussed at length in Section II.A. Because registration is so expensive and time-consuming for the creators of beats, these authors often forgo registration and do not receive the critical benefits that registration provides.

The Register of Copyrights—the director of the Copyright Office—has the authority to create a new group registration option that would allow beatmakers to register a number of beats with one application, thereby substantially reducing the registration hardship.<sup>25</sup> However, group registration mechanisms strain the limited resources of the Copyright Office and impose significant administrative burdens.<sup>26</sup> The Office is responsible for examining applications to ensure that, among other things, the work for which registration is sought contains copyrightable authorship and that the work is

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<sup>18</sup> See *infra* Section II.C.1.

<sup>19</sup> See *infra* notes 168–69 and accompanying text.

<sup>20</sup> See *infra* Sections II.C.3, II.C.4.

<sup>21</sup> See *infra* Section II.A.

<sup>22</sup> 17 U.S.C. § 411(a).

<sup>23</sup> *Id.* § 412; see *infra* notes 108–13 and accompanying text.

<sup>24</sup> 17 U.S.C. § 410(c); see *infra* notes 114–15 and accompanying text.

<sup>25</sup> See *infra* note 168 and accompanying text.

<sup>26</sup> See *infra* Section III.B.

attributed to the proper author or authors.<sup>27</sup> When this function is carried out successfully, the product is a robust public record of copyrighted works, which serves the public interest by making available key information to prospective licensees.<sup>28</sup> A deluge of group registration applications impairs the Office's ability to perform this duty in two primary respects. First, group registration raises the possibility that opaque records will hinder the usefulness of the public record.<sup>29</sup> Second, additional group registration options may slow processing times for the entire Registration Program.<sup>30</sup>

This Note contends that despite the difficulties, a new group registration option that balances the needs of individual beatmakers and the burdens of group registration on the Copyright Office is both possible and necessary. Part I examines what a beat is, how it came to be at the forefront of music creation, and the extent to which beats are protected by copyright. Part II elaborates on the significance of copyright registration and illustrates the substantial hardships that authors of beats face in registering their works. Part III explains the Copyright Office's role in registration and the administrative challenges of implementing group registration options. Finally, by drawing comparisons with existing group registration options, Part IV proposes a new group registration mechanism that, with practical limitations on eligibility and diminished correspondence with applicants, will reasonably serve the registration needs of beatmakers without harming the Registration Program.

## I. AT THE HEART OF NEW MUSIC: BEATS

### A. *What Is a Beat*

In its broadest sense, a beat, also known as an “instrumental,” is a non-lyrical composition that to some extent features “looping”—that is, when a short musical idea is repeated multiple times.<sup>31</sup> While

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<sup>27</sup> See *infra* note 167 and accompanying text.

<sup>28</sup> See *infra* notes 117–18 and accompanying text.

<sup>29</sup> See *infra* notes 172–75 and accompanying text.

<sup>30</sup> See *infra* notes 176–81 and accompanying text.

<sup>31</sup> See generally JOSEPH G. SCHLOSS, MAKING BEATS: THE ART OF SAMPLE-BASED HIP-HOP 2, 136–39 (Matthew Byrnie et al. eds., 2004); Benjamin L. Rolsky, *Beat Makers*, in



a beat can stand alone as its own complete expression, more frequently, songwriters use beats as a base layer on which they create a more-developed song containing lyrics.<sup>32</sup>

Beatmaking is a sample-based tradition.<sup>33</sup> In the 1970s, DJs in the Bronx discovered that “kids wanted breaks.”<sup>34</sup> The “break” or “breakdown” is the part of a funk, soul, R&B, rock, or disco song where the singing stops and the bass, drums, guitar, and other instruments play just the “groove.”<sup>35</sup> Using two turntables and two copies of the same record, the DJ would play the break section of the record on one turntable, and then do the same on the other turntable as soon the break concluded on the first turntable; by doing this repeatedly, the DJ created an unending loop of the “break beat.”<sup>36</sup> In 1986, the release of the Akai S900 and E-mu SP-12 drum machines took the artform to new heights.<sup>37</sup> These devices allowed users to “sample” (record short snippets of) songs and manipulate them to their liking. Sampling technology enabled beatmakers to develop creative techniques that were not possible with turntables, such as the ability to play multiple samples at the same time, to cut very short samples, and to assemble or layer these samples in infinite ways.<sup>38</sup> Moreover,

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ST. JAMES ENCYCLOPEDIA OF HIP HOP CULTURE (St. James Press ed., 2018); DONALD S. PASSMAN, *ALL YOU NEED TO KNOW ABOUT THE MUSIC BUSINESS* 125, 292 (10th ed. 2019); Joe Andrews, *Selling Your Original Melodic Beats Online Can Proffer \$100K a Year in Your Pocket*, CNBC (Aug. 17, 2019), <https://www.cnbc.com/2019/08/17/music-producers-making-100k-a-year-selling-their-melodic-beats-online.html> [<https://perma.cc/XLQ9-VZB9>]; see also U.S. COPYRIGHT OFF., *COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES* § 802.9(E)(5) (3d ed. 2021) (defining a loop) [hereinafter *COMPENDIUM (THIRD)*].

<sup>32</sup> See sources cited *supra* note 31; see also *COMPENDIUM (THIRD)*, *supra* note 31, § 802.9(E)(4).

<sup>33</sup> See generally SCHLOSS, *supra* note 31; NATE PATRIN, *BRING THAT BEAT BACK: HOW SAMPLING BUILT HIP-HOP* (Erik Anderson et al. eds., 2020).

<sup>34</sup> See PATRIN, *supra* note 33, at 17.

<sup>35</sup> See *id.* at 14, 17; SCHLOSS, *supra* note 31, at 31–32, 36; PRINCE CHARLES ALEXANDER, *HIP-HOP PRODUCTION: INSIDE THE BEATS 4* (Jonathan Feist et al. eds., 2022).

<sup>36</sup> See sources cited *supra* note 35.

<sup>37</sup> See ALEXANDER, *supra* note 35, at 35; SCHLOSS, *supra* note 31, at 35; PATRIN, *supra* note 33, at 70; see also DAN CHARNAS, *DILLA TIME* 58 (Sean McDonald et al. eds., 2022).

<sup>38</sup> See SCHLOSS, *supra* note 31, at 36, 39; ALEXANDER, *supra* note 35, at 33; see also TED, *How Sampling Transformed Music*, YOUTUBE (May 9, 2014), <https://www.youtube.com/watch?v=H3TF-hI7zKc&t=388s> [<https://perma.cc/MUY8-9WAD>].

producers of beats could now infuse and combine original content, like a new bass line or the “whooshing” sound of a jet airliner, with samples of old records.<sup>39</sup> Three and a half decades later—while sampling is still very much alive and well<sup>40</sup>—non-sample-based beats, those that are made up entirely of original elements rather than samples, have risen to the forefront, primarily as a result of the difficulty and cost of licensing samples.<sup>41</sup>

Today, virtually all recorded music, including beats, is created in a Digital Audio Workstation (DAW).<sup>42</sup> A DAW is a computer software application that allows the user to arrange and manipulate audio files in thousands of different ways.<sup>43</sup> To illustrate, imagine the user begins with a single audio file. This could be a ten-second bass line, or piano riff, or guitar part he recorded himself; it could also be a sample he has snipped from a preexisting recording. In other words, it could be anything. Using features of the software, the user can alter that audio file in myriad ways: he can “chop” it into smaller pieces, he can make it playback faster or slower, he can change the tone of the instrument from which it was played, and so on. There are thousands of tools at the user’s disposal.<sup>44</sup> Then, the

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<sup>39</sup> See, e.g., PATRIN, *supra* note 33, at 172–173; SCHLOSS, *supra* note 31, at 39.

<sup>40</sup> See generally, e.g., Midem, *The Queen of Sample Clearance: A Talk with Deborah Mannis-Gardner - Midem 2019*, YOUTUBE (June 5, 2019), <https://www.youtube.com/watch?v=ksIZbzPgA08> [<https://perma.cc/W95R-UE8N>].

<sup>41</sup> See PATRIN, *supra* note 33, at 315–16; SCHLOSS, *supra* note 31, at 174–77, 207 n.3. This process is known as “clearing the sample” or sample clearance. The creator of a beat or recording that incorporates a sample must obtain a license from both the owner of the master sound recording (“master”) and the owner of the musical work from which the sample originates. Neither the owner of the master nor the owner of the musical work is under an obligation to grant the license for any amount of money. Some owners, for creative control and reputational reasons, maintain a policy that they will not allow anyone to sample their work. See Midem, *supra* note 40, at 19:52–22:47. Others demand an extraordinary amount of money upfront and a share of the revenue that is generated from the new song. If the beat contains multiple samples from different sources, the creator must secure the two licenses with respect to every track sampled. See generally PASSMAN, *supra* note 31, at 250–51; see also, e.g., *Bridgeport Music, Inc. v. Dimension Films*, 383 F.3d 390, 393–94 (6th Cir. 2004); *Newton v. Diamond*, 388 F.3d 1189, 1191 (9th Cir. 2004).

<sup>42</sup> PASSMAN, *supra* note 31, at 78; ALEXANDER, *supra* note 35, at 113.

<sup>43</sup> See generally Matthew Defreitas, *What Is a DAW?*, BAY EIGHT STUDIOS (Jan. 10, 2022), <https://bayeight.com/what-is-a-daw/> [<https://perma.cc/TN62-UB6Tp>]; ALEXANDER, *supra* note 35, at 113, 119–23.

<sup>44</sup> Defreitas, *supra* note 43.

user adds more audio files to his piece of music—new parts and instruments. In addition to the ability to customize each audio file individually, the user can arrange and layer the various audio files in any way conceivable.<sup>45</sup> Once the user has finished his creation, which is comprised of dozens or hundreds of *little* audio files, he can “bounce”—or export—the finished product to one homogeneous audio file.<sup>46</sup> “Bouncing the session” to an audio file is like baking the ingredients of a cake; once it’s baked it can’t be unbaked.<sup>47</sup>

### *B. The Significance of Beats in the Modern Music Marketplace*

In today’s recorded music business, beats are the lifeblood of not only hip-hop—which is the most popular genre in the United States<sup>48</sup>—but also pop and electronic dance music, among other styles.<sup>49</sup> Modern popular music relies heavily on beats.<sup>50</sup> In contrast,

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<sup>45</sup> *Id.*

<sup>46</sup> See generally AVID TECH., INC., PRO TOOLS REFERENCE GUIDE: VERSION 2018.12, at 1003 (2018).

<sup>47</sup> Of course, the user can continue to make changes to his piece in the DAW and then bounce again, thus creating another homogeneous audio file. But the main point is, once a session is bounced to an audio file, the user can no longer adjust the “ingredients” inside of that particular audio file.

<sup>48</sup> See, e.g., John Lynch, *For the First Time in History, Hip-Hop Has Surpassed Rock to Become the Most Popular Music Genre, According to Nielsen*, INSIDER (Jan. 4, 2018, 12:44 PM), <https://www.businessinsider.com/hip-hop-passes-rock-most-popular-music-genre-nielsen-2018-1> [<https://perma.cc/N3WB-PC9F>].

<sup>49</sup> See PASSMAN, *supra* note 31, at 292–93; ALEXANDER *supra* note 35, at 90–91; see also *Top Charts*, BEATSTARS, <https://www.beatstars.com/genre/pop> [<https://perma.cc/2T5W-4TU9>]; see generally J. T. CLOUTIER, *THE BEDROOM SUPER PRODUCER* (2017).

<sup>50</sup> See John Koetsier, *Beats For Cash: 300K Artists Making \$20M in the Music Industry’s New Gig Economy*, FORBES (July 28, 2017, 7:26 AM), <https://www.forbes.com/sites/johnkoetsier/2017/07/28/300000-artists-are-making-20m-beats-is-the-new-music-industry/> [<https://perma.cc/KU4D-NYCP>]; Elias Leight, *How Internet Producers Took Over Mainstream Hip-Hop*, VULTURE (Apr. 19, 2018), <https://www.vulture.com/2018/04/how-internet-producers-took-over-mainstream-hip-hop.html> [<https://perma.cc/Y7RR-VA9M>] [hereinafter Leight, *Internet Producers*]; Nayeli G. Pena, *Internet Beats Are Changing the Way Music Is Created*, STUDY BREAKS (Apr. 30, 2020), <https://studybreaks.com/culture/music/internet-beats-easily-accessible/> [<https://perma.cc/83ZD-L7LR>]; see also Elias Leight, *Buying Beats for Viral Songs Is Becoming a Popular (and Messy) Business*, ROLLING STONE (Jan. 26, 2021), <https://www.rollingstone.com/music/music-features/buying-beats-viral-songs-1118879/> [<https://perma.cc/FKY9-MPRU>]; Murray Stassen, *UnitedMasters, Valued at \$550M, Just Launched Its Own Beat Marketplace*, MUSIC BUS. WORLDWIDE (May 5, 2022),

throughout the twentieth century, popular songs were generally written by one or two authors who would go into a room, often with a piano or guitar, and devise melodies, harmonic progressions and lyrics.<sup>51</sup> To be sure, this still happens: a songwriter creating a complete song from scratch. But more and more frequently, the prevailing songwriting process is bifurcated, in which one author, known as a producer, creates a beat, and then another author adds his melody or rap on top of the beat.<sup>52</sup> In some cases, the songwriting process is even further fragmented by the remote contributions of dozens of writers.<sup>53</sup>

As the popularity of hip hop grew, and the cost of music-making software and equipment plummeted, the number of producers making beats exploded.<sup>54</sup> Online marketplaces for buying and leasing beats like BeatStars, Airbit, and Beatport boast that millions of creators use their services.<sup>55</sup> Because beats are shorter and less developed than full-length songs, producers tend to be prolific, creating hundreds or sometimes thousands of new beats every year.<sup>56</sup> This is

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<https://www.musicbusinessworldwide.com/unitedmasters-valued-at-550m-just-launched-its-own-beat-marketplace/> [<https://perma.cc/NVV2-TDVS>].

<sup>51</sup> Cf. *History: The Singer/Songwriter*, BMI, [https://www.bmi.com/genres/entry/history\\_the\\_singer\\_songwriter](https://www.bmi.com/genres/entry/history_the_singer_songwriter) [<https://perma.cc/3WZW-Y4AZ>].

<sup>52</sup> See sources cited *supra* note 50.

<sup>53</sup> See, e.g., Associated Press, *Crafting a Hit: How Many Songwriters Does It Take?*, BILLBOARD (June 12, 2014), <https://www.billboard.com/music/music-news/crafting-a-hit-how-many-songwriters-does-it-take-6121118/> [<https://perma.cc/2M75-LH4Z>]; see also Jem Aswad, *Inside the Dirty Business of Hit Songwriting*, VARIETY (Apr. 7, 2021), <https://variety.com/2021/music/news/dirty-business-hit-songwriting-1234946090/> [<https://perma.cc/7C75-YBJV>].

<sup>54</sup> See Koetsier, *supra* note 50; Leight, *Internet Producers*, *supra* note 50; Pena, *supra* note 50; see also Caleb J. Murphy, *How to Set Up a Bedroom Home Recording Studio*, DIGIT. MUSIC NEWS (Mar. 18, 2022), <https://www.digitalmusicnews.com/2022/03/18/bedroom-home-recording-studio/> [<https://perma.cc/6GTJ-HGTT>].

<sup>55</sup> Murray Stassen, *Having Paid Out \$150M to Creators, BeatStars Launches Sony Music Publishing-Backed Publishing Service*, MUSIC BUS. WORLDWIDE (July 27, 2021), <https://www.musicbusinessworldwide.com/having-paid-out-150m-to-creators-beatstars-launches-sony-music-publishing-backed-publishing-service/> [<https://perma.cc/77L9-RP85>]; Tim Ingham, *Beatport Buys Loopmasters, Acquiring Plugin Boutique and Loopcloud*, MUSIC BUS. WORLDWIDE (Dec. 16, 2020), <https://www.musicbusinessworldwide.com/beatport-buys-loopmasters-acquiring-plugin-boutique-and-loopcloud/> [<https://perma.cc/WL4D-3D3R>].

<sup>56</sup> See, e.g., CLOUTIER, *supra* note 49, at 56; see also Nerisha Penrose, *Kanye West Is Producing Beats for all G.O.O.D. Music Artists*, BILLBOARD (Nov. 16, 2017),

also a result of market demand: artists and record labels seeking beats often peruse dozens or hundreds of them before finding the “right one” for a particular song—and that is just for one song.<sup>57</sup> For that reason, professional producers generally maintain catalogs of thousands of distinct beats.<sup>58</sup>

### C. Beats and Copyright Protection

#### 1. Copyright in Musical Works as Distinguished from Sound Recordings

As a preliminary matter, it is essential to distinguish the copyright in a musical work from that in a sound recording. A copyright is a monopoly on a particular work of authorship that guarantees the copyright holder certain exclusive rights to that work, including, for example, the exclusive rights to reproduce the work and to distribute the work.<sup>59</sup> Copyright protection extends only to “original works of authorship fixed in [a] tangible medium of expression.”<sup>60</sup> Musical works are one type of work of authorship.<sup>61</sup> Traditionally, an author “fixed” her musical work in a “tangible medium” by writing down the composition in musical notation.<sup>62</sup> Sound recordings are another kind of work of authorship.<sup>63</sup> Like a composition written in ink, a sound recording is fixed in a tangible medium when “actual sounds”<sup>64</sup> are captured in a material object like a vinyl LP or a computer hard drive.<sup>65</sup> As soon as a work is fixed in a tangible medium,

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<https://www.billboard.com/music/rb-hip-hop/kanye-west-producer-good-music-artists-8039210/> [<https://perma.cc/8BAP-N73Q>]; Natalie Robehmed, *Hit-Boy's Quest to Make More Than Hits*, FORBES (Mar. 31, 2015), <https://www.forbes.com/sites/natalierobehmed/2015/03/31/hit-boys-quest-to-make-more-than-hits/> [<https://perma.cc/FS4F-VC2Q>].

<sup>57</sup> See SCHLOSS, *supra* note 31, at 169–74.

<sup>58</sup> See sources cited *supra* note 56.

<sup>59</sup> 17 U.S.C. § 106.

<sup>60</sup> *Id.* § 102.

<sup>61</sup> *Id.*

<sup>62</sup> See *Skidmore v. Led Zeppelin*, 952 F.3d 1051, 1062 (9th Cir. 2020) (“[T]he Copyright Office did not even accept sound recordings as deposit copies. Indeed, ‘in order to claim copyright in a musical work under the 1909 Act, the work had to be reduced to sheet music . . . .’”).

<sup>63</sup> 17 U.S.C. § 102.

<sup>64</sup> *Id.* § 114(b).

<sup>65</sup> See *id.* § 101 (definition of sound recordings).

the work is immediately protected by copyright; no formalities such as registration or notification are required.<sup>66</sup>

Since the Copyright Act was amended to include sound recordings in 1972,<sup>67</sup> courts and the general public alike have often struggled in distinguishing between sound recordings and musical works, and indeed, the line can be a fine one.<sup>68</sup> The term musical work, while not explicitly defined by the statute, denotes compositions—such as songs, symphonies, or concertos—including their lyrics.<sup>69</sup> Copyright in a musical work protects the “compositional elements” of the piece: the author’s choice and arrangement of melody, rhythm, harmony, and lyrics.<sup>70</sup> On the other hand, the Copyright Act defines sound recordings as “works that result from the fixation of a series of musical, spoken, or other sounds.”<sup>71</sup> Contrary to the copyright in a musical work, which protects its “compositional elements,” the copyright in a sound recording protects the *unique performance* of a musical, dramatic, or literary work<sup>72</sup>—the “actual sounds” captured on the recording.<sup>73</sup>

As the predominant medium for songwriting has moved from sheet music to the digital audio workstation,<sup>74</sup> the confusion has compounded. When a songwriter uses a DAW to document her creative conception for the first time, the DAW serves the same function that sheet music traditionally has: it is a tangible medium of expression in which the composition is fixed, thus giving rise to copyright in the musical work. At the same time, the DAW often serves the dual function of being the first fixation of the actual sounds of a sound recording, thus giving rise to copyright in the sound recording. So the author has, with a single fixation, obtained copyright in

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<sup>66</sup> See *id.* §§ 102, 408(a). This was not always the case. Prior to the Copyright Act of 1976, an author was required to follow “very specific” procedures to obtain copyright protection. See *Skidmore*, 952 F.3d at 1062.

<sup>67</sup> Pub. L. No. 92-140, § 3, 85 Stat. 391, 392 (1971).

<sup>68</sup> See, e.g., *Newton v. Diamond*, 388 F.3d 1189 (9th Cir. 2004).

<sup>69</sup> See 1 MELVILLE B. NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHT § 2.05 (Matthew Bender, rev. ed.).

<sup>70</sup> COMPENDIUM (THIRD), *supra* note 31, § 802.3.

<sup>71</sup> 17 U.S.C. § 101 (definition of sound recordings).

<sup>72</sup> 1 NIMMER & NIMMER, *supra* note 69, § 2.10; *Newton*, 388 F.3d at 1193–94.

<sup>73</sup> Cf. 17 U.S.C. § 114(b).

<sup>74</sup> See *supra* notes 42–47 and accompanying text.

two separate works: the musical work and the sound recording. This is the situation in which beatmakers find themselves. While the practice of using a DAW as a songwriting tool has perhaps made it more difficult to perceive the delineations between musical works and sound recordings, the legal distinction between the two remain the same: copyright in a musical work protects the compositional elements that constitute the piece of music, and copyright in a sound recording protects the performance embodied in an audio file. For example, if a user re-records Dr. Dre's beat in the song "Still D.R.E." using their own instruments, this act would only implicate the musical work because they have only reproduced the compositional elements—the melody, rhythm, and harmony. But if the user samples the beat from the sound recording of "Still D.R.E." and uses that sample in a new recording, this act would implicate both the musical work and the sound recording because they have reproduced both the compositional elements and Dr. Dre's performance—the actual sounds.

## 2. A Non-Sample-Based Beat Will Usually Constitute a Protectable Musical Work and Sound Recording

In general, the sound recording and underlying musical work that result from creating a non-sample-based beat will each be protected by copyright. To be copyrightable, a work must be (1) a work of authorship, (2) fixed in a tangible medium, and (3) original.<sup>75</sup> Applying these requirements in turn, beats satisfy all three.

Beats are works of authorship. Musical works and sound recordings are enumerated in 17 U.S.C. §102 as types of works within the subject matter of copyright. A musical work is a succession of pitches, rhythms, and any accompanying words,<sup>76</sup> while a sound recording is a fixation of a series of sounds.<sup>77</sup> Beats, which are simply instrumental tracks of music, clearly fit within these broad definitions.

Beats also satisfy the fixation requirement. A work is fixed when its embodiment in a copy or phonorecord can be perceived,

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<sup>75</sup> 17 U.S.C. § 102.

<sup>76</sup> COMPENDIUM (THIRD), *supra* note 31, § 802.1.

<sup>77</sup> 17 U.S.C. § 101 (definition of sound recordings).

reproduced, or otherwise communicated.<sup>78</sup> A phonorecord is any material object in which sounds are fixed.<sup>79</sup> Digital audio files, such as .wav or .mp3 files, are one type of phonorecord.<sup>80</sup> Once an author completes a new beat using a digital audio workstation and then exports the beat to a .wav or .mp3 file, that audio file is a fixation of both his succession of pitches and rhythms—that is, his musical work—as well as a series of actual sounds—his sound recording.<sup>81</sup> In other words, a digital audio file like a .mp3 file simultaneously constitutes the first fixation of both the sound recording and the musical work embodied therein.

As to the final requirement, the vast majority of beats are original. “Originality” consists of two components: (1) the work must be created independently—not copied from others—and (2) it must possess a minimal degree of creativity.<sup>82</sup> There is no precise test for creativity, but “the requisite level of creativity is extremely low; even a slight amount will suffice.”<sup>83</sup> Beats that are more creative than a simple loop will surpass this extremely low threshold for creativity. It would be implausible to say that the use of looping as a compositional device in and of itself renders a work insufficiently creative, for repeating short musical ideas multiple times is nothing new in music.<sup>84</sup> However, *simple* loops—those that are, perhaps, only two or four measures and consist merely of a commonplace drum pattern and harmonic progression—without more, may not be sufficiently creative to merit protection.<sup>85</sup> But most beats consist of significantly more than a simple loop.<sup>86</sup> If they did not, they would

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<sup>78</sup> *Id.* (definition of fixed).

<sup>79</sup> *Id.* (definition of phonorecords).

<sup>80</sup> COMPENDIUM (THIRD), *supra* note 31, § 1509.2(A).

<sup>81</sup> *See id.* § 1509.2(A)–(B).

<sup>82</sup> *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991).

<sup>83</sup> *Id.* In *Feist*, the Supreme Court considered the copyrightability of a white pages directory sorted alphabetically and held that such a directory was not copyrightable because it possessed no creativity whatsoever. *Id.* at 363.

<sup>84</sup> *See Vox, Why We Really Really Like Repetition in Music*, YOUTUBE (Oct. 13, 2017), <https://www.youtube.com/watch?v=HzzmqUoQobc> [<https://perma.cc/C2YK-9XJQ>].

<sup>85</sup> *See* COMPENDIUM (THIRD), *supra* note 31, § 802.9(E)(5).

<sup>86</sup> One who doubts this need only visit one of the many online beat marketplaces and listen to the tracks offered for sale. *See, e.g.*, BEATSTARS, Inc., <https://www.beatstars.com> [<https://perma.cc/YN7Y-8W5W>]; AIRBIT, [www.airbit.com](http://www.airbit.com) [<https://perma.cc/JK4A-ZFXC>].



not capture the listener's attention; it is the creativity and distinctiveness of a particular beat that makes it desirable to the recording artist who chooses it among thousands of alternatives.<sup>87</sup> Thus, so long as the beat is not copied from another composition or sound recording, it will be considered original.

Since most non-sample-based beats will satisfy these three criteria—work of authorship, fixation, and originality—they generally will be copyright protected.<sup>88</sup> In fact, the Copyright Office expressly welcomes applications for registration of beats.<sup>89</sup>

It may be the case that a number of protectable beats will be entitled to only “thin” copyright protection. The doctrine of thin protection is an extension of the axiom that copyright protects only an author's *expression* and never *ideas*.<sup>90</sup> The idea/expression dichotomy ensures that no one can exclude others from using the fundamental “building blocks” of a form of expression.<sup>91</sup> In other words, despite the fact that a work is covered by copyright, copyright “does not protect every aspect of a work.”<sup>92</sup> Rather, the “commonplace

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<sup>87</sup> See SCHLOSS, *supra* note 31.

<sup>88</sup> A handful of district courts have held that “the beat” is an unprotectable element of a musical work, but in those cases, the courts were using the word “beat” to refer to either the time signature or a routine drum pattern that is idiomatic of a musical style, like a “rock beat.” See *Batiste v. Najm*, 28 F. Supp. 3d 595, 615–16 (E.D. La. 2014); *Lane v. Knowles-Carter*, No. 14 Civ. 6798, 2015 WL 6395940, at \*6 (S.D.N.Y. Oct. 21, 2015).

<sup>89</sup> See *Types of Works: Performing Arts*, U.S. COPYRIGHT OFF., <https://www.copyright.gov/registration/performing-arts/> [<https://perma.cc/N5RW-MJF3>] (under “Works Commonly Registered in This Category,” “Beats” is listed). However, the Office advises applicants not to describe an author's contribution as “the beat” in the application form because this description is “unclear.” When an applicant describes an author's contribution as “the beat,” two questions generally arise during examination of the application. First, in an application for a lyrical musical work (or a sound recording embodying such a work) in which there are multiple authors, the contribution of one of which is described as “the beat,” it is unclear whether that author's contribution legally constitutes co-authorship in the musical work, in the sound recording, or in both. Second, because of the prevalence of using samples in the creation of beats, any claim to have authored “the beat,” without more information, raises the question of whether the beat is wholly original or incorporates preexisting material. If the beat is wholly original, the Office advises that the author's contribution be described simply as “music.” See COMPENDIUM (THIRD), *supra* note 31, § 802.9(E)(4).

<sup>90</sup> 17 U.S.C. § 102(b).

<sup>91</sup> See, e.g., *Skidmore v. Led Zeppelin*, 952 F.3d 1051, 1069 (9th Cir. 2020).

<sup>92</sup> *Id.*

elements” of an artform itself are in the public domain.<sup>93</sup> Therefore, courts have held that works in which, after the commonplace elements are filtered out, only a “kernel” of creative expression remains are entitled to only “thin” protection.<sup>94</sup> A thin copyright protects only against *virtual identical* copying.<sup>95</sup> Some beats may be subject to thinner protection than other musical works if they consist mostly of common characteristics that are merely indicative of the genre, like a routine “trap” beat with little uniqueness.<sup>96</sup> But this protection is still valuable because it protects the copyright holder from wholesale pirating,<sup>97</sup> which is a widespread problem for authors of beats.<sup>98</sup>

In any event, the strength of a particular beat’s copyright protection is inconsequential at the registration stage.<sup>99</sup> The Copyright Office examines applications for registration to determine whether the work claimed constitutes copyrightable subject matter and whether the other legal and formal requirements for registration have been met.<sup>100</sup> If those two questions are answered in the affirmative, the Office registers the claim.<sup>101</sup> A contention of “thin protection” is generally raised as a defense in an action for copyright infringement,

<sup>93</sup> *Id.*

<sup>94</sup> *Cf.* *Comput. Assocs. Int’l v. Altai*, 982 F.2d 693, 706 (2d Cir. 1992); *see* *Google LLC v. Oracle Am., Inc.*, 141 S. Ct. 1183, 1198 (2021) (“[C]ourts have held that . . . where copyrightable material is bound up with uncopyrightable material, copyright protection is ‘thin.’”); *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 349 (1991) (noting that copyright protection in a factual compilation is thin because the “only conceivable expression is the manner in which the compiler has selected and arranged the facts”).

<sup>95</sup> *See Ets-Hokin v. Skyy Spirits, Inc. (Ets-Hokin II)*, 323 F.3d 763, 766 (9th Cir. 2003).

<sup>96</sup> *See generally* ALEXANDER, *supra* note 35, at 87. So-called “type beats” are another example of works that may be entitled to only thin protection. *See generally* Alphonse Pierre, *How Selling and Leasing ‘Type Beats’ Is Making Unknown Producers Rich*, PITCHFORK (Sept. 4, 2018), <https://pitchfork.com/thepitch/how-selling-and-leasing-type-beats-is-making-unknown-producers-rich/> [<https://perma.cc/L8NW-QVBK>]; Seth King, *Algorithm Alchemists: Meet the Producers Making a Small Fortune off of Type Beats*, RINGER (July 17, 2020), <https://www.theringer.com/2020/7/17/21328212/type-beats-youtube-beatstars-mjnichols-soulker> [<https://perma.cc/RB7S-6DET>].

<sup>97</sup> *Ets-Hokin II*, 323 F.3d at 766.

<sup>98</sup> *See infra* Section II.B.

<sup>99</sup> *See* Joshua L. Simmons, *The Five W’s of Merger*, 43 COLUM. J.L. & ARTS 407, 410–11 (2020) (discussing whether the merger doctrine should be considered at the point of determining copyrightability or at the point of infringement and concluding that at the point of infringement is the better view).

<sup>100</sup> COMPENDIUM (THIRD), *supra* note 31, § 602.

<sup>101</sup> *Id.*

and it is for the court to establish the breadth of the plaintiff's legal protection against copying.<sup>102</sup>

## II. PROLIFIC BEATMAKERS DESPERATELY LACK A COST-EFFECTIVE AND TIMELY OPTION FOR REGISTRATION

As a result of the extraordinary number of producers making millions of beats,<sup>103</sup> copyright registration has become an arduous burden, and in some cases, a practical impossibility for individual creators. This Part will first elaborate on the importance of copyright registration. Then, it will explain why registration of both sound recordings and musical works is essential. Finally, this Part walks through the current registration options for sound recordings and musical works, illustrating the costs and time each option requires for an author who creates fifty new beats per year and for an author who creates 1,000 new beats per year.

### A. *The Importance of Copyright Registration*

The Copyright Act sets forth procedures for the registration of copyrighted works.<sup>104</sup> While registration is not a requirement for copyright,<sup>105</sup> registration provides a multitude of benefits for the copyright owner, some of which are practically essential. First, registration is a prerequisite to filing a lawsuit for copyright infringement.<sup>106</sup> In other words, a copyright owner cannot enforce her exclusive rights to the use of her work without first registering it.<sup>107</sup>

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<sup>102</sup> See, e.g., *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 349 (1991); *Ets-Hokin II*, 323 F.3d at 766; *Apple Comput., Inc. v. Microsoft Corp.*, 35 F.3d 1435, 1446–47 (9th Cir. 1994); see also *Simmons*, *supra* note 99, at 410–11.

<sup>103</sup> See *supra* notes 54–58 and accompanying text.

<sup>104</sup> 17 U.S.C. §§ 408–410.

<sup>105</sup> *Id.* §§ 102, 408(a).

<sup>106</sup> A party can also file a lawsuit for copyright infringement if its application for registration has been refused by the Copyright Office. *Id.* § 411(a).

<sup>107</sup> A minor qualification, however, is that a copyright owner does not need a certificate of registration to request that an online service provider “take down” infringing content from its platform, which is one way of *enforcing* a copyright. See *id.* § 512(c)(1)(C). But takedowns are widely considered to be ineffective at ceasing infringements, and takedowns offer no remedy at all for past harms. See U.S. COPYRIGHT OFF., *COPYRIGHT AND THE MUSIC MARKETPLACE* 79–80 (2015).

Second, in an action for infringement, the owner must have registered the work before the infringing act began to be eligible for statutory damages and attorney's fees.<sup>108</sup> This means that if the owner wishes to claim statutory damages or attorney's fees, she cannot simply wait for infringement to occur before registering the work. This is significant for several reasons. Although a copyright plaintiff who registers the work after infringement occurs can still recover actual damages, those damages are harder to prove; the plaintiff must show the extent of her actual damages in addition to proving the infringement itself.<sup>109</sup> This not only adds a level of complexity to the litigation, which increases legal costs, but also places a heavy burden on the plaintiff.<sup>110</sup> In contrast, if the work was registered before the infringement took place, the plaintiff can recover statutory damages in lieu of actual damages.<sup>111</sup> In such cases, the plaintiff need only prove that the defendant infringed her work, and if she does, she is automatically entitled to a minimum of \$750 and up to \$30,000 per work infringed.<sup>112</sup> Moreover, the costs of litigating copyright infringement can be extraordinary,<sup>113</sup> which makes the ability to claim attorney's fees that much more critical.

Third, registration constitutes *prima facie* evidence of the validity of the owner's copyright and the facts stated in the certificate of registration, if registration is made before or within five years of the work being published.<sup>114</sup> To prevail in a claim of copyright infringement, the first element the plaintiff must prove is that she owns a

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<sup>108</sup> 17 U.S.C. § 412.

<sup>109</sup> *Id.* § 504(b).

<sup>110</sup> *See, e.g.,* Bouchat v. Balt. Ravens Football Club, Inc., 346 F.3d 514, 523–26 (4th Cir. 2003) (affirming a jury's finding that, despite having infringed Bouchat's copyright, the Baltimore Ravens' revenues were attributable entirely to factors other than the infringement, thereby denying Bouchat any monetary recovery). The difficulty of proving actual damages was a key factor in Congress's decision to implement a statutory damages regime. *See* H.R. REP. NO. 94–1476, at 161–62 (1976).

<sup>111</sup> 17 U.S.C. § 504(c).

<sup>112</sup> *Id.* § 504(c)(1). If the infringement was committed willfully, the court could award up to \$150,000. *Id.* § 504(c)(2).

<sup>113</sup> *See* S. REP. NO. 116–105, at 1–2 (2019) (declaring the overwhelming cost of copyright litigation as the primary purpose for enacting The Copyright Alternative in Small-Claims Enforcement (CASE) Act of 2019).

<sup>114</sup> 17 U.S.C. § 410(c).

valid copyright.<sup>115</sup> Thus, registration gives the plaintiff a rebuttable presumption that she has satisfied this element.

In addition to the numerous benefits to the owner of a copyright,<sup>116</sup> registration of copyrighted works serves the public interest by enhancing the public record. A robust public record of copyrights enables prospective licensees to quickly find who owns a particular work and the contact information for its administrator.<sup>117</sup> By increasing the efficiency of the licensing process, the public record removes impediments to—and perhaps even encourages—licensing and reduces instances of copyright infringement, thus saving the resources of private parties and the judicial system.<sup>118</sup>

*B. Registration of Both the Sound Recording and Musical Work Associated with Each Beat Is Critical*

For authors of beats, registration of the sound recordings as well as the musical works is critical. There are at least two infringement scenarios that are common to authors who hold out their beats for sale online. In the first scenario, a recording artist obtains the author's beat and, without permission, adds his lyrics and melody to it and distributes that product to the public.<sup>119</sup> In the second scenario, a competing producer obtains the author's beat and then uploads the very same beat to a streaming or e-commerce platform, holding it

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<sup>115</sup> *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991).

<sup>116</sup> A fourth benefit is that, for musical works, registration is a prerequisite to collecting royalties due to the owner under a §115 compulsory license for non-digital phonorecords. 17 U.S.C. § 115(c)(1)(A). Section 115 sets forth a limitation on the monopoly afforded by copyright with respect to musical works: it establishes a compulsory license under which the licensee, provided he is eligible and satisfies the statutory conditions, can use the musical work in certain ways without the owner's permission. One condition of the compulsory license is that the licensee pay the owner in accordance with the statutory royalty rate. *Id.* § 115(c)(1)(B). However, the owner is not entitled to receive these compulsory license royalties unless the owner is identified in the public records. Congress has decided that the licensee need not go on a fishing expedition in order to make use of the compulsory license.

<sup>117</sup> COMPENDIUM (THIRD), *supra* note 31, § 202.

<sup>118</sup> *Id.* § 602.1.

<sup>119</sup> *See, e.g., Complaint, Youssef v. Cocaine City Records, LLC, supra* note 1; *Complaint, Mims v. Kirk, supra* note 14.

out as his own.<sup>120</sup> Both scenarios involve the wholesale taking of someone else's sound recording. While an infringer could recreate an author's beat from scratch—which would only implicate the author's musical work, not his sound recording<sup>121</sup>—this is more difficult and time-consuming for the infringer. Because infringement of beats frequently involves the wholesale copying of authors' audio files, not just their compositions, authors are well-advised to register their sound recordings in order to pursue the full scope of legal action against infringers and realize the other advantages of registration.

### C. Current Registration Options for Sound Recordings and Musical Works, and Their Application to Prolific Beatmakers

The Copyright Office currently maintains four options for the registration of sound recordings and/or musical works: the Standard Application, the Single Application, Group Registration of Unpublished Works (GRUW), and Group Registration of Works on an Album of Music (GRAM).<sup>122</sup>

#### 1. Standard Application

The Standard Application is the most basic registration option for almost any type of work, be it a literary work, work of the visual arts, musical work, sound recording, or motion picture.<sup>123</sup> This application can be used to register a work by one author, a joint work, a work-made-for-hire, a collective work, a derivative work, or a

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<sup>120</sup> Many professional producers have created videos discussing these two scenarios and ways to mitigate or remedy beat theft. *See, e.g.,* XcaliberZero, *Someone Stole My Beats Off BeatStars*, YOUTUBE (Jan. 25, 2021), <https://www.youtube.com/watch?v=SBgIlgJzi4> [<https://perma.cc/RB7S-6DET>] (“Someone took our track and uploaded it to Spotify, acting as if it’s their beat.”); BeatStars, *Why You Should Offer Free Downloads for Your Beats: @Mike Trampe & @DJ Pain1*, YOUTUBE (Nov. 27, 2020), <https://www.youtube.com/watch?v=86WChlaQ0EQ> [<https://perma.cc/T7EP-8D5W>]; DJ Pain 1, *Don't Steal Beats or This Will Happen – How to Protect Your Beats from Being Stolen*, YOUTUBE (Aug. 25, 2018), <https://www.youtube.com/watch?v=a-tGarSbfkg> [<https://perma.cc/UYJ4-M2R5>]; Prodl1b, *3 Ways To STOP Artists From Stealing Your Beats | How to Sell Beats Online*, YOUTUBE (Mar. 2, 2019), <https://www.youtube.com/watch?v=3chJg4TGG1w> [<https://perma.cc/YL7M-G7E3>].

<sup>121</sup> *See supra* notes 67–73 and accompanying text.

<sup>122</sup> 37 C.F.R. §§ 202.3(b)(2)(i)(A)–(B), 202.4(c), 202.4(k).

<sup>123</sup> COMPENDIUM (THIRD), *supra* note 31, § 1403.

compilation.<sup>124</sup> While the Standard Application is highly versatile, it can only be used to register one work per application.<sup>125</sup> Thus, to register a sound recording and its underlying musical work using this option, the applicant must file two separate applications. The filing fee for each Standard Application is sixty-five dollars.<sup>126</sup>

For an author who creates fifty new beats per year, which is far below the norm for professional producers,<sup>127</sup> registration of all fifty sound recordings and their underlying musical works would require 100 Standard Applications, which would cost \$6,500. Presuming an applicant could complete an application form and submit the associated deposit<sup>128</sup> in ten minutes, the author who makes fifty new beats would spend nearly seventeen hours working on the 100 Standard Applications. For an author who creates 1,000 new beats per year, registration of all 1,000 sound recordings and 1,000 musical works would require 2,000 Standard Applications, at a cost of \$130,000 and over 333 hours spent completing applications.

## 2. Single Application

The Single Application is a cheaper registration option for the simplest kinds of claims.<sup>129</sup> With a forty-five dollar filing fee,<sup>130</sup> it is designed to benefit individual creators, as opposed to sophisticated entities, and to encourage such creators to register their

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<sup>124</sup> *Id.* § 1402.3. *See generally* 17 U.S.C. § 101 (definitions of work made for hire, collective work, derivative work, and compilation). A work-made-for-hire is either (1) a work prepared by an employee within the scope of his employment; or (2) one of nine enumerated types of works if the work was specially commissioned and the parties agreed in writing that the work would be a work-made-for-hire. 17 U.S.C. § 101. When a work is a work-made-for-hire, the employer or commissioner of the work is considered the author—not the preparer of the work—and therefore, ownership vests in that employer or commissioner. *Id.* § 201(a)–(b).

<sup>125</sup> 37 C.F.R. § 202.3(b)(2)(i)(B)(1).

<sup>126</sup> *Fees*, U.S. COPYRIGHT OFF., <https://www.copyright.gov/about/fees.html> [<https://perma.cc/L7N5-U3ZP>].

<sup>127</sup> *See supra* notes 56–58 and accompanying text.

<sup>128</sup> An applicant for registration must submit a complete copy or phonorecord of the work, referred to as the deposit copy, along with the application form. COMPENDIUM (THIRD), *supra* note 31, § 204.3; 17 U.S.C. § 408(b).

<sup>129</sup> COMPENDIUM (THIRD), *supra* note 31, § 1405.

<sup>130</sup> *Fees*, *supra* note 126.

works.<sup>131</sup> The Single Application may only be used to register a work that is wholly created and owned by one individual.<sup>132</sup> The work cannot be a joint work nor a work-made-for-hire, the author cannot be an entity, and the individual-author must be the sole owner of all rights in the work.<sup>133</sup>

As a general rule, the Single Application may be used to register only one work; however, there is an exception for a sound recording and its underlying musical, literary, or dramatic work.<sup>134</sup> To be eligible for registration of a sound recording and its underlying work with a Single Application—in addition to the general requirements above—(1) the author of the sound recording and of the work embodied therein must be the same individual, (2) that individual must own the copyright in both works, (3) that individual must be *the only person performing in the sound recording*, and (4) the two works must be embodied in the same phonorecord.<sup>135</sup> Embodied works that do not satisfy all of these requirements cannot be registered with the Single Application.<sup>136</sup>

The author who creates fifty new beats per year—presuming all of them are eligible for dual registration of the sound recording and underlying musical work with one application—would need to spend \$2,250 for fifty Single Applications, which would require over eight hours to complete if each application takes ten minutes. The author who creates 1,000 new beats would need to spend \$45,000 for 1,000 Single Applications, and nearly 167 hours filling them out.

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<sup>131</sup> COMPENDIUM (THIRD), *supra* note 31, § 1405.

<sup>132</sup> *Id.* § 1405.2.

<sup>133</sup> *Id.* § 1405.3.

<sup>134</sup> *Id.* § 1405.2. An applicant cannot, however, obtain registration for more than one underlying work with a Single Application. For example, an applicant may not use the Single Application to claim registration for a sound recording, an embodied musical work, and an embodied literary work. If the recording embodies multiple types of underlying works, then the applicant must use the Standard Application or another registration option to register additional works. *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*



### 3. Group Registration of Unpublished Works (GRUW)

Like the Single Application, Group Registration of Unpublished Works “is intended to benefit individual creators and small businesses who otherwise might not register their unpublished works on an individual basis.”<sup>137</sup> With the GRUW option, an applicant can register up to ten unpublished<sup>138</sup> works with one application and a filing fee of eighty-five dollars.<sup>139</sup> When the Copyright Office receives any kind of group registration application, it will examine each work individually to determine if it is registrable.<sup>140</sup>

The GRUW application has four main prerequisites. First, all of the works in the group must be unpublished.<sup>141</sup> Second, all of the works in the group must be of the same administrative class (e.g., all literary works, all visual art works, etc.).<sup>142</sup> Third, all of the works must be created by the same author or joint authors, and the *authorship statement* for each author must be the same.<sup>143</sup> This means that in the case of joint works, the nature of each author’s contribution is the same for every work in the group. For example, an applicant may properly use the GRUW application for ten unpublished musical works, all of which are authored by the same two individuals, one of whom is the composer and the other is the lyricist. Lastly, the author or joint authors must be named as the claimant or co-claimants for all works.<sup>144</sup>

The same rule that allows a Single Application applicant to register both a sound recording and the musical work embodied therein exists for a GRUW applicant. The GRUW option may be used to register up to ten unpublished sound recordings along with their underlying musical, literary, or dramatic works.<sup>145</sup> As with the Single Application, to register sound recordings and their underlying

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<sup>137</sup> *Id.* § 1106.

<sup>138</sup> Publication “is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending.” 17 U.S.C. § 101.

<sup>139</sup> COMPENDIUM (THIRD), *supra* note 31, § 1406.1; *Fees*, *supra* note 126.

<sup>140</sup> COMPENDIUM (THIRD), *supra* note 31, § 1106.

<sup>141</sup> *Id.* § 1106.1.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.* § 1106.1(E).

<sup>145</sup> *Id.* § 1106.1(C).

works, the author or joint authors must be the only individuals performing in the sound recordings.<sup>146</sup> However, contrary to the Single Application, the authors need not own the copyrights in any of the works.<sup>147</sup>

Presuming that all of the beats are unpublished at the time of registration and that the other conditions are met, an author who creates fifty beats per year can register his sound recordings and musical works with five GRUW applications, which would cost \$425. The presumption that a Standard and Single Application applicant could complete each application in ten minutes is not realistic in the context of group registration, because the applicant must provide information about each work in the group, which increases the time required. If the applicant can complete each group registration application in thirty minutes, then the beatmaker's five GRUW applications will take two and a half hours. The author who creates 1,000 beats per year, presuming all of them are unpublished and satisfy the other criteria, could register all of his sound recordings and musical works with 100 GRUW applications, at a cost of \$8,500 and approximately fifty hours spent on applications.

#### 4. Group Registration of Works on an Album of Music (GRAM)

With an application for Group Registration of Works on an Album of Music, an applicant can register up to twenty musical works or twenty sound recordings<sup>148</sup> that are contained on the same album.<sup>149</sup> For the purpose of this registration option, the Copyright Office defines an album as "a single physical or electronic unit of distribution containing at least two musical works and/or sound recordings embodied in a phonorecord."<sup>150</sup> In addition to the same-

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<sup>146</sup> *Id.*

<sup>147</sup> *Id.* § 1106.1(E).

<sup>148</sup> On an application to register up to twenty sound recordings on the same album, the applicant may also seek registration of "any associated literary, pictorial, or graphic works," such as liner notes or album artwork, with the same application and filing fee. 37 C.F.R. § 202.4(k)(1)(ii)(B).

<sup>149</sup> *Id.*

<sup>150</sup> *Id.* § 202.4(k)(1)(i). "As a general rule, all of the works must be first published on the same album . . . . [However, a] musical work or sound recording that was previously

album requirement, all of the works in the group must be created by the same author or have at least one common joint author, and the claimant or co-claimants must be the same for each work.<sup>151</sup> Works-made-for-hire may be registered through a GRAM application.<sup>152</sup> The filing fee for GRAM is sixty-five dollars.<sup>153</sup>

Unlike the GRUW option, it is impossible to register both sound recordings and musical works with a single GRAM application.<sup>154</sup> In promulgating the Final Rule, the Copyright Office believed that “permitting the registration of both musical works and sound recordings using one application may give rise to complexities in the examination process that could hinder the Office’s efficient administration of the group option.”<sup>155</sup> Specifically,

where the musical works and sound recordings on an album have different authors, an applicant would be required to list all the authors of both the music and sound recordings, to list the titles of the works created by each author, and to provide an appropriate authorship statement to describe each author’s contribution(s) to each work.<sup>156</sup>

In the Office’s experience, such situations frequently lead to “ambiguities requiring correspondence with the applicant, as well as potential inaccuracies in the public record.”<sup>157</sup> Correspondence with applicants significantly slows the examination process. An online application with a digital deposit<sup>158</sup> takes, on average, five weeks to

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published as an individual work only (e.g., as a single) may be included in [a GRAM] claim . . .” *Id.* § 202.4(k)(1)(v).

<sup>151</sup> *Id.* § 202.4(k)(1)(iv).

<sup>152</sup> *Id.*

<sup>153</sup> *Fees, supra* note 126.

<sup>154</sup> See *Frequently Asked Questions: Group Registration of Works on an Album of Music (GRAM)*, U.S. COPYRIGHT OFF., <https://www.copyright.gov/help/faq/faq-gram.html> [<https://perma.cc/6B6V-NZ8P>] (“Can I register a musical work . . . and sound recordings with the same group registration application? No . . .”).

<sup>155</sup> Group Registration of Works on an Album of Music, 86 Fed. Reg. 10820, 10822 (Feb. 23, 2021) (codified at 37 C.F.R. 202.4(k)).

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> As opposed to a mail-in application and/or mail-in physical deposit copy. See generally *supra* note 128 and accompanying text.

process if no correspondence with the applicant is needed, but thirteen to fourteen weeks if correspondence is required.<sup>159</sup>

Generally, authors of beats will not be eligible for the GRAM option because beatmakers usually do not distribute their beats collectively in a “single physical or electronic unit.”<sup>160</sup> For authors who create beats to sell or license them to recording artists, publishing their beats as a unit generally does not add commercial value. The consumers of beats—that is, other musicians—prefer the ability to browse thousands of beats and purchase the ones they want, without spending money on beats they don’t want.<sup>161</sup> This is in contrast with the recording artist who publishes an album of music because there is long-recognized artistic and commercial value to releasing a thematically consistent body of songs, and the album’s consumers are music listeners.

Sometimes, however, beatmakers will in fact distribute a group of beats as an album.<sup>162</sup> In such cases, an author who creates fifty beats per year and distributes them in three units containing twenty or fewer beats each (e.g., twenty-twenty-ten) could register all sound recordings and musical works for \$390—six GRAM applications, three for sound recordings and three for musical works. Presuming thirty minutes per application, the six GRAM applications would take about three hours to complete. And an author who creates 1,000 beats per year and distributes them in fifty units containing twenty beats each could register all sound recordings and musical works for \$6,500—100 GRAM applications, fifty for sound recordings and fifty for musical works—which would take approximately fifty hours to complete.

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<sup>159</sup> U.S. COPYRIGHT OFF., REGISTRATION PROCESSING TIMES FOR CASES CLOSED OCTOBER 1, 2022 – MARCH 31, 2023, <https://www.copyright.gov/registration/docs/processing-times-faqs.pdf> [<https://perma.cc/3J29-J4WH>].

<sup>160</sup> 37 C.F.R. § 202.4(k)(1)(i); see, e.g., *Top Charts*, *supra* note 49. As we can see from the BeatStars marketplace, beats are generally sold or licensed individually.

<sup>161</sup> See generally SCHLOSS *supra* note 31 and accompanying text.

<sup>162</sup> See, e.g., MADLIB, SOUND ANCESTORS (Madlib Invazion 2021).

### III. ADMINISTRATIVE CHALLENGES TO IMPLEMENTING GROUP REGISTRATION MECHANISMS

While devising a new group registration option to mitigate these barriers may seem simple enough, group registration imposes significant administrative costs on the Copyright Office and increases the risk that inaccurate information will be published in the public record. This Part first establishes the Copyright Office's role in registering copyright claims and its authority to develop group registration options. Then, it discusses the challenges that group registration applications impose on the Copyright Office's resources and the administration of its duties.

#### *A. Role and Authority of the Copyright Office in Registration*

The Copyright Office is an agency of the Library of Congress and is directed by the Register of Copyrights ("Register").<sup>163</sup> The Register, "together with the subordinate officers and employees of the Copyright Office,"<sup>164</sup> is responsible for processing applications for registration, registering successful claims, issuing certificates of registration, and notifying unsuccessful applicants of the reasons why registration has been refused.<sup>165</sup> Upon receiving an application, the Copyright Office assigns the claim to a Registration Specialist, who examines the applicant's materials.<sup>166</sup> After the Specialist has determined that the claimed work "constitutes copyrightable subject matter" and that "the other legal and formal requirements" of copyright law have been met, the Office registers the claim and issues a certificate of registration.<sup>167</sup>

The Register is empowered to determine the administrative classes for registration of works, including the ability to create "a single registration [vehicle] for a group of related works."<sup>168</sup> The Copyright Office currently maintains eight distinct group registration

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<sup>163</sup> See 17 U.S.C. § 701.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.* §§ 408(a), 410(a)–(b).

<sup>166</sup> See generally U.S. COPYRIGHT OFF., COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES GLOSSARY 17, in U.S. COMPENDIUM (THIRD), *supra* note 31 (defining "Registration Specialists").

<sup>167</sup> See 17 U.S.C. 410(a); accord COMPENDIUM (THIRD), *supra* note 31, § 602.

<sup>168</sup> *Id.* § 408(c)(1).

options.<sup>169</sup> Two of these options, GRUW and GRAM, were discussed in Part II and two others—Group Registration of Short Online Literary Works and Group Registration of Photographs—will be discussed in Part IV.

*B. Administrative Realities of the Registration Process Require the Balancing of Competing Values*

There are three primary goals that guide copyright registration policy: first, the desire to register as many existing works as possible; second, the desire to process applications for registration as quickly as possible; and third, the desire that information in the public record be as accurate and up to date as possible.<sup>170</sup> Group registration options tend to serve the first goal— incentivizing the registration of works that may otherwise go unregistered—but hamper the second two goals. Thus, creating additional group registration mechanisms requires “careful balancing of the copyright owners’ desire for more liberal registration options, the need for an accurate public record, and the need for an efficient method of facilitating the examination of each work.”<sup>171</sup>

In the Copyright Office’s experience, group registration raises the possibility that opaque records will hinder the usefulness of the Public Catalog. “When multiple works are included in one submission . . . it can be more difficult to adequately capture information about each work, particularly within the technological constraints” of the Office.<sup>172</sup> For example, prior to promulgation of the GRUW option, its predecessor, the Unpublished Collections registration procedure, had no limit on the number of works that could be claimed in a collection and allowed applicants to submit “dozens, hundreds, even thousands of works with one application and one filing fee.”<sup>173</sup> This strained the resources of the entire Registration Program and resulted in uncertain records of “what was actually

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<sup>169</sup> See 37 C.F.R. § 202.4.

<sup>170</sup> Cf. Group Registration of Works on an Album of Music, 84 Fed. Reg. 22762, 22762 (proposed May 20, 2019) (notice of proposed rulemaking).

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> Group Registration of Unpublished Works, 82 Fed. Reg. 47415, 47416 (proposed Oct. 12, 2017) (notice of proposed rulemaking).

reviewed for copyrightable authorship.”<sup>174</sup> Put simply, “[w]hen confronted with such a voluminous amount of material, it is difficult for the Office to conduct a full and complete examination of each and every work . . . and in many cases it [is] impossible to do so.”<sup>175</sup>

Furthermore, additional group registration options could result in “an adverse effect on the timeframe for examining other types of works.”<sup>176</sup> In contrast to applications involving a single work, applications that claim multiple works “may require several hours or more” to review.<sup>177</sup> Therefore, creating yet another group registration option has the potential to inflate pendency times throughout the Registration Program.<sup>178</sup> New group registration options for sound recordings and musical works can be particularly perilous in this regard. Because “each [audio] file must be opened, buffered, and played to determine if the work contains a sufficient amount of creative expression,” such works “take significantly more time to examine than literary or photographic works.”<sup>179</sup> Longer wait times for registration impose real harms beyond mere inconvenience. Copyright owners cannot initiate a suit for infringement until registration has been made or refused,<sup>180</sup> which means that the infringing conduct will presumably continue in the absence of enjoinder. Longer wait times also have the practical consequence of narrowing the statute of limitations for copyright claims if the work is unregistered when the infringement begins.<sup>181</sup>

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<sup>174</sup> *Id.* This is particularly concerning since one of the core purposes of registration is to provide *prima facie* evidence of the validity of a copyright. See 17 U.S.C. § 410(c).

<sup>175</sup> Group Registration of Unpublished Works, 82 Fed. Reg. at 47416.

<sup>176</sup> Group Registration of Works on an Album of Music, 84 Fed. Reg. at 22762.

<sup>177</sup> Group Registration of Unpublished Works, 84 Fed. Reg. 3693, 3695 (Feb. 13, 2019) (codified at 37 C.F.R. § 202.4(c)) (final rule).

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> 17 U.S.C. § 411.

<sup>181</sup> See *id.* § 507(b); *Fourth Est. Pub. Benefit Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881, 888–89 (2019) (holding that an action for infringement can be instituted only after registration is obtained or refused, not when an application has been submitted).

#### IV. GROUP REGISTRATION OF NON-SAMPLE-BASED BEATS: AN ADMINISTRATIVELY FEASIBLE SOLUTION

Despite these challenges, the Register of Copyrights should study the need for and implement a group registration option for non-sample-based beats in light of the overwhelming registration-related disadvantages individual creators face. Congress empowered the Register to provide for the group registration of works because it “recognized that requiring applicants to submit separate applications for certain types of works may be so burdensome and expensive that authors and copyright owners may forgo registration altogether.”<sup>182</sup> The detriments to owners who forgo registration can be severe.<sup>183</sup> Creating a group registration option for beats would be in line with the Office’s longstanding policy that group registration is reserved for “narrow exceptions” and “particular kind[s] of work[s].”<sup>184</sup> This Part proposes that by limiting the scope of this option to non-sample-based beats, establishing strict eligibility criteria, and reducing instances of correspondence with applicants, the Register can vigorously promote the registration of beats while ensuring that the Copyright Office’s duties are fulfilled and its resources remain intact. This proposed rule is similar to two existing group registration options that the Copyright Office has deemed workable: Group Registration of Short Online Literary Works and Group Registration of Photographs.

##### *A. Group Registration of Short Online Literary Works and Photographs*

The Copyright Office has created a registration option for a group of up to fifty short online literary works.<sup>185</sup> A short online literary work is “a work consisting of text that contains at least fifty words and no more than 17,500 words, such as a poem, short story, article, essay, column, blog entry, or social media post,” and each

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<sup>182</sup> Group Registration of Works on an Album of Music, 84 Fed. Reg. 22762, 22762 (proposed May 20, 2019) (notice of proposed rulemaking) (citing H.R. REP. NO. 94-1476, at 154 (1976)).

<sup>183</sup> See *supra* Section II.A.

<sup>184</sup> Group Registration of Unpublished Works, 84 Fed. Reg. at 3694.

<sup>185</sup> 37 C.F.R. § 202.4(j).



“work must be published as part of a website or online platform.”<sup>186</sup> Notably, all of the works in the group must be published within a three-calendar-month period.<sup>187</sup> This restriction addresses the plea of those who petitioned for this option—that registration is “effectively unavailable” for prolific writers who publish their works predominantly online<sup>188</sup>—without unduly straining the Office’s resources. Additional requirements include: all of the works must be created by the same individual or individuals; each creator must be named as the claimant or co-claimant for each work; and the works must not be works-made-for-hire.<sup>189</sup>

There are also two group registration options for photographs. An applicant can register up to 750 published photographs or 750 unpublished photographs with one application.<sup>190</sup> However, the applicant cannot register both published and unpublished photographs in the same application; all of the photographs in the group must be one or the other.<sup>191</sup> Furthermore, all of the photographs must be created by the same author, and the claimant for all the photographs must be the same person or entity.<sup>192</sup> In the case of a group of published photographs, all of the photographs must be published within the same calendar year.<sup>193</sup>

### *B. Proposal for Rulemaking*

These registration options further illustrate specific regulations that can make a new group registration option viable. By restricting the scope of the option and mitigating correspondence with applicants, a rule that substantially ameliorates beatmakers’ registration hardship is administratively feasible.

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<sup>186</sup> *Id.* § 202.4(j)(1). “The group may not include computer programs, audiobooks, podcasts, or emails.” *Id.*

<sup>187</sup> *Id.* § 202.4(j)(2).

<sup>188</sup> National Writers’ Union et al., Comment Letter on Proposed Rule for Group Registration of Contributions to Periodicals 4 (Jan. 30, 2017), <https://www.regulations.gov/comment/COLC-2016-0013-0003> [<https://perma.cc/5FQS-6B2G>] (click “Download”).

<sup>189</sup> 37 C.F.R. §§ 202.4(j)(3)–(4).

<sup>190</sup> *Id.* §§ 202.4(h)–(i).

<sup>191</sup> COMPENDIUM (THIRD), *supra* note 31, § 1114.1.

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

### 1. Eligibility Criteria

The Register should promulgate a rule under which a group of sound recordings and the musical works embodied therein may be registered with one application, the required deposit phonorecords, and one filing fee, if the following conditions are met:

- 1) The group may include up to fifty non-sample-based beats and the application must specify the total number of non-sample-based beats for which registration is sought. For purposes of this registration option, a “non-sample-based beat” is a sound recording of a non-lyrical musical work that does not contain any unclaimable material<sup>194</sup> and is distributed or held out to the public as an instrumental track to which lyrics may be added at a later time.<sup>195</sup>
- 2) All of the works must be published within a three-calendar-month period, and the application must identify the earliest and latest date that the works were published.
- 3) All of the works must be authored by the same individual, or jointly by the same individuals, and each author must be named as the claimant or claimants for each work in the group.
- 4) The works must not be works-made-for-hire.
- 5) The applicant must provide a title for each work and a title for the group as a whole.
- 6) The applicant must submit one complete phonorecord of each work in separate digital files. The file name for each work must match the title as submitted on the application.
- 7) The applicant must submit a sequentially numbered list containing a title/file name, the publication date, and the duration of the work for each work in the group.

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<sup>194</sup> See generally *id.* § 621; 17 U.S.C. § 103(b) (“The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, [not to] the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material.”).

<sup>195</sup> Of course, every work for which registration is sought must contain copyrightable authorship; thus, “simple loops” that lack sufficient originality will not be registrable under this or any other rule. See *supra* note 85 and accompanying text.

These requirements appropriately balance the need of individual creators of beats to have a practical registration option and the administrative difficulties imposed by group registration.

Several features of the scope of “non-sample-based beats” work to keep burdens on the Registration Program to a minimum. First, the definition ensures that the mechanism is only used for genuine beats, whose authors have a unique and legitimate registration hardship as a result of market conditions—namely, the importance of creating hundreds or thousands of beats in order to make a living as a producer.<sup>196</sup> This hardship is exacerbated by the fact that beats, in most cases, are ineligible for the GRAM option.<sup>197</sup> The proposed definition prevents authors of other types of sound recordings from availing themselves of this registration option, which is not designed for such works, thus curbing the costs on the Registration Program.

The proposal prohibits beats that contain unclaimable material, which thereby excludes sample-based beats from this registration option.<sup>198</sup> The key to the workability of this rule is its reasonableness in light of the Copyright Office’s limited resources and technological capabilities. Claims for works that contain samples and other unclaimable material are significantly more complicated than ordinary claims. First, if the work contains claimable and unclaimable material, many applicants may not know how to properly limit their claim solely to the claimable material in the application form. When the Registration Specialist receives an application for a work that contains unclaimable material and the application does not disclaim that material, he must communicate with the applicant, which increases pendency times throughout the Registration Program.<sup>199</sup> Second, when examining a work containing unclaimable material, the Specialist must filter out that material and assess whether there is sufficient copyrightable authorship remaining that is claimable by the applicant.<sup>200</sup> Such claims not only take significantly longer to review, but when there is insufficient authorship independent of the

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<sup>196</sup> See *supra* notes 56–58 and accompanying text.

<sup>197</sup> See *supra* notes 160–61 and accompanying text.

<sup>198</sup> See COMPENDIUM (THIRD), *supra* note 31, § 621.1.

<sup>199</sup> See *id.* § 621.9(E)(2); *supra* note 159 and accompanying text.

<sup>200</sup> See generally COMPENDIUM (THIRD), *supra* note 31, § 621.9.

unclaimable material, registration will be refused.<sup>201</sup> For these reasons, a group registration option for both sample-based and non-sample-based beats would be infeasible.

Conditions (2) through (7) are substantially similar to those for Group Registration of Short Online Literary Works.<sup>202</sup> Limiting registration to fifty beats per application fairly addresses the interests of prolific beatmakers without unduly straining the Office's capabilities. Furthermore, the three-calendar-month period requirement will lessen the volume of applications that can be filed under this option.<sup>203</sup> While some authors surely publish more than fifty beats per quarter, they still benefit from the promulgation of this rule because they could file multiple applications covering the same three-month period. For example, if an individual authored 150 beats between January 1st and March 31st, he could file three group registration applications consisting of fifty beats each, which is still less costly and more efficient than current options.

The Author and Claimant conditions—that all works must be authored by the same individual(s) and that they may not be works-made-for-hire—serve several important functions. First, these regulations advance the efficient examination of applications by allowing Specialists to focus on whether the works claimed have copy-rightable subject matter, rather than on complications related to authorship.<sup>204</sup> Second, applications involving works-made-for-hire increase processing time because, to be a work-made-for-hire, the work must be either (1) prepared by an employee in the scope of her employment, or (2) one of nine statutory types of works, specially commissioned, and the parties agreed in writing that the work would be a work-made-for-hire.<sup>205</sup> Because the stakes are high when a work-made-for-hire is claimed,<sup>206</sup> and because parties may be unaware of the statutory requirements, such a claim could require

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<sup>201</sup> *Id.* § 621.9(E)(6).

<sup>202</sup> *See generally* 37 C.F.R. § 202.4(j).

<sup>203</sup> *See* Group Registration of Short Online Literary Works, 85 Fed. Reg. 37341, 37344 (June 22, 2020) (codified at 37 C.F.R. § 202.4(j)) (final rule).

<sup>204</sup> *Id.* at 37343.

<sup>205</sup> *See* sources cited *supra* note 124.

<sup>206</sup> *See id.*

multiple correspondences with the applicant.<sup>207</sup> Lastly, the ban on works-made-for-hire reinforces the guiding purpose for establishing this option: to support individual creators who likely would forgo registration absent such an option.<sup>208</sup>

## 2. Correspondence and Refusals

In addition to establishing strict eligibility criteria, the Copyright Office should retain the right to and make known that it will quickly refuse applications for reasons of noncompliance with the eligibility conditions or failure to submit and properly label complete deposit phonorecords.<sup>209</sup> While in general the Office's policy of communicating with applicants to resolve omissions and variances is sound, special examination procedures should be undertaken in this case in order to make group registration of beats a reality. This places a heightened burden on applicants to ensure that their works are eligible for the group registration option and that their application materials are in order. But overall, applicants will be better served by the ability to register up to fifty non-sample-based beats with a single application and filing fee, and therefore this is a burden worth tolerating.

## CONCLUSION

A new group registration option for non-sample-based beats is necessary to enable authors of beats to register their works without undue burdens. Because of the prolific nature of beatmakers, current registration options for sound recordings and musical works do not adequately facilitate the registration of their beats. As a result, thousands or perhaps millions of beats remain unregistered, to the detriment of their authors and the public. Recognizing the challenges that group registration imposes on the Copyright Office, this Note proposes a rule that strikes an appropriate balance that will encourage widespread registration of beats while mitigating strains on the

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<sup>207</sup> See COMPENDIUM (THIRD), *supra* note 31, § 506.4.

<sup>208</sup> See *supra* text accompanying notes 131, 137; Group Registration of Short Online Literary Works, *supra* note 203, at 37344.

<sup>209</sup> Cf. Group Registration of Short Online Literary Works, 85 Fed. Reg. at 37344.

Office's resources and preserving the Office's ability to accurately examine claims.