IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

JON B. HAVRILESKO, Plaintiff, v. PETRY HOME BUILDERS, LLC, VULCAN BUILDING, LLC, NEWARK HOMEBUILDERS, LLC, ACADIA HOMES, LLC, SELENE HOMES, LLC, JENNIFER JEFFERY, JOSHUA PETRY, JEFFREY G. PETRY, JACOB PETRY, MICHAEL HAEGELE, JOHN KNABE, PETRY TRUST #1989, SANDALWOOD HOMES, LLC, and WHITE OAK HOME BUILDERS, LLC, Defendants.	Case No. 3:22-cv-50265 Honorable Michael F. Iasparro

RESPONSE OF THE REGISTER OF COPYRIGHTS
TO REQUEST PURSUANT TO 17 U.S.C. § 411(b)(2)

On February 12, 2026, pursuant to 17 U.S.C. § 411(b)(2), the Court requested advice from the Register of Copyrights ("Register") on the following questions:

1. Would the Register of Copyrights have refused to register the work[s] which [are] the subject[s] of U.S. Copyright Registration No[s]. VA 2-292-723[, VA 2-292-721, VA 2-292-045, VA 2-292-042, VA 2-292-704, VA 2-292-694, VA 2-292-478, and VA 2-292-469] if the Register of Copyrights had known that the application[s] w[ere] based upon or incorporated preexisting materials from another author who was not identified and which depicted similar architectural works/technical drawings, such as the pre-existing plan attached [to the Court's request] as Exhibit G?

2. Would the Register of Copyrights have refused to register the work[s] which [are] the subject[s] of U.S. Copyright Registration No[s]. VA 2-292-910[, VA 2-292-909, VA 2-293-016, and VA 2-293-012] if the Register of Copyrights had known that the application[s] w[ere] based upon or incorporated preexisting materials from another author who was not identified and which depicted similar architectural works/technical drawings, such as the pre-existing plan attached [to the Court's request] as Exhibit H?

3. Would the Register of Copyrights have refused to register the work[s] which [are] the subject[s] of U.S. Copyright Registration No[s]. VA 2-292-915[, VA 2-292-307, VA 2-292-409, VA 2-292-475, VA 2-293-023, and VA 2-293-020] if the Register of Copyrights had known that the application[s] w[ere] based upon or incorporated preexisting materials from another author who was not identified and which depicted similar architectural works/technical drawings, such as the pre-existing plan attached [to the Court's request] as Exhibit I?[1]

The Register hereby submits her response. Based on the legal standards and examining practices set forth below, the U.S. Copyright Office ("Copyright Office" or "Office") would not have registered Mr. Havrilesko's claims to the technical drawings and architectural works if it had known that they were based upon or incorporated preexisting material that he did not own. Before registering his contributions, the Office would have requested that Mr. Havrilesko exclude the unclaimable material. Notwithstanding the alleged error, the Office will accept supplementary registration applications from Mr. Havrilesko if he files them based on a claim that the Subject Plans are derivative works that incorporate an appreciable amount of unclaimable material.

[1] Req. to the Register of Copyrights at 1–3 (Feb. 12, 2026) ("Request"), ECF No. 239. The Request contains eighteen individual questions, each involving a different work. *See id.* Due to the substantive similarity of the questions, the Response addresses them in groups where appropriate. An individual analysis of each question, and its corresponding work, is included below.

BACKGROUND

I. Examination History

A review of the records of the Office reveals that on February 18, 2022 and February 20, 2022, the Office received applications to register nine model plans hereinafter referred to as the "Subject Plans": "1978 Model B," "1978 Model C," 1978 Model D," and "1978 Model E" (collectively, the "1978 Subject Plans"); "2149 Model A" and "2149 Model B" (collectively, the "2149 Subject Plans"); and "1848 Model A," "1848 Model B," and "1848 Model E" (collectively, the "1848 Subject Plans"). The applications sought to register each plan as an "architectural work" and a "technical drawing."[2] Each application identified "Rebenok Design & Consulting LLC" as the work made for hire author,[3] and Mr. Havrilesko as the copyright claimant by written agreement.[4] The applications stated that the Subject Plans were completed in 2015 and first published simultaneously in the United States on July 30, 2015. Based on the information provided in the applications and as subsequently clarified in correspondence, the

[2] An architectural work and a technical drawing of an architectural work are separate works. H.R. REP. NO. 101-735, at 19 (1990) ("An individual creating an architectural work by depicting that work in plans or drawing[s] will have two separate copyrights, one in the architectural work . . . the other in the plans or drawings."). Therefore, "[w]here dual copyright claims exist in technical drawings and the architectural work depicted in the drawings, any claims with respect to the technical drawings and architectural work must be registered separately." 37 C.F.R. § 202.11(c)(3).

[3] A "work made for hire" is a "a work prepared by an employee within the scope of his or her employment" or "a work specially ordered or commissioned for use as" a certain category of work that the parties expressly agree in a signed written instrument to treat as a work made for hire. 17 U.S.C. § 101 (defining "work made for hire").

[4] In the application to register the "technical drawing" claim in "1848 Model B," the applicant initially identified Mr. Havrilesko as the sole author who obtained copyright ownership by written agreement. Application for Service Request No. 1-11191479866 (Feb. 18, 2022). After an inquiry from the Office, the applicant amended the application to identify "Rebenok Design & Consulting LLC" as the work made for hire author and Mr. Havrilesko as the copyright claimant by written agreement. Email from Joel M. L. Huotari, WilliamsMcCarthy LLP, to U.S. Copyright Office (Mar. 29, 2022).

Office registered the Subject Plans as follows (collectively, the "Registrations"):

Title of Work	Technical Drawing Registration No.	Architectural Work Registration No.	Effective Date of Registration[5]
1978 Model B	VA0002292721	VA0002292723	March 30, 2022
1978 Model C	VA0002292042	VA0002292045	March 28, 2022
1978 Model D	VA0002292694	VA0002292704	March 30, 2022
1978 Model E	VA0002292469	VA0002292478	March 29, 2022
2149 Model A	VA0002292909	VA0002292910	March 31, 2022
2149 Model B	VA0002293012	VA0002293016	March 31, 2022
1848 Model A	VA0002292307	VA0002292915	March 29 and 31, 2022, respectively
1848 Model B	VA0002292475	VA0002292409	March 29, 2022
1848 Model E	VA0002293020	VA0002293023	March 31, 2022

II. The Court's Request

Mr. Havrilesko commenced this action on July 29, 2022.[6] As the Office understands the dispute, Mr. Havrilesko founded Rebenok Design & Consulting LLC ("Rebenok") and was its sole managing member and employee.[7] He created the Subject Plans while employed by Rebenok.[8] Rebenok has subsequently assigned all rights, titles, and interests in the Subject Plans to Mr. Havrilesko, who registered them with the Office.[9] According to Mr. Havrilesko, Rebenok granted "limited, single build construction licenses" for the Subject Plans to a development

[5] The EDR is the date the Office received a completed application, the correct deposit copy, and the proper filing fee. 17 U.S.C. § 410(d).

[6] Compl. for Copyright Infringement at 1 (July 29, 2022), ECF No. 1; Am. Compl. at 1 (Apr. 18, 2025), ECF No. 164.

[7] Am. Compl. at 6.

[8] *Id.* at 5–6.

[9] *Id.* at 6.

company with principals or agents in common with Defendants, "which authorized the licensee to use those plans to build a single home on a single lot."[10] Mr. Havrilesko alleges that Defendants infringed his copyrights in the Subject Plans by "building unlicensed homes using" the Subject Plans or unauthorized derivatives thereof, in addition to advertising them in print publications and on Defendants' and third-party websites.[11]

Denying the infringement claims,[12] Defendants challenged the validity of the Registrations[13] and moved the Court to request the Register's advice on whether she would have refused registration of the Subject Plans had she been aware that the works were derived from or incorporated plans owned by a third-party.[14] Specifically, Defendants alleged that "the Subject Plans are derivatives of architectural works created, developed, and owned by Defendant Jeffrey G. Petry and related entities."[15] According to Defendants, these architectural works were

[10] *Id.* Terms of the license included providing the licensee with copies of the Works, which included disclaimers and copyright management information reflecting ownership rights and the license's scope. *Id.* at 6, 8.

[11] *Id.* at 8–9, 19–20. Mr. Havrilesko also alleges that Defendants removed copyright management information and lot identification information from the Works and used the altered material when advertising and building homes. *Id.* at 20.

[12] *E.g.*, Answer to Am. Compl. and Affirmative Defenses at 30–33 (July 28, 2025), ECF No. 201 (filed on behalf of Defendants Jennifer Jeffery, Joshua Petry, and Vulcan Building, LLC).

[13] *See, e.g.*, *id.* at 33, 38–41. All Defendants, except for Defendants Newark HomeBuilders, LLC, Mike Haegele, and Sandalwood Homes, LLC, asserted affirmative defenses of copyright registration invalidity.

[14] Def. Vulcan Building, LLC's Mot. for the Issuance of a Req. to the Register of Copyrights Pursuant to 17 U.S.C. § 411(b) at 1–2, 4, 14 (Oct. 13, 2025), ECF No. 217. The Court subsequently granted Defendant Jeffrey G. Petry's and Defendant Petry Home Builders, LLC's joint motion to join Defendant Vulcan Building, LLC's Motion for Issuance of a Request to the Register of Copyrights Pursuant to 17 U.S.C. 411(b). Minute Order (Oct. 28, 2025), ECF No. 222.

[15] Def. Vulcan Building, LLC's Mot. for the Issuance of a Req. to the Register of Copyrights Pursuant to 17 U.S.C. § 411(b) at 1–2, 4, 14.

provided to Mr. Havrilesko "to modify."[16] In response, Mr. Havrilesko opposed the motion to request the advice of the Register, and contended that he created the plans "from scratch" without reference to any other plans.[17]

On January 7, 2026, the Court granted Defendants' motion, finding that they "sufficiently alleged an inaccuracy" in Mr. Havrilesko's registration applications that requires the Register's advice "as to the materiality of that inaccuracy."[18] The Court subsequently referred the matter to the Register, seeking her advice on whether the alleged inaccuracies, if known, would have caused her to refuse registrations.[19] The Court asked the following:

> 1. Would the Register of Copyrights have refused to register the [1978 Subject Plans] if the Register of Copyrights had known that the application[s] w[ere] based upon or incorporated preexisting materials from another author who was not identified and which depicted similar architectural works/technical drawings, such as the pre-existing plan attached [to the Court's request] as Exhibit G?
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> 2. Would the Register of Copyrights have refused to register the [2149 Subject Plans] if the Register of Copyrights had known that the application[s] w[ere] based upon or incorporated preexisting materials from another author who was not identified and which depicted similar architectural works/technical

[16] *See, e.g.*, Answer to Am. Compl. and Affirmative Defenses at 33, 38–41 (filed on behalf of Defendants Jennifer Jeffery, Joshua Petry, and Vulcan Building, LLC). All Defendants, except for Defendants Newark HomeBuilders, LLC, Mike Haegele, and Sandalwood Homes, LLC, asserted affirmative defenses of copyright registration invalidity.

[17] Resp. to Defs.' Mot. for the Issuance of a Req. to the Register of Copyrights at 3–4 (Nov. 12, 2025), ECF No. 226.

[18] Order at 5 (Jan. 7, 2026), ECF No. 231; *see also id.* at 3 ("[T]he Court finds that Defendants have adequately supported their allegation that [Mr. Havrilesko] knowingly provided inaccurate information on his application to warrant a request for an advisory opinion from the Register."). Although permissible, a motion by a party is not required. *See* 17 U.S.C. § 411(b)(2) ("[T]he court shall request the Register of Copyrights to advise the court whether the inaccurate information, if known, would have caused the Register of Copyrights to refuse registration.").

[19] Request at 1.

> drawings, such as the pre-existing plan attached [to the Court's request] as Exhibit H?
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> 3. Would the Register of Copyrights have refused to register the [1848 Subject Plans] if the Register of Copyrights had known that the application[s] w[ere] based upon or incorporated preexisting materials from another author who was not identified and which depicted similar architectural works/technical drawings, such as the pre-existing plan attached [to the Court's request] as Exhibit I?[20]

ANALYSIS

I. Relevant Statutes, Regulations, and Agency Practice

An application for copyright registration must comply with the requirements of the Copyright Act set forth in 17 U.S.C. §§ 408(a), 409, and 410. Regulations governing applications for registration are codified in title 37 of the Code of Federal Regulations at 37 C.F.R. §§ 202.1 to 202.24. Further, the principles that govern how the Office examines registration applications are set out in the *Compendium of U.S. Copyright Office Practices, Third Edition* ("*Compendium*"), an administrative manual that instructs agency staff regarding their statutory and regulatory duties and provides expert guidance to copyright applicants, practitioners, scholars, courts, and members of the general public regarding Office practices and related principles of law. The Office publishes periodic revisions to the *Compendium* to reflect changes in the law or Office practices and provide additional guidance where necessary; these revisions are made available for public comment prior to finalization. Because Mr. Havrilesko filed his applications in 2022, the governing principles the Office would have applied to evaluate the applications are set forth in the current edition of the *Compendium*.[21]

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[20] *Id.* at 1–3.

[21] U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES (3d ed. 2021) ("COMPENDIUM (THIRD)"), https://www.copyright.gov/comp3/docs/compendium.pdf.

A. Identification and Exclusion of Unclaimable Material, Including Preexisting Material

A registration does not cover any "unclaimable material" that may appear in the claimed work. As the *Compendium* explains, "unclaimable material" includes "[p]reviously published material," "[p]reviously registered material," "[m]aterial that is in the public domain," and "[c]opyrightable material that is owned by a third party."[22] If a work "contains an appreciable amount of unclaimable material, the applicant should identify the unclaimable material that appears in that work and should exclude that material from the claim [by providing] . . . a brief, accurate description of the unclaimable material in the appropriate field/space of the application."[23] The applicant must also identify the new material it seeks to register.[24]

As relevant here, if an applicant seeks to register a work that contains an appreciable amount of copyrightable material that is owned by someone other than the claimant named in the application, that material should also be excluded from the claim.[25] The applicant must make this determination on the date that the work is submitted for registration, so that the application is limited to material owned by the claimant.[26]

Additionally, the Copyright Act provides specific requirements for the registration of a derivative work, which is defined as a "work based upon one or more preexisting works" or a "work consisting of editorial revisions, annotations, elaborations, or other modifications, which, as a whole, represent an original work of authorship."[27] The statute dictates that an application

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[22] *Id.* § 621.1.
[23] *Id.*
[24] *Id.*
[25] *Id.* § 621.7.
[26] *Id.*
[27] 17 U.S.C. § 101 (defining "derivative work").

to register a derivative work must include "an identification of any preexisting work or works that it is based on or incorporates, and a brief, general statement of the additional material covered by the copyright claim being registered."[28] In light of this directive, the *Compendium* requires applications for derivative works to identify both the preexisting and new or revised material in cases where a work incorporates an "appreciable amount" of unclaimable material.[29] Identifying the new or revised material that the author contributed to a work and any material that is unclaimable "is essential to defining the claim that is being registered" and "ensures that the public record will be accurate."[30] If the work is registered, the registration will cover the new material or revised material that the author contributed to that work, but it will not cover any unclaimable material that appears in the work.[31]

In all cases, the Office must determine whether the new material created by the author named in the application contains a sufficient amount of original expression to satisfy the requirements for copyrightability.[32] This is the same standard that is required for determining whether copyright exists in any work. The author must contribute something more than a "merely trivial" variation.[33] "[T]he key inquiry is whether there is sufficient nontrivial expressive variation in the derivative work to make it distinguishable from the [preexisting] work

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[28] *Id.* § 409(9).

[29] COMPENDIUM (THIRD) § 621.1.

[30] *Id.*

[31] *Id.* § 507.2. This means that a derivative work registration will not cover any previously published, previously registered, public domain, or third-party material that appears in the work.

[32] *Id.* § 311.2 ("The new authorship that the author contributed to the derivative work may be registered, provided that it contains a sufficient amount of original expression, meaning that the derivative work must be independently created and it must possess more than a modicum of creativity." (citing *Waldman Publ'g Corp. v. Landoll, Inc.*, 43 F.3d 775, 782 (2d Cir. 1994))).

[33] *Id.* (quoting *Alfred Bell & Co. v. Catalda Fine Arts, Inc.*, 191 F.2d 99, 102–03 (2d Cir. 1951)).

in some meaningful way."[34] The *Compendium* explains that "[m]iniscule variations," such as changing the size of a preexisting work, or recasting a work from one medium to another, do not satisfy the originality requirement.[35]

There are several situations, however, in which exclusions and disclaimers are not required. For example, "[i]f the applicant intends to register a work that contains a minimal amount of unclaimable material, the applicant need not identify or disclaim that material in the application."[36] Likewise, "[i]f it is clear that the claimant is not asserting a claim to copyright in the unclaimable material that appears in the work," "the registration specialist may register the claim without communicating with the applicant" notwithstanding a failure to identify the unclaimable material in the appropriate field/space of the application.[37] In these circumstances, the registration specialist may annotate the registration record to clarify the extent of the claim and to identify material that is excluded from the claim.[38]

If an applicant determines that a disclaimer is required, the *Compendium* provides guidance on how to exclude the unclaimable material.[39]

B. Factual Assertions in Registration Applications

Copyright Office regulations require applicants to make "[a] declaration [] that the information provided within the application is correct to the best of the [applicant's] knowledge."[40] Generally, the Office "accepts the facts stated in the registration materials, unless

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[34] *Id.* (quoting *Schrock v. Learning Curve Int'l, Inc.*, 586 F.3d 513, 521 (7th Cir. 2009)).
[35] *Id.*
[36] *Id.* § 621.2, 621.9(A)(1).
[37] *Id.* § 621.9(A)(2), 621.2.
[38] *Id.* § 621.2, 621.9.
[39] *Id.* § 621.8.
[40] 37 C.F.R. § 202.3(c)(3)(iii).

they are contradicted by information provided elsewhere in the registration materials or in the Office's records."[41]

There may be instances during the application process where further communication between the applicant and the Office is necessary to clarify information in the application. It is not unusual for a registration specialist to correspond with an applicant about factual assertions if they appear to conflict with other information in the application materials.[42] Only if the Office determines that all the "legal and formal requirements" of title 17 have been met, will it register a claim to copyright and issue a certificate of registration.[43]

C. Supplementary Registration

A supplementary registration may be used to correct certain errors or amplify the information provided in a copyright registration.[44] Among other things, the *Compendium* provides that a supplementary registration can be used to "correct or amend the information that appears on the certificate of registration in the fields/spaces marked Author Created, Limitation of Copyright Claim, Nature of Authorship, and/or Material Added to This Work."[45]

If an application to correct or amplify the registration record is approved, the Office will prepare a certificate of supplementary registration that contains pertinent information from the application, create a public record that identifies and describes the changes or revisions that have been made, and assign a separate registration number and EDR[46] to the supplementary

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[41] COMPENDIUM (THIRD) § 602.4(C).

[42] *Id.* § 603.2(C).

[43] 17 U.S.C. § 410(a); COMPENDIUM (THIRD) § 602.

[44] 17 U.S.C. § 408(d); 37 C.F.R. § 202.6; COMPENDIUM (THIRD) § 1802.

[45] COMPENDIUM (THIRD) § 1802.6(J).

[46] The EDR for the supplementary registration "is the day on which an acceptable application and filing fee, which are later determined by the Register of Copyrights or by a court of

registration.[47] The Office will not cancel or replace the basic registration or the public record for that registration. Likewise, the Office will not change the EDR or other information set forth in the basic registration. The basic registration and the supplementary registration coexist with each other in the public record because the "supplementary registration augments — but does not supersede — the information set forth in the basic registration."[48] The *Compendium* explains:

> The Office maintains both records to allow courts to decide (i) whether the changes made by the supplementary registration are material, and (ii) whether those changes should or should not be deemed effective as of the date that the basic registration was made or the date that the supplementary registration was made.[49]

The Office may decline to issue a supplementary registration when it is aware that there is actual or prospective litigation involving a basic registration (1) if it seems likely that the proposed change would be directly at issue in the litigation, and (2) if the proposed amendment may confuse or complicate the pending dispute.[50] In such cases, the Office may stay its consideration of the supplementary registration application until the applicant confirms in writing that the dispute has been resolved.[51]

II. Register's Responses to Court's Questions

Based on the foregoing statutory and regulatory standards, and the Office's examining practices, the Register responds to the Court's questions as follows:

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competent jurisdiction to be acceptable for supplementary registration, have all been received in the Copyright Office." *Id.* § 1802.12.

[47] *Id.* § 1802.10. The Office will also place a note in the public record for the supplementary registration that cross-references the registration number and the year of registration for the basic registration. *Id.* § 1802.11.

[48] *Id.* § 1802; 17 U.S.C. § 408(d).

[49] COMPENDIUM (THIRD) § 1802.12.

[50] *Id.* § 1802.9(G).

[51] *Id.*

Had the Office known that the 1978 Subject Plans, 2149 Subject Plans, and 1848 Subject Plans were based on or incorporated preexisting materials from another author, and depicted architectural works/technical drawings, such as the corresponding preexisting plans identified in the Request as Exhibits G, H, and I, the Office would have asked Mr. Havrilesko to exclude the preexisting materials, and to identify the new material that he added to the Subject Plans.

Though disputed by Mr. Havrilesko,[52] the Court's questions assume as a fact that the Subject Plans are derivative works based on third-party-owned preexisting plans, including those identified as exhibits.[53] As noted above, if a derivative work contains an appreciable amount of unclaimable material, the applicant must identify and exclude that material from the claim.[54] In addition to identifying any appreciable preexisting material, an application for a derivative work must also identify the new or revised material that is being claimed in the application.[55] To be registrable as a derivative work, the new or revised material must contain a sufficient amount of original expression.[56]

Having reviewed the 1978 Subject Plans with the plan identified as Exhibit G, the 2149 Subject Plans with the plan identified as Exhibit H, and the 1848 Subject Plans with the plan identified as Exhibit I, the Register finds that the Subject Plans appear to contain an appreciable amount of unclaimable material, as shown by their similar renderings of each corresponding exhibits' site and floor plan. However, each Subject Plan also appears to contain more than a

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[52] Resp. to Defs.' Mot. for the Issuance of a Req. to the Register of Copyrights at 3–4.

[53] *See* 17 U.S.C. § 101 (defining "derivative work") (stating that a derivative work is a work that is "based upon one or more preexisting works").

[54] COMPENDIUM (THIRD) § 621.

[55] 17 U.S.C. § 409(9); COMPENDIUM (THIRD) § 621.1.

[56] COMPENDIUM (THIRD) § 311.2 (A sufficient amount of original expression means "that the derivative work must be independently created and it must possess more than a modicum of creativity.").

sufficient amount of new original expression to warrant registration. Each Subject Plan provides revised and additional architectural and technical drawing expression in the form of modified and new site and floor plans, new exterior elevations, new façade elements, and new framing details. Therefore, had the Office been aware that the Subject Plans were derivative works based on third-party-owned preexisting plans, assumed as fact in the Request, the registration specialist would have asked Mr. Havrilesko to identify his contributions and exclude the unclaimable plans.

If the Subject Plans are derivative works that incorporate an appreciable amount of unclaimable material, the Office will accept supplementary registration applications filed by Mr. Havrilesko to correct the omission in his original applications and exclude the unclaimable material.

CONCLUSION

After review of the available facts and application of the relevant law, regulations, and Office practices, the Register hereby advises the Court that had the Office been aware, prior to registration, that the Subject Plans were derivative works based on third-party-owned preexisting plans, it would not have registered Mr. Havrilesko's claims to the technical drawings and architectural works as submitted. Before registering his contributions, the Office would have requested that Mr. Havrilesko exclude the unclaimable material. The Office will accept supplementary registration applications filed by Mr. Havrilesko if the Subject Plans are derivative works that incorporate an appreciable amount of unclaimable material.

Dated: April 10, 2026

Shira Perlmutter
Register of Copyrights and Director
of the U.S. Copyright Office