

March 14, 2014

The Honorable Maria A. Pallante
Register of Copyrights
U.S. Copyright Office
101 Independence Avenue, SE
Washington, DC 20559-6000

**Re: Comments to the Copyright Office on Notice of Inquiry Regarding
“Strategic Plan for Recordation of Documents”
79 Fed. Reg. 2696 (January 15, 2013)**

Dear Register Pallante:

The American Intellectual Property Law Association (AIPLA) respectfully submits these comments in response to the above-referenced Notice of Inquiry regarding the U.S. Copyright Office’s strategic plan for the recordation of documents pertaining to copyright.

AIPLA is a national bar association with approximately 15,000 members who are primarily lawyers in private and corporate practice, government service, and the academic community. AIPLA members represent a wide and diverse spectrum of individuals, whose companies and institutions are involved in the practice of patent, trademark, copyright, and unfair competition law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property.

AIPLA welcomes the Copyright Office’s initiative to improve the existing recordation system. We agree with the concerns raised in the Notice that recordation at present is too costly, time-consuming, inconvenient, and inaccurate. Making recordation more efficient and useful for copyright owners and the wider public is crucial for the proper and orderly functioning of our nation’s copyright system.

We address three issues raised in the Notice.

1. A “Guided Remitter” Model of Electronic Recordation

AIPLA supports the implementation of a “guided remitter” model of electronic recordation. Such a system, if properly implemented, has the potential to address many of the weaknesses of today’s method of recording documents. Guided-remitter recordation gives the remitter, who is in the best position to know the facts and circumstances regarding the submitted documents, the ability to ensure that the records are accurate and complete. Such a model will allow greater

standardization in the organization of information entered into the Copyright Office's database, which will serve the public by making the information more accessible and more easily searchable. Moreover, such a system has the potential to improve accuracy by eliminating the cumbersome transcription step in the recordation process within the Copyright Office, which will speed processing times and greatly reduce costs. The Copyright Office should pass such cost savings on to remitters, so that fees for recordation submitted electronically can be lowered significantly. Lower fees are an important incentive for encouraging more frequent recordation which, in turn, will benefit copyright owners and the public alike.

AIPLA agrees that the Copyright Office should, as suggested in the Notice, perform targeted spot-checks to ensure the proper functioning and accuracy of the system. In addition, the Copyright Office should continue to work to improve the recordation system. After implementing a guided remitter model, the Copyright Office should study how well the overall recordation system is working and make changes as appropriate to further enhance the functionality of the process. If a guided remitter system is successful, the Copyright Office should consider eventually phasing out paper submissions.

2. Linking of Document Records to Registration Records

AIPLA supports an upgrade to the recordation system that would permit document records pertaining to registered works to be linked to the registration records of those works. To that end, AIPLA supports the proposal set forth in the Notice to require by regulation that document remitters provide in a standardized format the registration numbers for all registered works to which their documents pertain.

AIPLA adds two caveats to this, however, to protect remitters against potential unintended consequences of such a regulation.

First, any regulation promulgated by the Copyright Office should make clear that there is no requirement for the remitter to file a separate application to register a work that is the subject of a recordation. The requirement to supply registration numbers should apply only to already-registered works.

Second, any regulation should make clear that a remitter's failure, whether inadvertent or intentional, to provide registration numbers does not invalidate the recordation, does not limit the ability of the remitter or any other party to rely on Section 205(d) or (e), and does not otherwise prejudice the remitter's rights in the work. The effect of the regulation should not be harmful to copyright owners' rights as a result of clerical errors in the recordation process.

3. Additional Statutory Incentives to Record Documents Pertaining to Copyright

According to the Notice, a number of academic commentators have proposed that Congress create additional incentives or requirements for recording documents pertaining to copyright.

The Notice lists the following examples:

Congress could reinstate the requirement, dropped in 1989, of recording all documents in the chain of title from the author to the current owner of copyright as a precondition of filing in infringement lawsuit. It could also condition the provision of certain remedies, such as statutory damages and attorneys' fees, on the recordation of any and all documents that transferred ownership of works to those eligible to sue for infringement at the time infringement commenced. Perhaps the broadest proposal is to provide that no transfer of a copyright interest will be valid unless a note or memorandum of that transfer is recorded with sufficient description of the interest granted and identification of the parties from and to whom the interest is granted.

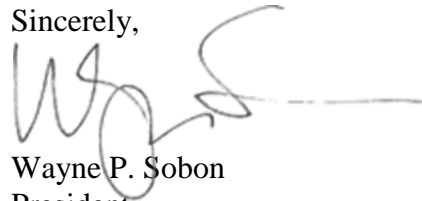
Strategic Plan for Recordation of Documents, 79 Fed. Reg. 2696, 2699 (Jan. 15, 2014).

Such amendments to the Copyright Act are premature. The technological and other changes that have been proposed, including adoption of a guided remitter model, have the potential to significantly improve the incentives for copyright owners to record documents pertaining to copyright. These changes should be allowed to take effect and then be studied to determine if additional changes, possibly including legislation, are appropriate. Moreover, it is likely that stakeholders will raise concerns about the imposition of new formalities. Such concerns may include possible undue prejudice to copyright owners' rights and violation of U.S. treaty obligations. Without adopting at this time a position on the merits of such concerns, AIPLA believes it is prudent to see how technological upgrades and other non-legislative improvements affect the recordation system before Congress imposes new statutory requirements.

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AIPLA appreciates the opportunity to provide the above comments and would be happy to work with the Copyright Office to further consider changes that would improve the recordation system. Thank you in advance for considering AIPLA's comments in response to the Notice.

Sincerely,



Wayne P. Sobon
President

American Intellectual Property Law Association