

Comments on Notice of Inquiry re Strategic Plan for Recordation of Documents

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The concerns expressed about Recordation of Documents in the US Copyright Office, noted in the Background Discussion, are long standing predating the two year study by many years.

1. Fees. The document function is supported by fees in contrast to registration of claims which is funded by fees and appropriated funds. The document function is very labor intensive including numbering each page of the document as well as entering large amounts of data into the catalog record. Correspondence on incorrectly submitted documents also adds to the cost.
2. Processing time. Delays arise from the need to enter large amounts of data [some documents contain hundreds to tens of thousands of titles, other documents contain dozens of party names], time spent on corresponding with remitters who submit documents that do not meet the recordation requirements, and inadequate staffing. While the Office recently added staff to the Section, for many years the Section was severely understaffed. The Section was also given the task of processing Online Service Provider notices with no additional staff or resources for several years.
3. Inconvenience of Remitting. The signature requirement was placed in the law in an attempt to prevent fraud upon the Copyright Office and the public. There have been complaints from time to time that documents included works that were not part of the transaction. The Patent and Trademark Office has used a simple electronic recordation system since the mid-1990s using scanned documents.
4. Cataloging inaccuracies. Staff will make some mistakes. The Section has not had the staff to check all records for many years. Only spot checking of records is realistic with a small staff. The cataloging system ignores “a” “an” and “the” in indexing terms in the catalog record. Many apparent inaccuracies are not errors made by staff, but are errors in the documents themselves which the staff must transcribe as given. They cannot correct errors even at the specific request of the remitter. Many documents submitted contain incorrect or incomplete document numbers or numbers such as LC Catalog Record numbers or ISBN numbers instead of registration numbers.

Concerns regarding the optimum identification of works to which recorded documents pertain.

1. Under current law, the document itself is the legal record. The burden is on the remitter to adequately identify the works in the document. While many works have the same title that is the choice of the author or publisher of the work. It is up to the remitter to supply the correct registration information. Some documents transfer works that have not been registered.

2. Linking registration records to documents is complicated by not only incorrectly formatted numbers, but by the remitters giving incorrect or incomplete numbers in the document. Staff cannot verify or correct these numbers. At times, it seems remitters have no concept on the size of the staff working on documents and the resources the Office has provided for this function.
3. Integration of Copyright Office records with information about works from other sources. While this might be useful, it would require standards not currently in place and unless the law is changed the separation of information in the Copyright Office record and that from outside databases would need to be made very clear.
4. Concerns about the Sufficiency of Statutory Incentives to Record Transactions. The strongest incentive to record outside of remitters self interest in having the document on record, was the requirement to record a document before filing an infringement suit. This requirement was dropped from the statute in 1989 as part of the legislation implementing the United States membership in the Berne Convention. While United States works must still be "pre-registered" or "registered" to initiate an infringement action, the requirement to record a document (where ownership of the work was transferred) as part of an infringement action was dropped for United States and all other works.

Subjects of Inquiry

1. Guided Remitter Responsibility Model of Electronic Recordation. The Office tried a paper version similar to this in the early 1990s. Remitters were supposed to complete a document cover sheet accurately reflecting the information in the document. Unfortunately many remitters submitted document cover sheets with their documents with basic errors such as the transferee identified as the transferor and the transferor identified as the transferee. Information about works often differed and remitters added information that was not in the document. The Office returned to using the document as the source of the catalog record. If an electronic version is developed, it will need to be made absolutely clear to the remitters that the staff will not check many records against a documents. Despite explicit statements that staff would not check the document cover sheet against the document in the instructions, many remitters expected the staff to do so and to correct their errors. You can't rely on remitters reading instructions.
2. Structured electronic documents. Given the variety of documents being recorded and remitters ranging from individual authors to large corporation and law firms, this seems unrealistic.
3. Linking of document records to registration records. While requiring remitters to give registration numbers in a standardized format would help, the format of registration records has varied over the years. So various formats and examples would need to be provided. Also, experience demonstrates that remitters cannot be relied on to provide accurate registration numbers.

4. Use of Standard Identifies and Other Metadata Standards. Most documents do not contain this information. Since documents are governed by state law, not federal law (with the main exception of notices of termination), how much information can the Copyright Office require in a document.
5. Additional Statutory Incentives to Record Documents pertaining to Copyright. The requirement to record a document as a pre-condition to filing an infringement suit was dropped as part of the Berne Convention requirements. While the pre-condition was retained for registrations of United States works, presumably it cannot be required for foreign works. Thus a restitution of this requirement for ownership shown in a recorded document would be limited to United States works.

Additional comment: the Office has never provided the public with an adequate guide or circular on recording Notices of Termination. If these notices are not properly prepared, served and recorded in the Copyright Office, the author or the author's may permanently lose rights in their works. This is a problem that the Office should correct as soon as possible.

If the Office is to ever have timely processing of documents, an electronic filing system is essential. Hopefully, will be willing to devote the time and resources needed to develop and build such a system. The commitment of Office management over many years has been sadly lacking in this regard.