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Comments Concerning Recordation and Reengineering

TO: Karyn Temple Claggett,
Associate Register of Copyrights, and
Catherine Rowland,
Senior Counsel, Office of Policy and International Affairs
Copyright Office

via electronic submission to
<http://www.copyright.gov/orphan/comment-submission/>

RE: Reply comments in response to the January 15, 2014 Notice of Inquiry

SFWA, Inc. respectfully submits the following comments concerning the Copyright Office's Notice of Inquiry. We regret that we did not submit comments during the initial phase of this inquiry. These comments are largely identical with parts of SFWA's comments submitted as part of the Orphan Works inquiry, but are being submitted again since they directly apply to the current inquiry on Recordation and Reengineering.

Statement of Interest

SFWA is a membership organization of over 1,700 commercially published writers of science fiction, fantasy, and related works. Its membership includes writers of both stand-alone works and short fiction published with other works. Of particular note, SFWA's membership includes a significant number of authors' estates, and has a long-standing record of advocating for the interests of authors' estates against those who would infringe on those estates' rights for their own profit.

SFWA is not a subsidiary of any other entity, and is entirely owned by its membership. SFWA has no subsidiaries or other ownership interest in any other organization that may be affected by this Inquiry.

A. Copyright Office digitization efforts

SFWA applauds the Copyright Office's recent digitization efforts and hopes that it has the funds to fully carry out its plans to digitize all of its physical records. One of the recurring problems in researching the copyright status of a work is the cumbersome process of searching the Copyright Office's paper records, which can be quite expensive.

We recommend that the Copyright Office prioritize digitization of works in the 1923–63 time frame when timely renewal of a copyright was required to prevent a work from entering the public domain. We would also like to see integration of the Copyright Office's databases so that a simple search would

be able to turn up the initial copyright of a work and any subsequent renewal. Many works published in the 1923–63 time frame have fallen into the public domain, but there is no easy way to tell, because, although many of the renewal records have been digitized, they are still not easy to search effectively. Many of these works are incorrectly labeled as orphans. Digitization of these records would clarify, as much as possible, the copyright status of works from this period and help prevent them being incorrectly claimed as orphan works.

We recommend that, as a specific part of its rulemaking efforts, the Copyright Office make a rule regarding accessibility of its initial registration records, of its renewal records, and of recordations regarding registered copyrights.

B. Freelance Contributions to Periodicals, Anthologies, and Other Collective Works

The Copyright Office should clarify and simplify the procedure for registering freelance contributions to periodicals, anthologies, and other collective works. All registrations of collective works should provide complete identification data — by author's name, date of initial publication (whether or not in the particular collective work), and title — of each individually copyrightable contribution, regardless of how the application treats those contributions. The ownership of copyright as of the date of publication of the collective work shall also be clearly stated for each copyrightable contribution. The registration should include the author's AID# if at all possible.

Should the individual works be temporarily copyrighted to the owner of the collective publication and reassigned to their authors following initial publication, the owner of the collective publication shall be required to enter that information and provide contact information for the authors.

All registrations of collective works shall be done electronically and in a text-searchable form and format.

All of the data gathered on the registration form shall be immediately made searchable in the same database as for the subject.

C. Author Information Directory

To make finding authors easier, the Copyright Office (or an entity it designates) should create and maintain an official Author Information Directory (AID) containing author contact information and information about their works. For the initial creation of the Directory, the Copyright Office could draw upon the Library of Congress Name Authority File (NAF), the Virtual International Authority File (VIAF), the International Standard Name Identifier (ISNI), copyright records, and other relevant data bases. The Directory should provide unique identifiers for authors (AID#) and for any of their pseudonyms. The system should also be able to deal with collaborations.

When authors already have NAF records, they should be able to search the NAF and then link their contact information in the Directory to the NAF records. We encourage the Library of Congress to open up the process by which authors can contribute material to the NAF so that records can be corrected and so that it may more effectively accomplish its goals and work in conjunction with the Directory. The Copyright Office should also seed the Directory with the information it has now, marking contact addresses with the date of the entry, thereby alerting database users that an address entry may no longer be valid.

Newly registering authors without existing NAF records or AID numbers should be able to log in via a web page, supply their name, email, and relevant contact information, and be assigned their unique author identification number. They should also be able to complete an information form requesting the generation of an NAF record, based on their provided information.

Registering with the AID would not be mandatory, but should be strongly encouraged.

Authors' use of Directory

To register a work, the author would log in to a web page, supply their author AID identification number, the title of the work, and any optional information that may be useful; the work would be registered and the author would receive a registration identification number for the work (a stable identifier, similar to a Digital Object Identifier).² Authors should at this time receive information stressing the importance of keeping their registration up-to-date. The registration identification number (Reg ID#) should not be based on ISBNs or other publisher-specific information, which is likely to be transitory and change over the life of the copyright.

While the Reg ID# could be based on some other already-existing identifier such as unique ISBNs, LC Authority control numbers, WorldCat record numbers, an entirely new identification system would likely work best. Whatever numbering system is used to identify works would have to identify both book-length works and shorter works published in periodicals, collections, or published individually electronically.

The Author Identification Directory would need to include a mechanism to link AID#s and Reg ID#s in a way that can properly record collaborations. The Library of Congress's database, ISNI, or the WorldCat database, both of which already have this function for linking authors and titles (or uniform titles), and could be strong tools for updating the AID. In order to disambiguate authors with the same name, authors should be linked to all individual works of theirs they register and the database should be designed to produce well formatted results for individual authors, including all of their registered works and any ancillary material they provide.

Authors should be able to register at least the first 100 words of each work and any unusual keywords or, if Copyright Office technology permits and the author desires, the full texts of their works in electronic format, to enable searches on phrases within the text for ease of location. This full text option would probably not be used widely, especially in cases where it might violate a publishing contract, but it would produce an unequivocal way of finding a text. During a search, only the search keywords would be displayed with a minimum amount of surrounding text, similar to Google's "snippet." Such a search facility should ensure searchers cannot extract anything but the minimum amount of text to make a positive ID.

Authors should also be able to enter a general description of the kind of work they create, to facilitate publishers searching for authors of unregistered work.

The registration process for both copyrights themselves and the AID should conclude with generation of a single-sheet educational flyer (or the equivalent) reminding registrants of the importance of maintaining a current, searchable contact and providing for succession of interests in a will or other document. The flyer should be enclosed with or attached to the registration confirmation message.

Author contact information - Current contact information for authors should, if the author so chooses, include contact information for an author's designated agent instead of for the author. The only need for filing change-of-address records would be when an agent moves their office or the author changes agents. Authors otherwise would submit a change of address form to the AID.

Anonymous email box for copyright holders - The Copyright Office should set up, in conjunction with the AID, an email system allowing copyright holders to receive email through an anonymous email box should they want keep their personal email addresses or mailing addresses confidential. If the Copyright Office is unable to set up such a system, it should encourage writers' organizations to create similar systems linked to the AID.

Third-party rightsholders - For works made for hire and other works in which the author has transferred all rights, the title and text of works should be linked to both the author(s) of the work and the publisher/copyright holder. Such works should be designated as publisher-owned work, with contact information pointing to the proper rightsholder(s).

Pseudonyms - Authors with pseudonyms should be able to register each separately. Pseudonymous work could be linked to author names using the NAF database at the author's discretion. Authors may opt to make the link between the two names public or private, based on their preferences and contractual obligations. Authors should, however, be encouraged to have the link be public or to allow the link to become public after a specified number of years.

Authors who change names or create new pseudonyms and wish their old and new names to be linked would be so linked, as they are in the NAF database.

Death of an author - In the case of a deceased author, a notice should be sent by the literary heir(s) to the AID indicating their or their representative's contact information. Upon presentation of the author's death certificate, any email addresses and password(s) will be transferred to the literary heir(s.)

To elaborate on our suggestion above, the Copyright Office should also provide educational materials to copyright holders at the time of their initial registration of copyright and at the time of their registration with the AID that reminds copyright holders of the importance of maintaining current, searchable contact information. The material should also stress the importance of providing for the succession of their interests in their works to their literary heirs, either in their wills or in other documents. Further, the Copyright Office should draft a suggested clause for use in wills, and send a copy of that clause with each certificate of registration for copyrights claimed by a natural person. Language should be included directing executors and heirs to update the AID records.

The information sheet will encourage authors to explicitly allow for copyrights in their wills, which in turn will make establishing ownership of a copyright by persons who wish to reuse materials considerably easier.

Verification of registration - There should be an option for authors who want to submit notarized registration forms or enter digital signature information into the directory of authors. What kind of authorization was used (if any) would not be public knowledge, so that anyone trying to fraudulently alter the record would be more likely to be discovered and deterred. If digital signatures are allowed (such as PGP or X.509 certificates), there should be no requirement as to what kind; authors should be allowed to enter information for any kind of digital signature.

When registering or entering data, anyone claiming authorship or copyright of a work should be required to do so under penalty of perjury.

Conclusion

SFWA believes that the Copyright Office needs to complete digitization of its records and make those records fully searchable, to assign unique ID's to authors and subsidiary ID's for individual works that incorporate the author's ID, and use the rulemaking process to establish the Author Information Directory or another system that will facilitate finding rightsholders.

Respectfully submitted for SFWA,

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Rachel Swirsky (ex officio)
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