



March 15, 2014

Maria Pallante
Register of Copyrights
United States Copyright Office
101 Independence Ave. S.E.
Washington, DC 20559

RE: Comments—Strategic Plan for Recordation of Documents

To the Register of Copyrights:

Pursuant to the Notice of Inquiry (“Current NOI”) published in the Federal Register on January 15, 2013 (79 Fed.Reg. 2,696), I submit these Comments on behalf of the Association of American Publishers (“AAP”)¹ regarding the Copyright Office’s interest in stakeholder recommendations for “key elements relevant to reengineering the function of recording documents pertaining to copyright pursuant to 17 U.S.C. 205.”

As noted in our earlier Comments in response to the Copyright Office’s Notice of Inquiry on *Technological Upgrades to Registration and Recordation Functions* (“Previous NOI”), AAP supports the Copyright Office’s endeavor to increase efficiency and convenience through technological upgrades that will enhance existing functions and also provide new services desired by owners and users of copyrighted works.

With respect to recordation, AAP agrees with the Copyright Office’s summary of key concerns that should be addressed in its effort to reengineer the recordation process, namely: (1) cost; (2) processing time; (3) inconvenience of remitting; and (4) cataloguing inaccuracies. Updating the process to allow electronic filing and online access to official documents would address each of these concerns by significantly reducing the inefficiency of requiring rights holders to submit paper documents as well as reducing the burden on Copyright Office staff to manually transcribe these documents into the Copyright Office Catalog.

¹ As the principal national trade association of the U.S. book and journal publishing industry, AAP represents some 400 member companies and organizations that include most of the major commercial book publishers in the U.S., as well as many small and non-profit publishers, university presses and scholarly societies.

Creating a legally valid, online recordation process is crucial in the digital age where easily accessible verifiable copyright ownership information is increasingly important for efficient business practices, minimizing the creation of new orphan works, and especially for expanded digital licensing opportunities. Thus, AAP appreciates this opportunity to provide the Copyright Office with additional comments from the publishing industry to improve the process of document recordation.²

This Comment is intended to provide feedback on the five topics flagged in the Current NOI: (1) a guided remitter responsibility model of electronic recordation; (2) the use of structured electronic documents that contain their own indexing information; (3) the linking of recordation records to registration records; (4) the use of standard identifiers, and other metadata standards, in recorded documents; and (5) potential additional incentives to record documents pertaining to copyrights.

I. Guided Remitter Responsibility Model of Electronic Recordation

AAP members are generally in favor of the Copyright Office switching to a system where “remitters would be responsible in the first instance for the accuracy of the catalog information they submit electronically,” subject to the following requirements:

- Cost savings of implementing this system are passed through to rights holders, to the extent practicable;
- Electronic recordation forms that employ a standard lexicon of terms for remitting documents are used and such forms include mechanisms to validate entries as appropriate;
- Space is provided in electronic recordation forms for rights holders to include additional information;
- Remitters with registered accounts (“Account Holders”) can save and edit templates to ensure provision of consistent and up-to-date information;
- Account Holders can review the information provided in the electronic forms in full before submission;
- Confirmation (e.g. by email or to an internal user account) of document submission(s) includes a copy of the submission to allow another chance to review for errors;
- A mechanism is provided to make corrections to the documents after submission without incurring a fee; and
- Easy to understand guidance, in the form of Circulars, FAQs, or webinars, is developed to train remitters to use the new system.

² The information provided in this Comment reflects only the views of the members that provided comments to AAP. While AAP did not receive input from each of our 400 plus members, we did receive feedback from a broad array of publishers that represent the diversity of viewpoints within the modern publishing industry, including responses from: trade, academic, and scholarly book and journal publishers ranging from large multinational to small and independent entities.

While it is crucial to our members that the Copyright Office adopt a streamlined electronic recordation system, it is also important to many of them that the Copyright Office maintain paper-based recordation. That said, AAP supports the Copyright Office’s recommendation to offer low fees for electronic recordation and to recalibrate paper-based recordation fees to be a “multiple of several times that of electronic recordation” in order to encourage rights holder to file electronically.

II. Use of Structured Electronic Documents

If, through its dialogue with relevant stakeholders, the Copyright Office finds that it is feasible to accept “structured electronic documents,” on a voluntary basis, as part of its recordation process, AAP’s members would generally support efforts of the Copyright Office to adopt guidelines for accepting such documents. In particular, book and journal publishers would like to see the following fields automatically populate the records in the Copyright Office Catalog based upon recordation of structured electronic documents:

- Title of the work
- Type of document (e.g. short form assignment, quit claim assignment)
- Parties
- ISBN
- Contact information for the rights holder
- Registration numbers
- Date of publication
- Date executed or Dated as of
- Date notarized

III. Linking Recordation and Registration Records

All AAP members that responded to our survey agreed that it would be useful for the Copyright Office to link recordation records with registration records. Furthermore, the majority of our members believe that the Copyright Office should promulgate regulations to require document remitters to “provide registration numbers in a standardized format for all registered works to which their documents pertain.”

IV. Use of Standard Identifiers

AAP members also believe it would be useful for the Copyright Office to adopt incentives for remitters to provide standard identifiers (e.g. International Standard Book Number,³ International Standard Serial Number, Open Research Contributor ID,⁴ and International Standard Name Identifier) in recorded documents in order to uniquely identify such works. Inclusion of such identifiers would also help to link Copyright Office Catalog information about works to other sources of information about such works.

Additionally, as noted in our previous Comments, publishers believe that bulk metadata transfers could be useful for record maintenance and in situations where they acquire copyrighted assets that were previously owned by other publishers.

V. Additional Incentives to Record Documents

While our members are generally supportive of additional incentives to record documents, when polled specifically about (1) whether requiring recordation in order to claim statutory damages and attorneys' fees would be an appropriate incentive and (2) whether a valid transfer of an interest in a copyright should require recordation of that transfer with the Copyright Office in accord with certain minimum criteria identifying the parties and interest granted—our members were split. Furthermore, the majority of our members objected to the recommendation that Congress should reinstate the requirement to record “all documents in the chain of title from the author to the current owner of copyright as a precondition of filing” an infringement action.

Perhaps the best way for the Copyright Office to increase voluntary recordation of documents is to make the electronic recordation system valuable to rights holders. For example, AAP's members have repeatedly told us that it would be very useful to be able to use an electronic recordation system to access official copies of assignments, transfers, and certificates of recordation that could be printed by rights holders.

³ One of AAP's members noted that in doing so, the Copyright Office should ensure that the electronic form for including this information “clarifies which ISBN should be included—especially for titles not first published in the U.S.” Additionally, a member that objected to the inclusion of ISBNs noted that, while inclusion of this information would help link works to other sources of information, “there are often many ISBNs associated with one registration record or one recorded document [because] each binding (cloth, paper, electronic, licensed reprint, etc.) has its own ISBN, but the *work* is only registered once.”

⁴See *What is ORCID?*, ORCID <http://orcid.org/content/initiative> (last visited Mar. 14, 2014) (stating that its mission is to “solve the name ambiguity problem in research and scholarly communication” by creating unique identifiers for individual researchers, creating a record of activity and facilitating transparent and open linking of this information through “APIs that support system-to-system communication and authentication.”)

VI. Conclusion

AAP's core mission is to support publishers as both copyright owners and users of the copyrighted works of others. As such, AAP and its member publishers have an interest in ensuring that the Copyright Office's overlapping registration, recordation and records searching systems are accurate, efficient, cost-effective, and user-friendly. AAP hopes that these Comments will be helpful in the Copyright Office's efforts to create an integrated system that maximizes the value each of these critical components.

We look forward to working with the Copyright Office and other stakeholders through upcoming roundtables to develop appropriate strategies to prioritize and implement upgrades to the recordation system that will benefit copyright owners, users, and the Copyright Office.

Respectfully Submitted,



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