



AMERICAN SOCIETY OF
MEDIA PHOTOGRAPHERS

U.S. COPYRIGHT OFFICE

**NOTICE OF INQUIRY
(FILED JANUARY 4, 2014)**

STRATEGIC PLAN FOR RECORDATION OF DOCUMENTS

MARCH 14, 2014

**INITIAL COMMENTS
OF
AMERICAN SOCIETY OF MEDIA PHOTOGRAPHERS (ASMP)**

**SUBMITTED BY:
VICTOR S. PERLMAN
GENERAL COUNSEL AND MANAGING DIRECTOR
AMERICAN SOCIETY OF MEDIA PHOTOGRAPHERS, INC.
150 NORTH SECOND STREET
PHILADELPHIA, PA 19106**

**215-451-ASMP EXT. 207
FAX: 215-451-0880
perlman@asmp.org
<http://www.asmp.org>**



INITIAL COMMENTS OF ASMP

Introduction and Background

ASMP wishes to thank the Register for this opportunity to provide comments on the Copyright Office's strategic plan for the recordation of documents. We greatly appreciate the opportunity to contribute to the Copyright Office's process of building a system in and for the 21st century --- one that can take advantage of all of the benefits that a truly modern digital document recordation system can provide to all of its stakeholders, including both owners and users of copyrighted works.

The American Society of Media Photographers' mission is to protect and promote the interests of professional photographers who make visual images --- both still and motion --- primarily for publication. ASMP is the oldest and largest trade association of its kind in the world and currently has approximately 7,000 members. ASMP's members are primarily commercial photographers, making images for publication in advertising, editorial, fine art and other commercial markets.

In general, as we said in our request to participate in the related roundtable discussions:

Recordation is rarely used by the vast majority of ASMP's members, but it is of extreme importance on those unusual occasions when members do use it. To be of value to both the photographers recording documents and the public, recordation must be easy, convenient and affordable to make, as well as easy and productive for anyone to search on line. Searches and results should, where possible, be linked to databases containing data related to the search.

Specific Comments

1. Cost

As the Copyright Office well knows, cost is a major concern for professional photographers seeking to protect and maintain the copyrights to their works. It is one of the primary deterrants to the registration of their copyrights, and it is could become an insurmountable barrier to their access to the document recordation system. Cost is multiplied as a factor for professional photographers because they routinely produce many thousands of copyrighted images over the course of a year, and each image has the potential of being licensed an infinite number of

times, as well as transferred outright. Fortunately, at least on a theoretical level, a conversion to a digital system of document recordation from the current, labor-intensive paper system should produce economies that would set the fees for recordation at an affordable level.

2. Inconvenience

The practical difficulties of dealing with the current paper system are familiar to everyone working in copyright-related industries. Today, almost all transactions take place digitally, not on paper. Having to convert digital documents to paper ones, and then going through a manual submission and recordation system, adds large amounts of time to the process. While large corporations are able to staff this effort and absorb the costs as overhead, most professional photographers are sole proprietors or small mom-and-pop organizations generating modest levels of revenues. Time spent on recordation is time that could and should be spent on marketing, photographing, fee-collecting and coyright registration. In light of that, recordation has to be of very low priority for professional photographers. In a digital environment, however, recordation could be easily automated and incorporated into the work flow, e.g. through an API, resulting in major improvements to the public record.

3. The Catalog of Recorded Documents

At the risk of stating the obvious, the current system of recordation of print documents does little to enable users of the system to find documents, to match them with the related copyright registrations, to match them with the copyright owners, to match them with the registered works, or to do the reverse. The searchable nature of digital records, however, allows all of the problems inherent in a print system to be overcome. Because of that, we would urge that the new system be designed to take advantage of all of the searching and linking possibilities, including image-recognition-based search technologies, that exist in a digital environment. Such a system could be integrated with both the Copyright Office's database of registrations and independent databses and registries. Everyone would benefit from this, including the Copyright Office, owners of copyrights and their licensees, users of copyrighted materials, and the public. A well-designed digital system of document recordation would eliminate the current difficulties in matching documents to their related registrations and works.

4. Caveats

Along with all of the obvious benefits of an updated system of recordation, there are some potential dangers, especially for small, independent creators of copyrighted materials like professional photographers. Foremost of these potential pitfalls is the possibility that revisions in the system could be used as a back-door way to de facto impose formalities on the protection of copyrights. Anything that would add requirements to the actual enforcement of copyright registrations by copyright owners would be unacceptable and would be in violation of at least the spirit of the Berne Convention's intention to do away with formalities imposed on the protection of copyrights. For example, if recordation

became mandatory in any way, including as a prerequisite to any form of copyright protection, almost all working photographers would be deprived of their already limited practical ability to enforce their rights. As mentioned earlier, professional photographers rarely use the current recordation system. Accordingly, a requirement that they use the recordation system would almost certainly be met infrequently at best in the photography world.

For example, the Copyright Office's Notice of Inquiry included the following:

5. *Record Documents Pertaining to Copyright.*

A number of academic commentators have proposed that Congress create additional incentives or requirements for recording documents pertaining to copyright. 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...

Such a proposal would have the practical effect of making almost every copyright owned by professional photographers unenforceable, and such proposals must be rejected outright.

Conclusion

ASMP thanks the Register and her staff for their constant desire to move the Copyright Office forward, to take maximum advantage of evolving technologies, and to make all of the Office's operations as user-friendly as its limited budget will allow. It is ASMP's hope that Congress will recognize the pressing need to upgrade the Copyright Office's digital systems and to make the same kind of continuing investment in digital technologies as working photographers and most businesses have to make in order to remain in business. ASMP looks forward to a continuing dialogue with the Register and her staff in an effort to assist in the constant process of maximizing the Office's value to all of its users.

Thank you for your time and consideration.

Respectfully submitted,

Victor S. Perlman

General Counsel and Managing Director



American Society of Media Photographers, Inc.
150 North Second Street
Philadelphia, PA 19106
215-451-ASMP Ext. 207
Fax: 215-451-0880
E-mail: <perlman@asmp.org>