

UNITED STATES COPYRIGHT OFFICE

NOTICE OF INQUIRY
CONCERNING
STRATEGIC PLAN FOR RECORDATION OF DOCUMENTS
Published at 79 Fed. Reg. 2696 (January 15, 2014)

WRITTEN COMMENTS OF

COPYRIGHT CLEARANCE CENTER, INC.

DRAFT March 3, 2014

I. INTRODUCTION

Copyright Clearance Center, Inc. (“CCC”), submits these written comments in response to the request of the Copyright Office set forth in its Notice published at 79 Fed. Reg. 2696 (January 15, 2014) in connection with the Office’s strategic plan for recordation of documents (the “Notice”).

CCC has been engaged for over 35 years in the centralized licensing of text-based copyrighted materials on behalf of rightsholders to users of all kinds, including academic, business and government organizations; in the course of our business, we regularly need to address recordkeeping issues, including identifying rightsholders, rights and works, issues that are substantially similar to those that the Copyright Office has identified in the Notice as being of concern in connection with the Office’s statutory and practical obligations to record documents affecting copyrighted works. We have developed substantial skills in addressing those issues, skills relied on by many parties who participate in the text publishing industry, including not only rightsholders and their representatives but also those parties interested in licensing rights from rightsholders.

II. BACKGROUND AND EXPERIENCE IN DATA MANAGEMENT

CCC was created at the suggestion of Congress in the legislative history of the Copyright Act of 1976, and has been engaged in the licensing of the copyrighted works of others since the effective date of the Act on January 1, 1978. As a not-for-profit corporation established by a group of authors, publishers and users that had worked with Congress in its revision of the Act, and continuing to this day with representatives on our Board of Directors not only from the author and publisher communities but from user communities

as well, CCC has created and maintained markets that have served all parties effectively and efficiently.

Since 1978, CCC has evolved from a single, simple transactional service – still in use today – through which rightsholders and users can exchange, one-by-one if they choose, permissions and royalties relating to the licensing of photocopying on an as-needed basis, to being, today, an integrated licensing and copyright management organization, offering global transactional and repertory licenses for both photocopying and digital uses to business and governmental organizations, as well as for both paper coursepacks and various digital uses to academic organizations. We have also developed and operate an automated licensing facility that permits copyright rightsholders to issue licenses to use their materials directly from the point of content on their websites. And we also provide other rights management tools to both rightsholders and users. This growth has led us to the point where today we manage hundreds of millions of rights to tens of millions of works, and hold information relating to many more. Among other things: we issue repertory licenses to thousands of businesses and other organizations with, collectively, more than 25 million employees; we operate high-volume transactional licensing services over the Internet; we cooperate with counterpart organizations in other countries to license millions of uses and users abroad; and we have distributed over \$1 billion to participating rightsholders over the past seven years.

Overall, CCC’s experience, developed over these decades of providing rights licensing and related rights management services to tens of thousands of rightsholders and tens of thousands of users, corroborates the utility – and the feasibility – of improving the document remittance and recordation mechanisms along the lines set forth in the Notice. More specifically relative to the Notice, since 2009 CCC has provided access to RightsCentral, a secure “reporting and communications hub” for our participating rightsholders to directly manage information relating to their works and rights in our systems; and, most recently, CCC has brought to our user customers our DirectPath workflow solution – and search facility – for tracking the works and rights available under their licenses. Both of these services indicate the feasibility, with existing technology, of tracking rights, works and licenses at an extremely granular level, and of keeping the relevant records up-to-date, searchable and highly reliable.

Until recently, the inner workings of the post-registration process – of recordation, sub-rights licensing, transfer, etc. – have been “technical details” of little interest to the public at large. However, due to the explosion of publicly-available content in the web-enabled era, *everyone* now holds copyright rights in some fashion and, as a result, far more individuals have a personal and, indeed, potentially a valuable economic, interest in efficiently identifying, managing, maintaining and perhaps even exploiting those rights. Yet tracing the “chain of title” to copyright, so important for commercially-valuable properties, remains something of a mystery for many and, it seems, a source of difficulty for the Copyright Office and its customers. As well recognized by the Office in its description of the issue in the Notice, an easily-searchable recordation system, “fit for purpose” for the 21st century, is now clearly called for. CCC sees its systems expertise in the management of copyrighted works and rights as uniquely relevant and potentially

valuable to the Copyright Office in this context, and we would be pleased to assist the Office in any way possible throughout the anticipated redesign process and implementation.

III. SUBJECTS OF INQUIRY FROM THE COPYRIGHT OFFICE

In the January 15 Federal Register Notice, the Copyright Office set forth a series of elements for its proposed strategic plan for the improvement of its recordation services and for improvement of the quality of copyright information provided to the public through recordation. CCC provides comments below on two of those elements.

1. *A Guided Remitter Responsibility Model of Electronic Recordation*

Through CCC's online service facility for its rightsholders, RightsCentral, CCC makes pertinent usage information from our many services (each of which addresses one or more rights as to which we administer licenses) available to our rightsholder participants, and provides a simple means for them to update and revise their works and rights information, and the applicable fees associated with them.¹ Specifically, RightsCentral allows publishers, authors and other rightsholders: to update, add to or delete the works that they have entered into our services (whether individually by work and/or by service, or in bulk), and to revise the rights and license fees associated with those works; to run royalty, usage and order status reports; to notify us of changes in those works and rights (assignments to or from other parties; redirection of royalty payments; etc.) and to approve individual permission requests, among other functions. It provides them with full transparency into the business process of working with CCC. But it does so very much within a structured system of questions and answers that make it most likely that the rightsholder will provide appropriate information in a manner most useable by CCC (and vice versa). While there are options that allow for unpredicted variations and "free text", and those options will sometimes require human intervention, those are exceptions which CCC regularly seeks to minimize through updating of the structured Q&A when appropriate.

This set of services through RightsCentral is similar in outline to what the Copyright Office describes in the Notice for some of the functions necessary to operate a guided remitter model for recordation. CCC's experience shows that several data design challenges must be met by any such system in order for it to meet its objectives. Specifically, for example, rights, works and parties must be validated, and the relations among them must be established clearly, maintained accurately, and updated easily as appropriate.

To that end, CCC believes that the concepts described in the Notice as possible tools for such guided remittance are in fact not only reasonable and appropriate but necessary in a bulk management system such as that administered by the Copyright Office. CCC's needs are of course narrower than those of the Office, if only because CCC's focus is on

¹ See <http://rightscentral.copyright.com>.

one medium – text publishing – while the Office’s is much broader.² Nevertheless, our learning in this respect is that the Office would benefit substantially from building the equivalent of electronic “decision trees” in the recordation process, starting perhaps from the Office’s traditional paper-based system of dividing types of works into TX, VA, PA, SR and many more, and then seeking assistance from specialists in each of those fields for the kinds of information that should be solicited from a remitter and that could, for example, be loaded into drop-down boxes to guide remitters.

Registration and recordation specialists from the Office should not need to divine the intentions of private parties and their lawyers without assistance, especially where so many of those private parties and lawyers are often not expert themselves in the copyright fields in which they are managing rights. Instead, skilled lawyers and other copyright professionals who are hired to prepare recordation documents (or should be) could provide the core advice necessary to design the questions most applicable to individual fields of copyrighted works, perhaps with guidance from the Office’s system designers: what issues are important in your field in a typical transaction requiring recordation (assignments, licenses, mortgages, testamentary devises, etc.)? what is the order in which those issues are commonly addressed by the parties? what questions are raised in connection with each of those issues? and many more.

The routine transactions that take place in, say, text-based works are similar, but decidedly not identical, to those that take place in connection with music; there is no reason why, in an electronic environment, the remittance and recordation processes need to be identical. And the processes suggested by the Office – identifying data elements that might need to be validated by double-input (either because of their importance or the likelihood of errors creeping in), which data elements can be optional, and the like – will likewise probably vary among fields, again as can be identified by experts in each field. The Office, probably with assistance from the private sector, identified that reality long ago when it first created its paper forms; doing the same today, with improvements unavailable in the old context of a two-sided 8.5x11-inch piece of paper, is both necessary and appropriate.

4. *Use of Standard Identifiers and Other Metadata Standards*

In CCC’s daily work with rightsholders, and in its public-facing catalogue served through copyright.com, we use unique identifiers and formats wherever feasible. For example, in RightsCentral we enable publishers to upload their lists of titles in Online Information Exchange (ONIX) 2.1 format; internally, we use standard identifiers including International Standard Serial Numbers (ISSN), International Standard Book Numbers (ISBN), Digital Object Identifiers (DOI) for works at the article and chapter level, and where absolutely necessary, even our own standard identifiers for works (which we share with our business partners in order to streamline both recordkeeping and transactions). In

² That said, CCC’s systems must keep geographically-sensitive records that are probably unnecessary for the Copyright Office, as CCC acquires authorizations to license from rightsholders outside the United States and issues licenses as to which rights may vary from country to country in which the licensee plans to use a particular work.

addition, of course, we have internal means for uniquely identifying the rights we manage as well. All of this structure is common in the management of massive databases of information and it is one that the Copyright Office should internalize as well.

More broadly, the problem of establishing unique (and persistent) content identifiers, for works of all types, continues to present a significant challenge. However, we see this issue as addressable with existing tools and technologies. The goals and the work of the Linked Content Coalition,³ in which CCC participates, supply a useful example in this context. The core objective of the Coalition has been “to establish automated communications between rightsholders and those who wish to use content.” In scientific and scholarly literature, publishers have applied the power of well-structured XML, plus a “handle” system for content (the DOI), towards this goal of self-indexing content that is more readily discoverable. More than 65 million DOIs are already in use, covering a wide swath of recent scientific and other scholarly content.

On the entities (organizations and persons) side, the development of the Open Researcher and Contributor Identification (ORCID) identifier⁴ amounts to what has been described in our industry as “a DOI for creators”. After only a few months since implementation, more than a half-million researchers and research-related institutions have already taken up their ORCID identifiers. Use of ORCID identifiers complements, for the science research community, the more general use of a broad, open directory of personal and corporate identities; broad use by all communities, including the Copyright Office, of a directory such as one adhering to ISO 27729, the International Standard Name Identifier administered by www.isni.org, would also serve to further clarify and standardize these identities for users everywhere.

Using all of these identifiers, as well as internally assigned numbers, CCC is able to keep track of, in addition to different works, multiple versions of individual works, sometimes with different rights and rightsholders attached (including circumstances where CCC does not in fact have authorization to manage the rights to a work but where we can reasonably expect that users will ask about it); in addition, we create internal relationships between works, rights and rightsholders to ensure that the multiple versions are managed in the context of their multiplicity. Because we are authorized by individual rightsholders only to license identified rights (sometimes with identified conditions) with attached prices, it is crucial to CCC that the unique identifier system operate; we have been building it throughout our history and cannot function without it. This robust and extensible database design is foundational to our scalable system architecture. And, using it, CCC is able to manage hundreds of millions of rights to tens of millions of works in all formats, in all languages and from all countries, while also managing information about millions more works which are not authorized in our system.

In our operations, CCC is an active consumer of unique content identifiers, and a participant in their development. And, while our focus has always been on text-based copyrighted works, our users are often in need of more information than that. Thus,

³ See <http://www.linkedcontentcoalition.org>.

⁴ See <http://orcid.org>.

CCC's latest user-facing rights platform, DirectPath, capitalizes on multiple content and entity identifiers, across media types, in order to make the content needed by our customers findable and useable as to rights and licenses. DirectPath, like other of CCC's proprietary technology, is based on patented methods, systems and data structures which enable us to manage rights and works separately while maintaining their associations dynamically as to time and applicable license.

Finally, CCC's participation in the activities of the National Information Standards Organization (NISO), including service on committees and its Board of Directors, is indicative of the importance we place on cross-platform, vendor-neutral information.

IV. CONCLUSION

CCC looks forward to participating in the upcoming roundtable discussions on these topics and to assisting the Copyright Office and other participants in this effort to design and implement a "fit for purpose" 21st century recordation system at the Office, one that will help rightsholders and users to administer copyrighted works transparently and conveniently. Only by recording rightsholders' rights and their circumstances, and users' licenses and other arrangements, as appropriate, can the Office fulfill its statutory mandate – and only by building a recordation process based on appropriate private sector advice and suggestions, along with connections and identifiers built on private sector bibliographic (works) and rights databases – will the Office rise to meet these opportunities, as we know that it can.

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