



32 BROADWAY
SUITE 1114
NEW YORK, NY
10004-1612

TEL

(212) 791-3400

FAX

(212) 791-0333

WEB

WWW.GAG.ORG

March 13, 2014

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2014-1]

Strategic Plan for Recordation of Documents

Comments Submitted by the Graphic Artists Guild, Inc.

by electronic filing

Re: Federal Register/ Vol. 79, No. 10 / Wednesday, January 15, 2014 / Notices

NOTICE OF INQUIRY SUMMARY: The United States Copyright Office is requesting public comment on proposed key elements relevant to reengineering the function of recording documents pertaining to copyright pursuant to 17 U.S.C. 205.

INTRODUCTION

The Graphic Artists Guild is pleased to have the opportunity to submit our comments, opinions and suggestions to the US Copyright Office as contribution to the study of potential improvements and technical enhancements to the information technology platforms that support its registration and recordation functions, including the recordation of rights transfers. These comments are submitted on behalf of visual artists, with a focus on illustrators and graphic designers (together “graphic artists”).

Graphic arts are integral to a broad range of industries, such as publishing (illustration, book design, graphic novels), advertising, educational and training materials, motion pictures and broadcasting, retail packaging, websites and online commerce, textiles, video games, apparel, home furnishings, computer graphics, stationery, posters, CD and DVD art, ceramics, and editorial illustration. Because graphic art is so integral to the American economy, the graphic art industry is uniquely vulnerable to copyright infringement. Protecting the creative works of illustrators and graphic designers must continue to be a necessary and integral part of U.S. law. We believe it is of vital importance to the professions of graphic arts for the Copyright Office to facilitate online procedures for the recordation of documentation of works and rights holders that are easy and affordable to individual and small business creators as well as large corporate creative businesses.



32 BROADWAY
SUITE 1114
NEW YORK, NY
10004-1612

TEL

(212) 791-3400

FAX

(212) 791-0333

WEB

WWW.GAG.ORG

As described in Circular 12, Recordation of Transfers and Other Documents, recording documents relating to transfers of copyright ownership with the Copyright Office serves the purpose of creating a public record and provides legal advantages to the parties. The Copyright Office would like to encourage rights holders and assignees to make a public record of rights transfers, and this would also help address the problem of un-locatable and unidentifiable copyright owners (orphan works). As the Copyright Office is planning to update the recordation process and documentation, the Graphic Artists Guild would like to make some suggestions that would be helpful for visual creators and the recordation of visual works. We will address concerns and suggested solutions particular to visual works only.

Our comments and suggestions to the questions posed in the NOI are as follows:

PROBLEMS WITH CURRENT SYSTEM

The Copyright Office is still accepting only paper documents which then have to be scanned by Copyright Office staff, and then all information must be manually recorded from the paper documents into Copyright Office records.

Cost: The Copyright Office staff must scan documents submitted on paper, and manually enter information in the database. The labor costs are greater than the current fee for recordation, which is already much higher than the fee for online registration. The high fee for recordation discourages many from doing it. Some rights holders or assignees have submitted documentation of transfer of many works together without identifying individual works in one recordation in order to avoid paying the recordation fee for each work. Obviously, this results in non-specific records of rights transfer resulting in unidentified individual works in the public record and, in effect, results in more orphaned works. Or, assignees have chosen to register the copyright of previously existing and/or registered works under their own names for the much lower registration fee instead of recording the assignment of copyright, resulting in confusing public records that appear to be doubled rights holders or conflicting registration information in the public record rather than the actual assignment that has transpired.

Processing Time: The current system of recordation can take a year or longer to process and make information available online in the Copyright Office Catalog.



32 BROADWAY
SUITE 1114
NEW YORK, NY
10004-1612



(212) 791-3400



(212) 791-0333



WWW.GAG.ORG

Inconvenience of Remitting: The Copyright Office currently requires hard copy documents with an ink signature.

Cataloging Inaccuracies: Manual transcription of information by Copyright Office staff has resulted in accidental errors in recorded information, including typos, misspelled names and titles, and transposition of numbers of registration certificates and dates.

Concerns Regarding The Optimum Identification Of Works To Which Recorded Documents Pertain: The current system doesn't enable linking of other records for the same works within the Copyright Office, including registration documents, or linking information about the works existing in other databases outside of the Copyright Office.

Identification Of Works To Which Recorded Documents Pertain: Current requirements do not include requirement of the rights holder or assignee preparing the document to be recorded to include the copyright registration number of the work, or an image of a visual work. Title of the work is required; however the title is not required to be unique.

The Linking Of Document Records With Registration Records: Since 1978, documents submitted have included copyright registration numbers in inconsistent formatting.

Integration Of Copyright Office Records With Information About Works From Other Sources: "There are many privately maintained databases that contain information about large numbers of works under copyright. These include databases maintained by various types of rights management organizations such as ASCAP, BMI, SESAC, the Copyright Clearance Center, the Harry Fox Agency, and Art Resource; by companies that own and license large numbers of copyrighted works, such as Getty Images and Corbis; and by music identification app developers such as Shazam, Midomi, and SoundHound. None of the records contained in these databases is currently linked to registration or document records in the Copyright Office Catalog. The lack of such links means that users of the privately-maintained databases cannot easily find Copyright Office records about the works represented in those databases," and vice versa.



32 BROADWAY
SUITE 1114
NEW YORK, NY
10004-1612

TEL

(212) 791-3400

FAX

(212) 791-0333

WEB

WWW.GAG.ORG

Concerns about the Sufficiency of Statutory Incentives to Record Transactions:

“In 1989, Congress removed the requirement to record any documents in the chain of title from a work’s author to an owner of that work as a precondition of that owner filing an infringement action.”

SUBJECTS OF INQUIRY AND RECOMMENDATIONS

I. A Guided Remitter Responsibility Model of Electronic Recordation.

The Guild supports the Copyright Office’s idea of “electronic submission of information allows for a variety of types of guidance that would greatly reduce the number of inaccuracies entering the Copyright Office Catalog. For example, when a limited number of answers to a question are valid, electronic forms can provide enumerations such a dropdown boxes or buttons, rather than empty fields, to eliminate entries that are invalid or contain typographical errors. Many entries can be validated against lists of valid values or templates of valid formats, and rejected or questioned if the entries are not found in the lists or entered in valid formats. Crucial information can be required to be entered twice, and consistency between the entries can be checked. Parties that record documents frequently could carefully enter repeated information such as names and addresses once, and then access that stored information when recording subsequent documents, to ensure consistency between catalog entries.” Providing a sample document for specific classes of works for users to review is always helpful.

For creators and rights holders of visual works, we would also suggest optional form fields for creator’s alternative names, logos, identity glyphs, monographs or makers marks, actual signatures used on visual works, and Digimarc ID numbers; some of these may require uploading an image file.

The Graphic Artists Guild suggests the requirement of including image files (small file size with requirement limitations noted) of all visual works recorded, including image files of individual visual works included in an assignment of rights of multiple works to an assignee.

We agree with the Copyright Office’s solution to create the necessary documentation in a word processing application and save the file in a cross-platform format such as Adobe Portable Document Format including electronic signatures to be transmitted electronically



32 BROADWAY
SUITE 1114
NEW YORK, NY
10004-1612

TEL

(212) 791-3400

FAX

(212) 791-0333

WEB

WWW.GAG.ORG

to the Copyright Office for recording. Online recordation of assignments and transfers through eCO, using a standardized form including electronic signatures would streamline the process, lower cost, and motivate more people to record assignments of rights.

2. Structured Electronic Documents.

The Guild supports the adoption of standards for and accepting structured electronic documents in which tagged indexing or cataloging information is integrated into the documents themselves. Again, providing a sample document for specific classes of works for users to review will be very helpful.

3. Linking of Document Records to Registration Records.

The Guild supports linking all records of works within the Copyright Office Catalog online electronic database.

4. Use of Standard Identifiers and Other Metadata Standards.

The Picture Licensing Universal System [PLUS] may be able to provide a solution for visual works.

5. Additional Statutory Incentives to Record Documents Pertaining to Copyright.

The Graphic Artists Guild strongly objects to reinstating 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 an infringement lawsuit. Graphic artists and illustrators create an enormous volume of works throughout their careers; most of it is not registered with the Copyright Office. Many graphic artists and illustrators grant non-exclusive license to a variety of users for a variety of uses in different media by oral agreement throughout their careers. They usually do not have documentation of these licenses themselves, nor can they provide documentation of these licenses to assignees or heirs. For most, it would be impossible to provide documentation of chain of title that would accurately include existing licensing. In addition, if the artist has not cited clear and detailed provisions in his/her will regarding his/her complete inventory of creative works and IP rights to his/her heirs, it may be impossible for the creator's heirs to provide clear documentation for the Copyright Office.



32 BROADWAY
SUITE 1114
NEW YORK, NY
10004-1612

TEL

(212) 791-3400

FAX

(212) 791-0333

WEB

WWW.GAG.ORG

In the case of infringing use, the alleged infringer must provide proof that he/she was granted permission for that use. The creator or rights holder is not required to provide proof that he/she did not grant permission. The legal onus to provide proof of license or permission should remain with the alleged infringer.

The Guild objects to requiring the recordation of rights transfers as a condition for the provision of certain remedies, such as statutory damages and attorneys' fees, or the recordation of any and all documents that transferred ownership of works to those eligible to sue for infringement at the time infringement commenced. As just described, it is likely to be impossible for many graphic artists, illustrators and their heirs or assignees to provide documentation and comply.

CONCLUSION

Rights holders and assignees would likely be encouraged to record assignments if they could do it online, for a low fee, if the information recorded added value and information to older registrations made on paper — such as adding a digital image of a visual work — and were motivated to do so to prevent works from becoming orphaned.

Creation of a system of online recording of transfers on eCO is the opportunity to connect existing documents on the same works in the Copyright Office Catalog and make these available to public searches online. This also provides a new opportunity for visual creators and rights holders of visual works to add image files of those works to the Copyright Office records and digital database. Hopefully, PLUS licensing metadata can be utilized in these newly created records to help track visual works and rights holders.

Re-engineering the recordation of rights transfers also ties into orphan works. This is another opportunity to identify rights holders of visual works; especially older works that either weren't registered at all, or works registered on paper before eCO and the Copyright Office didn't keep or scan the deposit copy. For example, when the rights to



32 BROADWAY
SUITE 1114
NEW YORK, NY
10004-1612

TEL

(212) 791-3400

FAX

(212) 791-0333

WEB

WWW.GAG.ORG

works pass to an heir either by advance notice by the rights holder before he/she dies, or after death through a will or estate at which time a probate attorney or heir might want to make a public record that they now hold the rights. Or as a result of sale, merger, or buyout of corporately-held copyrights. This might be an opportunity to collect rights holder info and images of works.

Authors, creators and rights holders of classes of works other than visual works are the best sources of recommendations for solutions to the particular concerns of those classes of copyrighted works.

ABOUT THE GRAPHIC ARTISTS GUILD

In the course of its 47-year history, the Graphic Artists Guild has established itself as the leading advocate for the rights of graphic artists on a wide range of economic and legislative issues, from copyright to tax law. Through its publication of the *Graphic Artists Guild Handbook: Pricing & Ethical Guidelines* (now in its 14th edition), the Guild has raised ethical standards in the industry, and provides an invaluable resource on pricing information that is relied on by both artists and clients. The Guild's newsletter, the *Guild News*, provides lively, provocative, and useful coverage of developments in the visual communications industry for its readers.

The Guild also provides a wealth of services and benefits for its members, including educational programs, discounts on a multitude of products and services, a legal referral network, and grievance handling. The Guild's website offers up-to-date information on Guild activities, updates on advocacy issues, members' portfolios, individual chapters, and tools and resources for all graphic artists.

Respectfully submitted,

Haydn Adams, President

Lisa Shaftel, National Advocacy Committee Chair

Tricia McKiernan, Executive Director