

U.S. COPYRIGHT OFFICE

NOTICE OF INQUIRY

Strategic Plan for Recordation of Documents

March 19, 2014

**INITIAL COMMENTS
OF
PACA, Digital Media Licensing Association**

SUBMITTED BY:

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Introduction and Background:

These comments are submitted on behalf of the trade association PACA, Digital Media Licensing Association (“PACA”). PACA’s members consist of entities and individuals that are engaged in the archiving and distribution of images for purposes of licensing, either directly or indirectly. PACA is *the* trade association in North America representing the interests of stock photograph archives of every size—from individual creators to large corporations—that license media for commercial use. Founded in 1951, PACA’s membership includes approximately 150+ companies worldwide providing photography, footage, animation, and illustration.

PACA’s mission is to foster and protect the interests of the picture archive community through advocacy, education and communication. PACA accomplishes its mission by providing a community to educate and inform members on current issues affecting digital media licensing including copyright, technology, tools and changes in the marketplace.

General Response

PACA appreciates the opportunity to respond to the Copyright Office Notice of Inquiry regarding a strategic plan for recordation of documents. Consistent with the initial comments of The American Society of Media Photographers, most members rarely take advantage of recordation under Section 205 of the Copyright Act. However, looking forward, PACA would like to make these initial comments and continue a dialogue with the Copyright Office as it moves to modernize its recordation system to provide valuable resources to all stakeholders.

PACA members are at the center of online licensing of visual images. Many members aggregate and manage large databases of both still and motion visual content for licensing purposes and the variety of content will only expand in the future.

While there are various types of licensing models, a typical transaction permits a potential user of visual content to search a database of content by entering a search term in a search field, selecting the appropriate visual solution for the intended project, downloading the content, entering into a license agreement and paying a license fee using just a few keystrokes, all within a matter of minutes.

There is a very high volume of these transactions (many of which are non-exclusive licenses) and the licensing fees are relatively low. The practical result of this is that most transactions are not recorded currently and would not likely be the type of copyright license transfers that would benefit from a recordation system. In particular, the system that exists now, with its high costs of recordation and the inconvenience of filing records in paper format rather than digitally, would never be appropriate in this digital license environment. Moreover, since the current system of recordation does not relate back to copyright registrations to match them with copyright owners or with registrations, it is not very useful.

The type of transactions that would benefit from an update recordation system would be acquisitions of collections of content that include copyright transfers, or financing records in the event any collection of visual content is used as security for a loan or investment. In those instances, the current system still offers significant barriers to users, as stated above, such as the cost of filing the records, the cumbersome process of filing using paper, rather than online, and the amount of time it takes for the records to be entered into the system. We have experience at our firm of transactions being held up due to the long recordation processing delay which makes it difficult to view the necessary documents when a party is conducting due diligence.

In looking towards the future, it would be helpful if the Copyright Office had sufficient funding from Congress to upgrade all of its filing systems, including registration as well as recordation. The goal would be to integrate all systems so that copyright registrations and records could be linked together with all correspondence and, potentially, deposits so that a copyright search could be meaningful. Currently, the USPTO has an integrated system such that a search of a trademark or trademark owner reveals all assignments and records regarding the trademark and links them to the initial trademark filing. Copyright serves an important benefit to content owners and the ability to easily and affordably register and take advantage of recordations under section 205 should be a priority.

PACA would not support, however using Section 205 to increase formalities and require recordations or registrations as prerequisites for creators to enjoy the benefits of copyright for the duration of the copyright term. The current registration system already has inherent burdens and barriers to visual artists who create a larger quantity of copyrighted works than other authors,

such as writers and filmmakers. We oppose the suggestion provided in the Notice of Inquiry under Section 5, entitled *Additional Statutory Incentives to Record Documents Pertaining to Copyright*, whereby certain academic commentators have proposed that Congress should create additional incentives or requirements for recording documents in order for creators to enjoy the benefits of copyright. It would be unduly burdensome and would essentially strip creators of their rights under copyright if additional requirements were to become mandatory. Examples of such stultifying requirements include mandating recordation chain of title of transfers as a precondition for filing a copyright infringement lawsuit, conditioning certain legal and equitable remedies, such as statutory or attorney's fees, on recordation, and imposing detailed requirements to validate transfers. We do not believe any of these formalities would comply with the spirit of our international treaties or would be compatible with The Berne Convention. These formalities would only serve to create more burdens and barriers to visual content owners and those who license on their behalf.

Conclusion

We understand that this is just the beginning of the Copyright Office inquiry into recordation and we remain interested in working with the Copyright Office and assisting in any way to help make the Copyright Office more digitally friendly. PACA members have vast experience with digital databases and metadata and would be pleased to participate in any studies with the Copyright Office to make copyright registration, copyright search, and copyright records more accessible.

We thank you for this opportunity to present our initial comments.

Respectfully submitted,

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