



May 21, 2013

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*RE: Comments—Technological Upgrades to Registration and Recordation Functions*

To the Register of Copyrights:

Pursuant to the Notice of Inquiry (“NOI”) published in the Federal Register on March 22, 2013 (78 Fed.Reg. 17,722), I submit these Comments on behalf of the Association of American Publishers (“AAP”)<sup>1</sup> regarding the Copyright Office’s interest in assessing what improvements to its existing registration, recordation, and records searching functions copyright owners and users would find useful.

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. We appreciate that the Copyright Office has consulted with a diverse array of stakeholders ranging from technical experts and content creators to small businesses and public interest organizations, which demonstrates the Office’s recognition that verifiable copyright ownership information is increasingly important in the digital economy.

More specifically, AAP appreciates this opportunity to provide the Office with comments from the publishing industry.<sup>2</sup> In the past five years, unit sales of trade<sup>3</sup> eBooks have increased over 4,456%.<sup>4</sup> This exponential expansion of digital content means that the technological capabilities

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<sup>1</sup> As the principal national trade association of the U.S. book and journal publishing industry, AAP represents some 300 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.

<sup>2</sup> The information provided in this Comment reflects only the views of the members that provided comments to AAP.

<sup>3</sup> “Trade” refers to the publishing sector that produces general adult fiction, non-fiction, children’s and young adult books.

<sup>4</sup> *BookStats Volume 3*, 2013 (available for purchase at <http://bookstats.org/>).

and limitations of the Copyright Office are increasingly relevant to the business efficiency of AAP member publishers.

The growth of digital content and new technologies necessitates that the Copyright Office provide a user-friendly system for registering works, recording changes in ownership and a convenient way to find such information—online. This Comment is intended to provide a preliminary response to the two questions asked in the NOI: (1) How [do] stakeholders use the current online offerings of the Copyright Office, especially with respect to registration and recorded documents, and how do the current offerings meet, fail to meet, or exceed user expectations; and (2) How [would] stakeholders like to interact with the Copyright Office electronically in the future, or, put differently, what online services, or aspects of existing online services [would] stakeholders like to see?

***I. How [do] stakeholders use the current online offerings of the Copyright Office, especially with respect to registration and recorded documents, and how do the current offerings meet, fail to meet, or exceed user expectations?***

**ONLINE REGISTRATION**

**Current Uses**

As owners of copyrights, AAP's members routinely use the Copyright Office's online system to register the books and journals that they publish. There is general consensus among publishers that the online registration system is a significant improvement over the previous paper-based system for reasons even as simple as being able to resolve office actions through email as opposed to mail, which has resulted in shorter application processing times. Additionally, publishers submitting numerous applications each year noted that the ability to customize and save commonly used templates helps to make registration more efficient.<sup>5</sup> Moreover, many of our members indicated that existing circulars provide useful guidance for filling out applications.

**Recommendations**

That said, publishers have experienced some frustration with the current online registration system with regard to efficient communication with examiners, tracking the status of registration applications, and learning about proper registration processes. AAP offers the following recommendations, which our members believe could make the online registration process even more efficient, user-friendly, and organized:

**Paper v. Online Forms**

Harmonize the online registration forms with the paper forms so that both documents request the same information.

- Provide a space to indicate that the applicant is not claiming the copyright for previously published text or illustrations.
- Provide a space for additional information so that account holders can include information that would otherwise be requested later by an examiner.

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<sup>5</sup> Publishers would, however, appreciate the addition of an option to edit previously saved templates.

- Allow account holders to manually order the authors that are included in any registration application.<sup>6</sup>

Make the online forms more intuitive.

- Provide separate fields to enter: (1) the author of the original work and (2) the author of the translated or revised edition, instead of the single “author” field that currently exists. This would make registering revised editions or translations much more intuitive.

### Communication

Provide online chat capabilities,<sup>7</sup> or at a minimum, direct email, within the application interface to communicate with the examiner.

Record the online chat or internal email with the examiner as part of the work’s file history so that the examiner reviewing the application later can reference the information provided and avoid duplicating work.

### User Interface<sup>8</sup>

Make the interface for registration more user-friendly and more easily navigable.

- Allow account holders to view their registration templates in order of “most-used” as an option in addition to chronological order and/ or allow account holders to manually order saved templates to suit individual preferences.
- Allow account holders to see more than 10 results per page.
- Allow account holders to sort “cases” in more nuanced terms, *i.e.*, by “open,” “pending,” and “complete”<sup>9</sup> status and/or create separate sections for completed cases and those that are not yet complete.<sup>10</sup>
- Link examiner requests for additional information to pending case files, making the case file a central location for any information related to obtaining registration.
- Optimize the registration platform to work with updated web-browsers, such as Google Chrome®.<sup>11</sup>

### Status Bar

Include a status bar that tracks registrations in progress.

- Include at a minimum:
  - (1) status of the online application based on the claimant’s actions (in progress, review, submitted, etc.);
  - (2) when deposit copies have been received by the mail room and/or the examiner;

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<sup>6</sup> Within the current system, when using a blank template, authors appear in the order that they are entered. However, if a claimant uses a saved template, but then adds additional authors, the template re-orders the authors.

<sup>7</sup> Numerous publishers noted that an online chat feature would be extremely useful as opposed to calling the Copyright Office.

<sup>8</sup> Publishers noted that although a customizable user interface could be helpful, there are many other smaller or important changes that the Copyright Office could make which would be much more worthwhile.

<sup>9</sup> Suggested case statuses: “open,” “pending,” “closed,” etc. are explained throughout this Comment. In general, however, a record of the status of the claim, *with dates* for when the claim was submitted, opened, and closed etc. (including when holds were resolved and the Certificate of Registration was mailed/ became available to print) should be made available in the file history.

<sup>10</sup> AAP members noted that the current system does not reliably display pending applications, requiring publishers to click through multiple pages of data to find their working cases.

<sup>11</sup> Publishers noted that certain pages, such as the “Payment Successful” screen, will not print at all when accessed from Google Chrome® and that other pages render in ways that are inconvenient to use.

- (3) status of the application based on the examiner (“in queue,” “open,” “held pending resolution of X,” or “closed”<sup>12</sup>); and
- (4) when a certificate of registration has been mailed out or, if possible, when the certificate is available to print (if an official copy could be made available online).
- Allow account holders to review their completed registration application form, as opposed to the abstract information, before submitting the claim.
- Send account holders a copy of the completed application with the receipt of successful submission via email.
- Allow account holders to make changes to *submitted* registration applications while the application is still “in queue,” *i.e.*, before an examiner officially designates the file as “open” when the file is under active review.
- Allow account holders to access *submitted* registration application forms while the form is under review.<sup>13</sup>
- Send account holders an email and include in the status bar of the application when an examiner believes that an application requires further action. This could be indicated with a status such as: “held pending resolution of X.”

#### Auto-Complete

Increase auto-complete functionality within registration forms (including the “note to Copyright Office” section).

#### Deposit Copies

Allow applicants to track the receipt of deposit copies with their registration application.<sup>14</sup>

Create a more efficient system for handling and mailing bulk deposits.

#### Guidance

Provide more detailed embedded instructions (including examples, where appropriate) in online registration forms.

- For example instructions for: (1) how to complete entries where works have a named co-writer who is working on a work for hire basis; or (2) identifying situations when a limitation of claim should be filed.
- Indicate, where appropriate, that leaving a field blank or filled with incorrect information will prompt an office action.

Offer pre-recorded online tutorials with step-by-step instructions on registration basics and/or regular webinars on the registration process for varying skill levels.

Provide more tools to facilitate error-free registrations:

- A “Help” section on copyright basics for users;

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<sup>12</sup> When a case file is designated as “closed,” a PDF of the Certificate of Registration should become available in the work’s file history. From this page, an account holder should also be able to directly request that the Certificate of Registration be mailed out, if the claimant does not receive the Certificate within a timely manner.

<sup>13</sup> Allowing publishers to access their submitted registration applications would allow publishers to view/review the application if an examiner later emails the publisher with a question during his/her processing of the application.

<sup>14</sup> A particular frustration with the current deposit system reported by an AAP member is that, on multiple occasions, his company has received confirmation from the Off-Site Mail Receiving Center that the deposit copies were received, but that an email from the examiner will subsequently note that the deposit copies are missing.

- A “Common Mistakes” document that identifies common mistakes and how to avoid them when filling out a registration application.
- Simplified definitions or a supplemental explanation of current definitions in plain English as opposed to legalese.
- Create a tab or search tool to allow users to search all circulars so that users do not need to know in advance which circular they need.

## ONLINE RECORDS SEARCHING

### **Current Uses**

AAP’s members also routinely need to record assignments, transfers and other documents with the Copyright Office as well as search the Copyright Office records database to: (1) verify claims of copyright registration and (2) search for records of assignment, renewal, or transfer. While the online records are useful, many publishers note the difficulty of searching for relevant information within the system.

### **Recommendations**

In this section, AAP shares its members’ recommendations for making basic improvements to the Copyright Office records searching system.

#### User-Friendly Searching

Upgrade the basic functionality of the search system so that it does not crash, as it frequently does now.

Add more nuanced yet flexible searching, sorting and filtering options.

- Allow searching by whole phrases, partial names, date ranges, word combinations and field combinations (*i.e.* “title” and “author”).
- Allow users to run an initial search of the Copyright Office records and then have options for refining the search results, such as: format, date published, nation of first publication, etc.

#### More Information

Include the current contact information for the copyright owner in search results and make sure that information is updated when owners file change of address requests.<sup>15</sup>

Allow users to access and print online copies of the actual assignments, transfers, other certificates of recordation, deposit, and registration etc. instead of only providing abstracts.

Ensure that the search system can handle large volume requests, such as determining the entire number of copyright registrations held by a particular owner, which for certain publishers can be upwards of 100,000.<sup>16</sup>

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<sup>15</sup> Publishers appreciate that there may be privacy concerns regarding the mandatory disclosure of contact information. However, this issue will need to be addressed in order to help create more reliable copyright ownership records.

***II. How [would] stakeholders like to interact with the Copyright office electronically in the future, or, put differently, what online services, or aspects of existing online services [would] stakeholders like to see?***

There are undoubtedly many new services that could be dreamt up for the Copyright Office to provide. However, AAP's members recognize that resources are tighter than we would hope for the Copyright Office, but that the goal of encouraging registrations and other use of the Copyright Office services will be undermined by simply increasing fees. Therefore, our members have focused on key changes that would make their interaction with the Copyright Office more efficient; reduce time and money spent by the Copyright Office on registration and recordation; and facilitate greater access to copyright information for the public and third party services.

FUTURE REGISTRATION

*Online Registration Certificates*

Make official certificates of registration available to print directly from an account holder's online case file.

*Improve Uploading*

Upgrade the registration system so that it can quickly handle large multi-media files, as opposed to the current system which is reported to take hours at times to upload large files.

*Online Deposit Copies*

Improve and possibly expand the system by which claimants can submit deposit copies electronically.

*Article-Based Production*

Amend Form SE and related regulations to meet the needs of journal publishers that are moving to "article-based production"<sup>17</sup> to respond to consumer demand for more immediate access to scholarly articles.

Discontinue the pre-requisite to registration that all articles in a specific journal issue be published simultaneously because this requirement does not provide an efficient registration mechanism for the growing "article-based production" model.

*Harmonize Registration Rules*

Amend Form SE and related regulations to allow journal publishers to register and act as the claimant for articles for which they have obtained exclusive rights to publish and distribute the article.

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<sup>16</sup> The current records search system appears to be unable to load more than 10,000 total results. Publishers do not necessarily need the system to be able to upload the content of all copyright registrations belonging to a particular owner, but an accurate summary of the pertinent information for all registrations, no matter how numerous, would be very helpful.

<sup>17</sup> In this model ("article-based production"), journal publishers are harnessing the capabilities of online access to make articles, which will be incorporated into a final "compilation," available before the final journal issue is ready to print.

- Accept “obtained license of exclusive right of publication, distribution, and enforcement” as a sufficient basis of copyright ownership for journal publishers to act as claimants to register licensed contributions as part of the publisher’s serial.<sup>18</sup>
- Making this change would better reflect Sec. 408 of the Copyright Act, which states that “the owner of a copyright or *any* exclusive right in the work may obtain registration...” whereas the current regulations only permit: (i) the author of a work or (ii) the “organization that has obtained ownership of *all rights*” to act as copyright claimant in registering the work.<sup>19</sup>

### Group Applications

Allow claimants greater flexibility in organizing their “open” and “completed” cases within their account. For example, allow account holders to group applications where individual text and artwork registrations are sought for a single book.

## FUTURE RECORDATION AND RECORDS SEARCHING

### Online Recordation System

Create an online process for recording copyright-related documents.

Adopt a hybrid system for recordation that incentivizes users to submit records electronically, but still allows for paper submissions.

Preserve existing services such as:

- Providing an official certificate of recordation for assignments, transfers, etc. but do so electronically, if possible. And, at a minimum, preserve the mail version, but make an unofficial electronic copy available in the public record and in the account holder’s case file for that work.
- Certifying receipt of deposit copies (whether hard copy or digital) and include a PDF of the certification as part of the work’s online case file.

Allow verified copyright owners to easily update contact information for their particular copyright registrations online.

Ensure that information added by a verified copyright owner to update a particular copyright registration (e.g. address change, recordation of assignment, etc.) is automatically integrated into the public record for that particular work.<sup>20</sup>

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<sup>18</sup> See Circular 62 and paper Form SE, Section 4, which require the copyright claimant to “give a brief statement of how the claimant(s) obtained ownership of the copyright.”

<sup>19</sup> Compare 17 U.S.C. §408 with 37 C.F.R. §202.3(a)(3). Moreover, making this change would promote the freedom of contract so that there is not a disincentive for journal publishers to license more limited rights from article authors, as opposed to obtaining full copyright transfers.

<sup>20</sup> One publisher was frustrated by the fact that he had filed an address change, the document was recorded, but the new address was not available in the online records. Another publisher was frustrated by the fact that contact information from the “Correspondent” page was reproduced as the “Rights & Permissions” contact information online, which is inaccurate.

### Records Searching

Integrate pre- and post-1978 records into one online database.

As stated above, add more nuanced yet flexible searching, sorting and filtering options. At the same time, ensure that the interface is more intuitive so that it works for all skill levels.

Enable users to search for a work's complete history using any ISBN (or ISSN) associated with the same copyright.<sup>21</sup>

Provided that the actual documents (as opposed to abstracts) are viewable online:

- Enable public users to search, download, share, and print unofficial copies of all certificates of registration and recordation as well as assignments, transfers and renewals as PDFs.
- Enable account holders to download *official* copies of their *own* certificates of registration or recordation for renewals, assignments, transfers etc.

Organize records into complete file histories, *i.e.*, if a member of the general public searches for a particular work (by title, author, ISBN, etc), all documents associated with that particular work should be part of the file.<sup>22</sup>

Allow users to export selected fields of data (ISBN, Title, Date, Owner, Content Type, etc.), in the order of their choosing, to Excel or Word.

### METADATA TRANSFERS

In conjunction with publishing more digital content, many publishers already submit some ONIX metadata on copyright ownership to third party entities in the publishing supply chain. Hence, publishers are, in general, optimistic about the possibilities of bulk data transfers using ONIX, which could “make the transfer of larger amounts of copyright-related book data submitted by publishers more consistent, efficient, and routine.” In addition to facilitating primary registration and record maintenance, publishers believe such bulk data transfers could be very helpful in situations where they acquire copyrighted assets that were previously owned by other publishers.

AAP's members are intrigued by these opportunities and are willing to explore the practicability of such data transfers with the Copyright Office and other relevant stakeholders. Preliminary issues that would be worthwhile to consider clarifying are: (1) scope of data gathering; (2) maintenance requirements for regularly updating the information; (3) validation processes; and (4) privacy protections.

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<sup>21</sup> Note, publishers see great value in being able to search by ISBN for more recent works, but raise the following concerns that would need to be addressed in a comprehensive system: (1) Searching by ISBN may only be useful for more recent works given that it is a fairly new policy for the Copyright Office to request this information, so what would you do with the older works where there is no ISBN information provided? (2) There are instances where there is no copyrightable change between two works, and therefore the copyright notice stays the same, but a new ISBN is assigned to the later work. How would the database accommodate this situation and would the Copyright Office require continual updates on ISBNs for the same book metadata?

<sup>22</sup> See the TESS database for organizing trademark file histories at the U.S. PTO.



### **III. 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 registration, recordation and records searching systems are equipped for the digital age.

AAP hopes that the Copyright Office will find these Comments helpful in making its services more efficient, cost-effective, and user-friendly. Our recommendations span the gamut from small changes such as allowing combination searches to creating an entirely new online recordation process. Recognizing that the Copyright Office will not have infinite time or resources to upgrade its services, the following suggestions should be viewed as our priorities: (1) include a status bar for registrations and deposit copies; (2) improve methods of communication with examiners; (3) create an online recordation process; (4) organize all correspondence, certifications, and records into centralized, complete, case files;<sup>23</sup> and (5) make the actual documents and certificates, as opposed to abstracts, viewable and printable through the online records search.

AAP looks forward to working with the Copyright Office and other stakeholders to develop appropriate strategies for making useful upgrades to its registration, recordation, and records searching systems.

Respectfully Submitted,



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<sup>23</sup> With a central case file, an account holder should be able to: (1) file an application for registration; (2) file corrections, address updates, etc. later in time; and (3) record an assignment, transfer or other document and then view all of this information within one centralized file history.