

**BEFORE THE
U.S. COPYRIGHT OFFICE
LIBRARY OF CONGRESS
WASHINGTON, D.C.**

**In the Matter of Technological Upgrades
to Registration and Recordation
Functions**

Docket No. 2013-2

**COMMENTS OF THE AMERICAN SOCIETY OF COMPOSERS, AUTHORS
AND PUBLISHERS**

The American Society of Composers, Authors and Publishers (“ASCAP”) respectfully submits comments in response to the U.S. Copyright Office’s (the “Office”) Notice of Inquiry dated March 18, 2013 for written comments on issues regarding technological upgrades to the Office’s registration and recordation functions (the “NOI”).¹

I. INTEREST OF ASCAP

ASCAP is the nations leading music performing rights licensing organization (“PRO”), representing hundreds of thousands of songwriter, composer and publisher members and a repertoire of millions of copyrighted musical works. ASCAP licenses the non-dramatic public performance rights of its members’ works on a non-exclusive basis to a wide range of users, including entities such as radio, broadcast television, cable, satellite and the Internet, as well as restaurants, stores, concerts, background music services, aerobics and dance studios, and many more.

ASCAP represents not only U.S. writers and publishers, but also hundreds of thousands of foreign writers and publishers through reciprocal license agreements with PROs in nearly every country in the world. Through these reciprocal agreements, ASCAP is permitted to license in the U.S., the public performing right in many thousands of musical works by foreign songwriters and composers. ASCAP also receives royalties from those foreign PROs for performances of ASCAP musical works occurring overseas.

In addition to licensing its members’ work on their behalf, ASCAP is charged with the ability to enforce its members’ rights when their copyrighted works are performed publicly without authorization. To that end, ASCAP brings infringement lawsuits in U.S. District Courts throughout the country on behalf of its members.

¹ 78 Fed. Reg. 17722 (March 22, 2013).

Once license fees are received, ASCAP distributes such fees to its members based on the performances of the works.²

Because ASCAP is tasked with administratively passing through license fees for over 450,000 songwriters, composers and music publishers based on the actual performance of their millions of works, ASCAP must necessarily maintain extensive and comprehensive data collection and processing systems. Those systems must be able to intake and catalogue (1) the proper identity of hundreds of thousands of songwriters and publishers and (2) the proper and current ownership information of millions of unique musical works written and owned by such members. Additionally, ASCAP's systems must properly catalogue the proper payees of royalties earned by its members, whether they are heirs, assigns or creditors. ASCAP is able to match this work and ownership information with actual performance data (i.e. what songs were performed when and where), also housed in linking databases, to ensure accurate distribution to its members.

Moreover, because we operate today in a global marketplace, and ASCAP's members' works are performed throughout the world (as such world repertoire is performed in the U.S.), ASCAP's data systems must be in conformance with international data standards to ensure the proper identification of ASCAP's members and their works to further process accurately these international performances.

ASCAP's systems do not, however, dovetail with the Office's data systems. Some, but not all, of ASCAP's members' works are registered with the Office. Some but not all of ASCAP's members record ownership transfer information with the Office. However, there is clearly overlap. Therefore, ASCAP believes it may be in the best interest of the Office to consult with ASCAP to determine how ASCAP's robust database systems may play a part in providing the Office with more complete and accessible data systems.

II. REGISTRATION CONCERNS

The NOI deals first and foremost with issues surrounding the Office's central role as registrar. ASCAP does not register its members' copyrighted works with the Office. ASCAP's members currently do so independently. However, ASCAP does rely on the Office registration system when enforcing its members' rights against unlicensed users of their works. ASCAP requires accurate registration and ownership evidence prior to bringing infringement actions on behalf of its members. Accordingly, ASCAP has an interest in ensuring that the Office registration system is efficient, accurate and easily accessible online.

From ASCAP's standpoint, copyright owners would benefit greatly from an ability to search the Office's registration database via various work identification data

² ASCAP, as an unincorporated membership association, does not retain any fees. It distributes all fees to its members after necessary operating expenses. The fees are distributed pursuant to rules and regulations adopted by ASCAP's members.

points, beyond simply the title and author of the work. Described in the next section is the basic data points utilized by PROs in identifying authors and works on a global basis. The Office should consider seriously the prudence of utilizing or linking into the international conventions used by PROs.

With regard to obtaining copies of registrations, ASCAP advocates the ability to have immediate free or inexpensive online access to PDF copies of all registrations, including those dated prior to 1978. ASCAP is based in New York and Nashville, without any physical presence in Washington D.C and accordingly desires online access to all registrations. Obtaining hard copies of registrations kept at the Office's D.C. location is burdensome and expensive. Of course, digitizing and providing online access is difficult and ASCAP understands resources may be limited. Accordingly, ASCAP suggests providing access to pre-1978 works in a backward chronological order.

ASCAP is willing and able to work with the Office as necessary to further its goal of ensuring that all registration documentation is made available to the public online in an efficient and affordable manner.

III. MUSICAL WORKS DATABASE

PROs have for decades worked on developing protocols for exchanging information about the ownership of musical works under the aegis of the International Confederation of Societies of Authors and Composers (known as "CISAC" – based on the acronym for its French name, Confédération Internationale des Sociétés d'Auteurs et Compositeurs), a global trade association of collecting right organizations. The PROs have been driven to do so given the extensive means by which individual musical works are used and performed through all types of media and platforms worldwide. It is absolutely crucial for the PROs to carry complete and accurate databases, maintained under agreed standards, listing the musical works, writers and owners which they represent in their territories to enable the licensing of such works by music users as well as accurate distribution of royalties paid under such licenses.

While ASCAP does not expect that these database systems should or could be incorporated into Office registrations systems, we submit that the Office should have a high level summary of some of the procedures that have been adopted by PROs as well as their present work on designing a Global Repertory Database (the "GRD;" also sometimes referred to as the "GRDB").

A. IPIs: How Writers and Publishers are Identified

Upon joining a PRO, the writer (all songwriters, composers and lyricists are hereinafter referred to as "writers") or music publisher member discloses to that PRO its full contact and other personal information that the PRO might find relevant and necessary to pay the writer or publisher royalties. The PRO keeps this information confidentially in its own proprietary and confidential membership database. No other PRO has access to the non-public, personally identifying, and confidential data or

membership database of any other PRO. However, because PROs must know which musical works are licensed through which PROs in order to properly distribute both domestic and foreign royalties, all the PROs worldwide have adopted a system of uniform number coding used to link musical works with their writers and publishers and their PRO affiliation. As noted, this system is overseen by CISAC.

CISAC has 231 societies, as either full, associate and provisional members, in 121 countries, which collect for creators or “authors” of musical, literary, audiovisual, graphic and dramatic works, with the majority being collecting societies for musical works. *See www.cisac.org*. One of CISAC’s “essential purposes” is to co-ordinate the technical activities of collecting right organizations. To that end, CISAC’s societies have worked to develop a “common information system” or “CIS,” the purpose of which is to introduce, develop and maintain: (i) standards for the efficient distribution of royalties (“CIS Standards”); and, more importantly for our purposes, (ii) databases which enable members to share information based on the CIS Standards. Referenced therein are several standards, which are discussed in greater detail below, including the “IPI” (interested party identifier), the “ISWC” (the international standard work code for musical societies) and CIS-Net (the network of databases used for referencing data on musical works, which allows for cross- referencing of ISWCs to IPIs, including unique PRO codes).

Once a writer’s or a publisher’s membership in a PRO is accepted, the PRO will apply for a unique IPI for that unique member. The function of an IPI number is the de facto international identifier of that person or entity and link to its PRO of affiliation by territory. It is the IPI that is thereafter associated globally with the writer of the work and the work’s publisher (on a territorial basis), even if his, her or its society of affiliation may change. If, for example, a writer resigns from ASCAP and joins another PRO, he or she retains the same IPI.³

While the PRO itself retains detailed information regarding its members and affiliates in its own confidential databases, the IPI database contains only limited identifying information regarding the writers and publishers, limited to the name of the writer or publisher, its affiliated PRO, date of birth and nationality. The IPI database does not contain the writer’s or publisher’s address, residence or contact information, the identity of any assignees, or in the case of a deceased writer, his or her heirs. However, the IPI database is accessible by all PROs, as well as certain music users, as part of a network of databases with musical work information known as CIS-Net, as overseen by CISAC.

Standing alone, the IPI database has little significance as it serves merely to list centrally all writers and publishers that are members of PROs to permit such writers and

³ Those writers that work under various pseudonyms will obtain a “Base IPI number” and separate sub-IPI numbers for each pseudonym. The pseudonym sub-IPIs will automatically link to the Base IPI, such that usage of any of the writer’s sub-IPIs will refer back to the Base IPI. This ensures that works authored by one writer under various pseudonyms will all link back to the same writer and the writer’s PRO of affiliation.

publishers to be identified internationally by a specific code number; it is only when the IPI is used in connection with other data that it has the utility, for example (and most importantly) to connect writers and publishers with the musical works they have created, as explained below.

B. ISWCs: How Musical Works are Identified

Every musical work, whether a song, classical composition or television soundtrack cue, has been written by one or more writers, who divide their interests in their work by an agreed-upon percentage. These writers typically, but not always, assign their copyright interests in the work to one or more music publishers, generally in the same fractional ratio; sometimes a writer will retain some share of ownership as a “publisher.” The writers of a specific work will, of course, never change once the work is written, whereas publishers of works sometimes change when they sell their works to other publishers, writers terminate their contracts with publishers and take back their publishing interests, give their copyright interests to another publisher and/or authorize another publisher to administer their works.⁴

The writer and publisher share data regarding a musical work (*i.e.*, who authored and published a work) is unknown to PROs until the creators of the work – the writer(s) and/or publisher(s) – publicize that information. This publication is accomplished through registration processes operated by each PRO separately. Members of a PRO are required to register their works with their PRO for inclusion in that PRO’s own title database. The title registration will contain the identities of the writers and the publishers (updated as necessary), the appropriate fractional shares and affiliated PROs of each. Once registered by a PRO member, the work becomes a part of that PRO’s repertory. Many PROs maintain free, publicly searchable databases of the works which they represent in their territories; ASCAP’s is known as ASCAP Clearance Express or ACE, and is available through ASCAP’s website, at www.ascap.com/ace/; BMI’s database is available at www.bmi.com; and SESAC’s is available at <http://www.sesac.com/Repertory/Terms.aspx>. By virtue of these searchable title databases, any member of the public can peruse the vast repertoires of the U.S. PROs, which together contain practically the entire U.S.-based copyrighted song repertory,⁵ as well as the works of foreign PRO members as represented by ASCAP, BMI and SESAC here in the U.S.

To ensure, however, that the entire world musical works repertoires are aligned, works registration follow CISAC-agreed registration standards, referred to as “Common Works Registration” standards, and which in turn allow for obtaining a unique “ISWC.” Much as each PRO member is given a unique IPI code to identify the member in a

⁴ In the case of foreign PROs, however, the writer remains with the foreign PRO – typically having given it an exclusive right to license – and whatever changes may take place vis-à-vis the writer’s publishing relationship, the new publishing relationship would still run through the foreign PRO.

⁵ It should be noted that some PROs have a legal requirement to make its list of members and repertoires publicly available. See, e.g., Section X of the ASCAP Consent Decree at <http://www.ascap.com/~media/Files/Pdf/members/governing-documents/ascapafj2.pdf>.

standardized manner, each musical work is similarly given a unique international work code, known as the ISWC, to identify that work internationally in a standardized manner.

To ensure that all PROs have access to the same musical work interest information, the PROs, through CISAC, make their musical works title database information accessible through the CIS-Net.⁶ In this way, PROs all access the CIS-NET, and thereby have access to a connected listing of all works by ISWC and all writers/publishers by IPI. Because of the CISAC CIS-NET systems, all PROs worldwide access uniform information regarding tens of millions of copyrighted works worldwide.

C. GRD: The Global Repertoire Database

As explained, CIS-NET, which contains undoubtedly the world's most comprehensive, interlinked databases of writers/publishers and their works is not searchable by the public directly, nor does it contain contact information of the copyright owners; one must still contact the PROs directly for that information or use their publicly accessible databases. However, a working group was created in December 2009 following certain "Online Roundtable" discussions sponsored and facilitated by the DG Competition of the European Commission. The working group's role was to consider how a GRD for musical works might be created and deployed to provide access to a single, consolidated source of data which music creators, music publishers, music rights societies and other users can rely on for authoritative, multi-territorial information about the ownership and/or control of musical works.

After a period of study, twelve PROs formed the "GRDDesign SAS," to employ contractors to design the GRD and lay out its requirements. These societies have already invested substantial sums in the GRDDesign SAS for this purpose. In addition, the GRDDesign SAS is working under a collaboration agreement with representatives of various other international and European based music publisher and songwriter associations, as well as a wide range of the major online and mobile music service providers.

IV. FINAL THOUGHTS

There has been much recent discussion surrounding the Copyright Principles Project ("CPP"), a group of copyright experts that have consulted with past Office personnel and whose goal is to consider directions for reform of the U.S. copyright system. One of the areas of focus was administrative reforms, including that of the registration system. The CPP recommended that the Office transition away from being

⁶ Again, CIS-Net is actually a network of database nodes, including individual PRO database nodes and multi-society nodes, or nodes that are gateways to networks, like the WID ("Works Information Database," managed by ASCAP) or "LatinNet," which is managed by the Spanish society, SGAE, and used largely by societies handling predominantly Hispanic title works and writer names. A work may appear in multiple "nodes," but the information that is considered authoritative is always the one that can be found in the PRO's node affiliated with the work's writer(s) and publisher(s), or the node of the group in which that PRO is participating.

the sole registry for copyrighted works and toward the certifying the operation of registries operated by third parties. This proposal has some theoretical merit. Indeed, as these comments indicate, ASCAP has already developed a robust and comprehensive database -- fully searchable -- regarding the body, authorship and ownership of U.S. copyrighted works. To the extent the Office were to consider shifting or sharing registration functions, ASCAP is in the best position to meet that need. Nevertheless, ASCAP would caution against shifting these roles to multiple parties -- specifically for-profit registries. A single registry -- or at the very least multiple registries that maintain identical uniform and standardized information -- is crucial for keeping accurate record.

ASCAP and the other PROs have, and continue, to develop these comprehensive and standardized database systems for the musical works industries. With regard to increasing uniform cataloguing and searching of musical work information, ASCAP believes that, at a minimum, the Office should explore the possibility of including ISWC numbers to registered works. ASCAP would also encourage including globally-recognized author and owner identifiers.

ASCAP invites the Office to explore these matters together in more detail.

Respectfully submitted,

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