

**Before the
U.S. COPYRIGHT OFFICE
Library of Congress
Washington, DC**

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In the Matter of)	
)	
Technological Upgrades to Registration and Recordation Functions)	Docket No. 2013-2
)	

COMMENTS OF BROADCAST MUSIC, INC.

Broadcast Music, Inc. (“BMI”) hereby submits these comments pursuant to the Notice of Inquiry (“Notice”) issued March 18, 2013 by the Copyright Office (the “Office”), 78 Fed. Reg. 17722 (March 22, 2013).

BMI is a performing rights organization that licenses, on a non-exclusive basis, the public performing right in approximately 7.5 million non-dramatic musical works on behalf of its over 600,000 affiliated songwriters, composers and publishers, including many thousands of foreign works through BMI’s reciprocal licensing agreements with foreign performing rights organizations. A recognized leader in harnessing technology for the benefit of songwriters, composers and music publishers, BMI pioneered the use of Internet-based tools to allow its members to view their royalty statements and catalog of works, register new works, update mailing and e-mail addresses, sign up for direct deposit of royalties and obtain paperless statements.

BMI commends the Office for recognizing the need to improve and enhance the information technology platforms that support the Office’s registration and recordation

functions, and for including the subject of a technology upgrade in its long-term strategic plan as a special project.

Like many organizations involved with the protection and exploitation of copyrighted works, BMI is dependent on the accuracy and accessibility of the Office's records. BMI has frequent need to identify the owners of copyrighted works and to confirm whether or not copyright protection subsists. Accordingly, BMI participated in the stakeholder meeting held by the Office in November 2012, monitored other meetings, and is appreciative of this opportunity to provide written comments about an important, yet often overlooked, subject.

Interface between the Office & the Public

Register Maria Pallante recently observed that "a 21st century copyright law requires a 21st century agency" and that "migrating the Copyright Office to the next generation of services is a primary focus of Office staff at this time."¹ BMI supports this view whole-heartedly and supports the Office's goal of providing better services to the public.

One of the topics discussed at the stakeholder meeting last Fall was whether and to what extent deposit material should be made available online. With regard to musical works, BMI believes that, if a copyright owner wishes to authorize uploading short digital samples² of works to the Office website and incorporating such samples as part of the registration records, samples would be useful in the identification of copyrighted works, particularly if the samples could be

¹ Maria Pallante, U.S. Register of Copyrights, delivered the 26th Annual Horace S. Manges Lecture, entitled "The Next Great Copyright Act," on March 4, 2013 at Columbia University. *See*, 37 COLUM. J.L. & ARTS (Spring 2013).

² BMI is aware that deposit material for registration of copyrights in musical works may be filed in various formats; since a single application is often filed for registration of copyrights in both a musical work and a sound recording, the deposit for a musical work could be a digital audio file.

coded and searchable. However, BMI is aware that making samples available to the public would involve numerous issues including certain risks that must be considered. Moreover, BMI is concerned that making entire musical works available to the public could facilitate unauthorized uses of copyrighted works and could impose costs on the Office.

As stated above, BMI utilizes the Office's online records, and because these online records go back only to 1978, BMI is also often forced to utilize the paper files in the Madison Building in Washington, DC. Making pre-1978 records available online would provide significant benefits, including time and cost savings, particularly for persons and entities such as BMI that do not reside in Washington, DC.

BMI is aware that the Office has tens of millions of paper records dating back at least as far as 1870. It would certainly be of value to have all of these records available online someday, but the more recent records are of greater concern to BMI. Specifically, if the Office could digitize registration and recordation records going back to the 1920s (i.e., records relating to works for which copyright protection is still in effect) that would be a significant and valuable step. These records are not only of historical interest, but are crucial to the task of confirming ownership and status of musical compositions. Such information stimulates commercial use of copyrighted musical works for the benefit of songwriters, composers, music publishers and the entire content community. Making these records accessible and searchable from the Office website would provide savings of both time and cost to BMI, to other organizations involved in administering and using copyrighted works, and to members of the general public as well.

Additionally, the volume of notices of termination of transfers and licenses received and needing to be processed by BMI has greatly increased in recent years, especially now that the time period for exercising Section 203 termination rights has begun. We suspect that the Office

is also faced with an increasing volume of notices of termination. Every variety of participant in the copyright community is likely to encounter terminations of grants of copyright in some way, whether as creators seeking to terminate, as rights holders whose rights are terminable or as administrators, licensees or other interested parties whose business systems and practices must accommodate terminated grants.

With terminations playing an increasing role in ownership determinations, virtually every member of the content industry will at some time likely require the means to verify the validity of termination notices. This can be accomplished only by reviewing both the termination notice served upon the then-current rights holder and verification from the Office that the termination notice was timely filed with the Office. It is therefore crucial that the digitization and uploading of termination notices to the Office's website for public review becomes and remains up-to-date.

Moreover, as it has been presented to BMI, the search methodology for isolating termination notices when searching the Office website is not particularly user-friendly. The utility of the Office's website would be increased if the Office were to create a designation (such as "TN," where "PA," "EU" and others are used now) and/or a search functionality that would readily allow users of the Office's website to filter searches for termination notices. The content community, internationally as well as within the U.S., would stand to benefit as the need for licensees, agents and rights holders abroad to quickly identify the appropriate U.S. copyright owners will be of increased importance.

Metadata Standards

The Office also requested comments on the topic of "metadata standards in particular industries that the Copyright Office might adopt or incorporate into its systems." The Notice specifically mentioned the International Sound Recording Code ("ISRC"). The Office should be

aware that, in addition to ISRC, there is also the International Standard Musical Work Code (“ISWC”). ISWC is the international standard published by the International Organization for Standardization (“ISO”) as ISO 15707 and is administered by the International Confederation of Societies of Authors and Composers (“CISAC”), which appoints national and regional agencies where appropriate. In the United States, BMI and the American Society of Composers, Authors and Publishers (“ASCAP”) are members of CISAC.

ISWC identifies musical works so that licensing royalties can be accurately and efficiently attributed. In BMI’s view, including an ISWC in the metadata required for the registration of copyrights in a musical work would enhance the value of the Office’s records to BMI and other stakeholders, including other performing rights organizations, copyright owners, licensees and content users.³ Such a step, by facilitating the identification of copyrighted works, would stimulate licensing and reduce the number of “orphan works.”

Conclusion

BMI commends the Register and the Office for playing a leadership role in this important effort to improve information technology platforms, thereby enhancing the registration and recordation functions and augmenting the scope and accessibility of records for the benefit of the public.

³ In the event that the ISWC is issued after registration, BMI suggests that the Office allow the records to be updated by means of an electronic submission with no filing fee. Currently, Form CA must be filed in hard copy, has a filing fee of \$100, and takes months for the Office to process.

Respectfully submitted,

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