

Before the
UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS

In the matter of
Technological Upgrades to Registration and Recordation Functions
Docket no. 2013-2
Notice of Inquiry

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Summary

I recommend that copyright registration documentation include optional fields for the description of metadata embedded in a work. Metadata may include copyright management information. This information can be critical to the identification of a copyright owner. A description of metadata in the registration record could improve the copyright search process. Inclusion of these fields in the registration record could alert copyright claimants to the possibility of embedding copyright management information within their works. Common use of metadata could prevent copyright protected materials from becoming orphan works.

Metadata and copyright

Metadata, or data about data, can be embedded directly into a digital file. This serves the purpose of describing the file and identifying the copyright owner. Metadata can include as much or as little information as the copyright owner chooses to provide. It may include, but is not limited to, the copyright owner's name, contact information, terms of use, the date, location and keywords.

Most, if not all, of this metadata is regarded as copyright management information. 17 USC § 1202 (b) makes the intentional removal or alteration of copyright management information illegal. The law does not make any specific statements about metadata, but it is clear that metadata could include copyright management information. Therefore, intentionally removing such metadata is illegal.

The gravity given to copyright management information by the Digital Millennium Copyright Act should be reflected in the registration process. For visual works in particular, the metadata may be the most feasible place to include copyright management information. The copyright claimant should have a clear place to indicate that there is metadata embedded in a work and to describe the metadata. Not every work will include metadata, so the fields should be optional.

Further, this recommendation is consistent with the narrowly applied rights of attribution and integrity that may be found in VARA 17 USC § 106A and the broader moral rights found abroad.

Discovery and orphan works

If a copyright owner chooses to embed copyright management information in a work, then the work is more easily discoverable and traceable. Someone who seeks to license the work for use could look to the metadata for information on the copyright owner. Keywords could make the work more easily retrievable in searches.

In the digital age, it is all too easy for a copyright protected work to become an orphan work. Files make their way around the web. In the process, the origin of these files can quickly get murky. If it is unclear who the copyright owner of a work is, the potential for misuse increases. Even the most responsible user may give up on a search if there seems to be no hope of finding the copyright owner. At this point the user may abandon plans to use the work or decide to use the work regardless of its potential copyright protection. Neither of these situations is desirable to the copyright owner.

When a user wants to license a work for use, all parties involved are best served if the copyright owner can be identified and contacted. The user is in position to communicate through the proper channels to propose a use of the work. The copyright owner becomes aware of the request and can choose to grant or deny a license.

If it is unclear who the copyright owner is and the work becomes an orphan work, the copyright owner is losing the benefits of having copyright protection in the first place. The user may be unaware of the copyright owner's existence, while the copyright owner may not know that his work is being used. The process breaks down. Orphan works proliferate.

This illustrates why a copyright owner would want to embed copyright management information into a work. The information becomes part of the file. The copyright owner is assured by the law that this information should not be intentionally removed. This further incentivizes creative production. A copyright owner who has embedded metadata in a work is less likely to have his exclusive rights violated through improper use of that work.

Including optional fields for description of metadata in copyright registration documentation accomplishes two objectives. First, it gives content creators who already embed metadata in their work a place to indicate that the work has metadata and to describe that metadata. Second, it notifies claimants who may not be aware of metadata that this is something that could be used to embed copyright management information in their work. If more people embed this type of metadata in their content, that content will be more easily traceable. If those works are more thoroughly described and more easily traceable, they are less likely to be misused and less likely to become orphan works.