

BEFORE THE UNITED STATES COPYRIGHT OFFICE

In re: Copyright Protection for Certain
Visual Works

Docket No. 2015-01
Fed. Reg. Vol. 80, No. 79

REPLY COMMENTS OF PUBLIC KNOWLEDGE

Attn: Catherine Rowland, Senior Advisor to the Register of Copyrights

Public Knowledge respectfully submits the following comments in response to the Notice of Inquiry on Copyright Protection for Certain Visual Works dated April 24, 2015.

Public Knowledge is a nonprofit organization dedicated to representing the public interest in digital policy debates. Public Knowledge promotes freedom of expression, an open internet, and access to affordable communications tools and creative works. In reviewing the initial round of comments, a number of themes emerge. Three of these are the role of internet search engines in the visual works marketplace; the difficulties faced by creators of visual works in registering their works; and the difficulty of protecting ownership-identifying metadata.

Search Engines

A number of initial comments discussed the role of search engines in the marketplace for visual works. While many commenters view search engines as a source of challenges, they may also prove to be a solution to other challenges. Search engines already enable users to initiate reverse-look-ups of images, allowing them to discover information and context about images, including ownership and licensing information. Effective and efficient image search engines would enable good faith users of images to identify the authors and rightsholders of images, improving the functionality of the licensing market as well as reducing the ongoing orphan works problem. Public Knowledge believes that rather than the creation of a single Office-run or Office-endorsed platform, the better method of promoting growth and innovation among such

search engines is the promotion and protection of policies that allow current market players, and future market entrants in the search engine business, to develop and operate image search engines.

Reinforcing and promoting robust fair use protections for non-expressive uses of works that increase access is fundamental to any effort to promote innovation and growth in the marketplace for image search engines. Rather than cast too skeptical an eye on efforts to digitize and index more materials, the Office and the visual works community should embrace efforts to increase the likelihood of a user finding accurate information about the image and its owner. In fact, the Office can go further in aiding this effort by making its library of deposited digital images available for appropriate indexing by search engines.

Registration

A common theme among commenters is that the registration process as currently exists poses a number of difficulties for creators of visual works. Public Knowledge supports easing the the path to registration for works of any type. Increasing the probability that a work is registered has the benefit of also relieving the orphan works issue, and reducing uncertainty for potential licensees trying to identify the owners of works.

However, any reform of the registration process should be focused on increasing incentives to register, not decreasing them. We disagree with the suggestion raised by at least one commenter that the availability of attorneys fees and statutory damages should not be coupled to registration. The correct approach to ensuring artists have access to remedies is easing registration, not severing it.

17 U.S.C. § 1202

The integrity of metadata in digital copies of visual works was raised by a number of commenters, who identified the stripping of metadata from files as a significant

challenge to monetization and licensing. However, 17 U.S.C. §1202, the provision of the DMCA that protects the integrity of copyright management information, a seemingly directly relevant statute, has received almost no attention among the direct replies to this NOI.

Public Knowledge encourages the Copyright Office to consider §1202 more closely in relation to the metadata integrity issue. We note that §1203(c)(3)(B) offers victims statutory damages ranging from \$2,500 to \$25,000 for violations of §1202. This compares favorably to statutory damages for infringement of copyright under §504(c)(1), which begin can range as low as \$750 per work infringed. A better understanding of how §1202 functions, and what difficulties rights holders face in using it should inform any further consideration by the Office on the topic of metadata.

Copyright Office Modernization

Many commenters have tied their comments on many issues to the condition of IT infrastructure and funding at the Copyright Office. Insofar as improving the Office's abilities to rapidly process registrations, make registration of works easier, and increase the public's access to the Office's records, Public Knowledge concurs with other commenters and supports increased investment in the Office's IT systems and increasing funding for the Office. Both the creator community and the public at large deserve a modern, digital, efficient, and accessible Copyright Office.

Respectfully submitted,

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