

Before the
UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of Deposit Requirements for
Registration of Automated Databases That
Predominantly Consist of Photographs

Docket No. 2011 – 2

Comments of Public Knowledge

Public Knowledge commends the Copyright Office’s decision to require the submission of all photographs in a compilation database when those photographs are being registered with the Copyright Office. This requirement is an important step towards a complete Copyright Registry.

Our copyright system functions best when it is easy to quickly and accurately identify the owner of copyrighted material. Without the ability to identify copyright ownership, it is hard for the public to make use of works and hard for creators to be compensated for that use.

The consequences of being unable to identify the rightsholder of a work are vividly illustrated by the status of orphan works. These works are protected by copyright but unlicensable by the public because there is no way to accurately identify and compensate the true rightsholder. As a result, these untraceable works are trapped in limbo. Permission to use the works cannot be requested and therefore will never be granted. Culturally significant works become obscure when the very act of disseminating them creates liability that cannot be cleared. Making the Registry less effective by allowing registration without deposit exacerbates this type of problem.

The Copyright Office's Copyright Registry should be the first place that the public looks to determine such ownership information. Any member of the public should be able to easily determine if a work is included in the Registry. If the work is registered, it should also be straightforward to determine the owner of that work.

This rule change will help to advance that goal. The Copyright Office is correct in noting that there is no reason to create a special exception from individual registration for entities registering large numbers of works. The mere existence of a database containing individual works should not allow rightsholders to avoid submitting the individual works being registered. In most cases the primary value of a database of visual works is derived from those individual works. As such, the individual works should be individually registered in the Registry. An exception to the general deposit-for-registration rule works counter to the goals of a complete Registry by allowing parties registering the largest number of works to avoid depositing individual copies of those works with the Registry.

Public Knowledge hopes that this proposed rule is the first in a series designed to improve the utility of the Registry, and by extension the copyright system. The first step down that path, as embodied by this change, is to guarantee as complete a Registry as possible.

The second, and perhaps more challenging step, is to make that Registry useful to the public. That means creating tools for simple online access to, and searching of, the Registry. The Copyright Office is correct to recognize the inadequacy of descriptive

identifying material when compared to actual images.¹ Public access to the Registry cannot merely be text-based, as copyright covers so much more than the written word. In addition to text and keyword search, the Copyright Office should create tools for visual searching of visual works. Generic keywords and written descriptions are simply inadequate ways to search the entire body of registered visual works.

Creating a way for the public to accurately search for the ownership information for visual works would provide a great benefit to the visual artist community, which currently faces a number of challenges in identifying and tracking the use of its work. It would also simplify the identification of rightsholders for the public. Currently, the public can only search for a visual work through the use of keywords. If the artist is unknown and the subject of the work is abstract, unclear, or generic, such a system is often ineffective. In contrast allowing the public to search the Registry visually, potentially by submitting a copy of the work in question to a visual search engine that can match submissions to deposits in the Registry, would be an effective way to determine ownership information and copyright status of the work.

Public Knowledge supports the Copyright Office's attempt to build a more complete Registry by requiring the submission of each individual work during registration. Furthermore, Public Knowledge hopes that this is the first step towards a truly authoritative and user-friendly copyright Registry housed within the Copyright Office.

¹ Deposit Requirements for Registration of Automated Databases That Predominantly Consist of Photographs, 76 Fed. Reg. 5106 at 5107 (Jan. 28, 2011).

Respectfully submitted,

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