



AUTHORS
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Regan A. Smith
General Counsel and Associate Register of Copyrights
U.S. Copyright Office
101 Independence Ave. S.E.
Washington, D.C. 20559-6000

By Electronic Submission

RE: Comments to Notification of Inquiry for Registration Modernization

Dear Ms. Smith:

Authors Alliance welcomes the opportunity to offer comments in response to the United States Copyright Office's Notice of Inquiry on Registration Modernization.¹ Authors Alliance is a nonprofit organization representing the interests of authors who want to take advantage of opportunities of the digital age to share their creations with readers, promote the ongoing progress of knowledge, and advance the public good.² Our members share the Office's interest in ensuring that the public record of copyright claims is as timely, complete, and accurate as possible.

Alongside other educational efforts, Authors Alliance provides resources and tools to help authors understand the benefits of registering works, how to register works, and when to update or supplement a registration.³ Our resources emphasize the importance of registration to creating a public record of copyright ownership, enabling would-be users of works to identify and locate the copyright owner in order to ask for permission or a license to make uses that are within the copyright owner's exclusive rights, to provide attribution to the author, or to discover when a work is in the public domain. These resources also explain that some benefits, such as statutory damages, are dependent on registration.

Because of the importance of a well-functioning registration system to authors, Authors Alliance applauds the Copyright Office's work to build a modernized registration system that meets the demands of the digital age. We welcome the development of a new technological

¹ Registration Modernization, 83 Fed. Reg. 52336 (Oct. 17, 2018).

² For more information about Authors Alliance, see Authors Alliance, *About Us*, www.authorsalliance.org/about/.

³ Authors Alliance, *Copyright Fundamentals*, <https://www.authorsalliance.org/resources/copyright-fundamentals/>.

infrastructure system with accompanying legal and policy changes to improve user experience, increase Office efficiency, and decrease processing times.

To amplify the effects of this work, Authors Alliance encourages the Office to initiate or commission an empirical study of authors' views on the advantages of and barriers to registration to evaluate why only a fraction of eligible works are registered. With additional information from authors, the Office could restructure incentives to register copyright claims in order to promote greater participation in the Office's registration system.

We hope our comments, attached, will be helpful as the Office makes plans to improve the regulations and practices related to the registration of copyright claims.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brianna Schofield". The signature is fluid and cursive, with the first letter of each word being capitalized and prominent.

Brianna Schofield
Executive Director, Authors Alliance

4. Dynamic Pricing Models: Should the Office replace the Single, Standard, and group applications with a dynamic pricing model that scales fees based on the number and type of works submitted for registration?

Authors Alliance supports efforts to make registration more affordable to all copyright owners. An empirical analysis of Copyright Office data on the annual number of copyright registrations suggests that the rate of registration decreases in response to small increases in registration fees.⁴ As the Office acknowledges, “when fees are set too high, potential users—including non-profit or non-commercial users—will be unable or unwilling to pay and simply will stop participating at all and the public record will suffer.”⁵ Without a public record of ownership, authors can miss out on the chance to grant permission for uses they would welcome (perhaps even without payment) and would-be users may abandon potential onward uses of the work. For these reasons, we appreciate the Office’s exploration of alternative models for calculating fees.

The Office invited comments on a dynamic pricing model that scales fees based on the number and type of works submitted for registration. Authors Alliance believes that scaled fees, carefully implemented, could help balance the Office’s cost-recovery goals with the price elasticity of demand for registration and provide a more equitable way of accounting for the varying complexity of claims.

The Office also invited comments on alternative methods for calculating fees that would sustain the Office, provide equity to users, and encourage registration. We encourage the Office to explore additional methods for differentiating fees, taking into consideration authors whose works have an unproven or low commercial value.⁶ For example, one approach for differentiated fees for registration, proposed by Robert Brauneis, is “to charge tiered registration fees for different statutory damage ceilings, or different packages of registration benefits more generally.”⁷ In this way, “[r]egistrants who believe that their works are likely to be of lower value, or who are not particularly interested in protecting the copyright value of their works, could pay substantially less for registration, while receiving a registration with a lower statutory damages ceiling.”⁸ While this approach would require legislative action, we encourage the Office to consider this and other ways to differentiate fees to accommodate all

⁴ William M. Landes & Richard A. Posner, *THE ECONOMIC STRUCTURE OF INTELLECTUAL PROPERTY LAW* 235 (2003); *see also* Christopher Sprigman, *Reform(aliz)ing Copyright*, 57 *STANFORD L. REV.*, 485, 513-14 (2004).

⁵ Copyright Office Fees, 83 Fed. Reg. 24054 (May 24, 2018).

⁶ For more details on Authors Alliance’s suggestions for making registration and recordation more affordable for authors whose works have unproven or low commercial value, *see* Authors Alliance, Comments Submitted in Response to the U.S. Copyright Office’s May 24, 2018 Notice of Proposed Rulemaking Fees.

⁷ Robert Brauneis, *Properly Funding the Copyright Office: The Case for Significantly Differentiated Fees*, GWU Law School Public Law Research Paper No. 2017-58, at 23 (July 4, 2017), *available at* https://scholarship.law.gwu.edu/faculty_publications/1298/.

⁸ *Id.* at 24.

creators' needs in order to maximize participation in the registration system and provide the public with information about the largest possible number of works.

9. The Rights and Permissions Field: Should the Office allow authorized users to make changes to the Rights and Permission field in a completed registration?

The benefits of recordation cannot be realized unless the public record about copyright owner information is accurate and up to date. For this reason, Authors Alliance supports the Office's efforts to build a registration interface that allows users to update Rights and Permissions information without having to submit a supplementary registration together with the associated fee. Currently, the costs associated with updating the Rights and Permissions field discourages users from updating contact information, leading to inaccurate records and contributing to the orphan works problem.⁹ Authors Alliance believes that eliminating fees and streamlining the process for updating the Rights and Permissions field will improve the accuracy of the Office's records.

Moreover, Authors Alliance encourages the Copyright Office and Congress to reinforce this change by providing meaningful incentives to encourage copyright owners to keep contact information accurate and up to date. For example, Congress might amend the Copyright Act to limit the remedies available to owners who do not timely update their contact information when a defendant can show that the inaccurate information derailed a good faith attempt to secure permission from the owner.¹⁰

10. Additional Data: What additional data should the Office collect on applications for registration? For example, should ISBNs or other unique identifiers be mandatory? Should the Office accept other optional data?

Authors Alliance urges the Office to accept optional data documenting licensing terms, including information about any applicable public license, with a registration application. A significant benefit of registration records is to help potential users of works to identify and

⁹ See Robert Brauneis, TRANSFORMING DOCUMENT RECORDATION AT THE U.S. COPYRIGHT OFFICE 128-29 (Dec. 2014), <https://www.copyright.gov/docs/recordation/recordation-report.pdf> (describing how high costs virtually guarantee that contact information will rarely be updated at the Copyright Office and recommending that the Office reduce fees for entering a change of address to a nominal or zero fee).

¹⁰ See AUTHORS ALLIANCE, *Principle 2: Improve Information Flows About Copyright Ownership*, <http://www.authorsalliance.org/principles-and-proposals-for-copyright-reform/principle-2/> (last visited June 26, 2017) (recommending that the incentives for updating copyright owner contact information be strengthened). See also Daniel Gervais & Dashiell Renaud, *The Future of United States Copyright Formalities: Why We Should Prioritize Recordation, and How to Do It*, 28 BERKELEY TECH. L.J. 1460, 1492 (2013) (recommending that “[t]ransferees should have an obligation... to keep their contact information up-to-date” and, at a minimum, “if a user requested that the Copyright Office send a notice to the last known address... of a transferee and the transferee fails to respond... then copyright should not be enforceable beyond minimally required remedies”).

contact a copyright owner in order to ask for permission or a license to make uses that are within the copyright owner's exclusive rights. Optional data about licensing terms, which could include links to automated licensing platforms, would improve the utility of the public record by further streamlining licensing transactions.¹¹ One promising use case for this optional field is for documenting when a work is made available under a public license, such as a Creative Commons license.¹² With nearly 1.5 billion works available under a Creative Commons license,¹³ integrating data fields that capture this licensing information would help to facilitate countless socially beneficial uses of copyrighted material.

13. Linking Registration and Recordation Records: What considerations should the Office take into account in expanding the Online Public Record to connect registration and recordation records and provide chain of title information?

Authors Alliance encourages the Office to expand the Online Public Record to connect registration and recordation records. When records of transfers of copyright ownership and terminations of transfers are linked to registration records, it increases the likelihood that users will be able to locate current and accurate contact information for copyright holders, better facilitating licensing and permissions requests. As a result, authors who want to prevent their works from becoming orphans, as well as those who want to use other authors' works, will benefit from improved links between registration and recordation records.

¹¹ See Brauneis, *supra* n. 9, at 127 (stating that rights and permissions information could include licensing terms and links to automated licensing platforms, thus further streamlining licensing transactions).

¹² See Creative Commons, <https://creativecommons.org/>.

¹³ Creative Commons, *State of the Commons*, <https://stateof.creativecommons.org/>.