

Submitted by Emily Feltren, Director of Government Relations

January 14, 2019

Ms. Karyn A. Temple
Acting Register of Copyrights
United States Copyright Office
101 Independence Avenue S.E.
Washington, D.C. 20559

RE: Registration Modernization: Notification of Inquiry and Request for Comment (83 F.R. 52336, Docket No. COLC-2018-0009)

Dear Ms. Temple:

The American Association of Law Libraries (AALL) is pleased to submit these comments in response to the Copyright Office’s October 17, 2018 Registration Modernization: Notification of Inquiry. We appreciate the Copyright Office’s diligence in requesting input from stakeholders as it considers building a new registration system.

AALL’s comments specifically address Part II.C (“Public Record: How Users Engage and Manage Copyright Office Records”). We focus these comments on advocating for expanding the Online Public Record to include refusals, correspondence, and appeals records along with updated contact information of copyright owners.

I. The Online Public Record Should Include Refusals, Closures, Correspondence, and Appeals to Assist the Public in Understanding What Constitutes Copyrightable Subject Matter

Law librarians and legal information professionals frequently assist patrons with researching copyright-related questions, such as whether a work can be registered for copyright protection and how to register a work with the Copyright Office. AALL supports publishing refused registration application records, full versions of correspondence records, and associated appeal records in the Online Public Record because we believe it would help the public better understand the originality requirement in copyright law and assist those who wish to register a claim to a copyright understand the contours of what “constitute[s] copyrightable subject matter.”¹

A work that is protected by copyright law must possess “at least some minimal degree of creativity.”² More detailed copyright registration records would assist prospective

¹ 17 U.S.C. § 410(b) (2012).

² *Feist Publ’ns, Inc. v. Rural Telephone Serv. Co.*, 499 U.S. 340, 345 (1991).

copyright registrants in determining whether their works would successfully surpass the minimal creativity threshold. Access to more information about previous claims that are refused, withdrawn, or appealed would also better inform decisions made by members of the public who are contemplating applying for copyright registration or requesting reconsideration.

II. The Online Public Record Should Include Updated Copyright Owner Contact Information and Complete Chain of Title Information to Encourage Users to Properly Obtain Permission for Use and to Avoid Contributing to the Orphan Works Problem

AALL supports a balance between the rights of users of information and the rights of copyright owners and licensors. Registration is a necessary prerequisite for a copyright owner to bring an action for copyright infringement.³ An expanded Online Public Record would reduce the complications and challenges of identifying copyright owners and thus would encourage users to lawfully obtain permission or a license for use.

Access to comprehensive copyright registration information that is dispositive of copyright status and current ownership in an expanded Online Public Record would help others avoid accidental or innocent infringements by making it easier for users to recognize whether a work is still protected by copyright and consequently whether obtaining permission or a license is necessary prior to using the work. An opt-in system that permits snippets of deposits or thumbnail images would assist the public with determining whether a work is registered for copyright protection, especially if the database offers the ability for users to conduct reverse image searches. This feature would be useful for law librarians and legal information professionals, who assist members of the public, faculty, attorneys, and other library users identify copyright information. For example, academic law librarians could use the tool to assist faculty members with determining who owns the copyright of an image to ensure that proper attribution is provided and that any necessary permission to use the work is obtained.

Inclusion of up-to-date contact information of current copyright owners in the Online Public Record would minimize the risk of works becoming orphan works. AALL supports the movement of materials into the public domain when their copyrights expire. A recent Copyright Office report acknowledged that the inability to identify or contact a copyright owner prevents the creation of new works or use of works through either obtaining permission or by license.⁴ Because copyright law permits transfer of

³ 17 U.S.C. § 411.

⁴ See U.S. Copyright Office, *Orphan Works and Mass Digitization* (June 2015), <https://www.copyright.gov/orphan/reports/orphan-works2015.pdf>.



ownership,⁵ the Online Public Record should also include detailed information about change of ownership and recordation of transfer. Updated contact information and complete chain of title information would assist users who are attempting to obtain permission to use a work with accurately identifying and contacting the current copyright owner.

We recommend for the modernized registration system to include a mechanism for current copyright owners to update their own contact information to better ensure that the information remains up-to-date, thereby reducing the risk of a work becoming an orphan work, encouraging proper attribution by others, and facilitating users with properly obtaining permission or a license to use a work.

III. Conclusion

AALL reiterates its appreciation to the Copyright Office for undertaking this inquiry and for the opportunity to comment.

⁵ See 17 U.S.C. § 201.