

UNITED STATES PATENT AND TRADEMARK OFFICE, DEPARTMENT OF
COMMERCE AND NATIONAL TELECOMMUNICATIONS AND INFORMATION
ADMINISTRATION, DEPARTMENT OF COMMERCE

REQUEST FOR COMMENTS
CONCERNING
DEPARTMENT OF COMMERCE GREEN PAPER, COPYRIGHT POLICY,
CREATIVITY, AND INNOVATION IN THE DIGITAL ECONOMY
Published at 78 Fed. Reg. 61337 (OCTOBER 3, 2013)

WRITTEN COMMENTS OF
COPYRIGHT CLEARANCE CENTER, INC.

November 13th, 2013

I. INTRODUCTION

Copyright Clearance Center, Inc. (“CCC”), submits these written comments in response to the request of the USPTO and the NTIA as set forth in their “Request for Comments on Department of Commerce Green Paper, Copyright Policy, Creativity and Innovation in the Digital Economy,” (“Request for Comment”) published at 78 Fed. Reg. 61337 (October 3, 2013). Our comments are limited to the questions relating to the “Government Role in Improving the Online Licensing Environment.”

CCC has been engaged for more than 35 years as a centralized licensing hub for text-based copyrighted materials, enabling the issuance of licenses on behalf of rightsholders to users of all kinds, including academic, business, government and non-profit organizations. In the course of our business, we regularly assist users in completing permissions transactions concerning rights and royalties for text works and, to a lesser extent, other media types. We enjoy long-standing and close relationships with publishers, authors, and other rightsholding and representative groups.

In July 2012, the UK’s Intellectual Property Office issued an independent report entitled: *Copyright Works: Streamlining Copyright Licensing for the Digital Age* (“Copyright Works”).¹ This report, authored by Richard Hooper, CBE and Dr. Ros Lynch, investigated many of the issues raised in the current Federal Register Notice, and concluded that a public/private collaboration should be undertaken by the UK government to ease licensing in the online environment. *Copyright Works* stated that: “[i]n building the Copyright Hub, much can be learnt from the CCC which since 1995

¹ <http://www.ipo.gov.uk/dce-report-phase2.pdf>

has been conducting digital commerce and acting as an ‘online hub’ for the publishing industry and therefore doing what the UK Copyright Hub would aspire to do across all creative sectors and many markets both nationally and internationally.”² CCC was subsequently invited to join the Copyright Hub Launch Group, where we worked with a cross media sector team to develop and launch the first phase of the UK Copyright Hub. CCC continues to be directly involved in the subsequent phases of the Hub’s development. Our responses below are informed in part by these experiences.

At CCC, we believe that a voluntary, cross-media registry developed and maintained by industry and market participants – supported as appropriate by the Federal Government through statute, regulation, the identification of best practices, and/or funding – would provide an effective and sustainable means of ensuring that whatever system is put in place continues to reflect the public policy of respecting the rights of copyright rightsholders. Add a transactional (i.e., pay-per-use) licensing component to that registry concept, and the contours of a functional and valuable US Copyright Hub begin to emerge.

Further, CCC believes that any approach to addressing the wide number of issues relating to copyright will require careful balancing of the rights and privileges of both rightsholders and users, particularly in the context of the international obligations of the United States, under Berne and other controlling treaties, and we appreciate the opportunity to provide information for consideration in that process.

II. BACKGROUND AND GENERAL COMMENTS ON THE SOCIAL AND ECONOMIC UTILITY OF VOLUNTARY COLLECTIVE LICENSING

CCC was created at the suggestion of Congress in the legislative history of the Copyright Act of 1976, and has been engaged in the licensing of the copyrighted works of others since the effective date of the Act on January 1, 1978. We are a not-for-profit corporation established by a group of authors, publishers and users that had worked with Congress in its revision of the Act. To this day, we bridge all of those communities, with representatives on our Board of Directors not only from the author and publisher communities, but from user communities as well.

Since 1978, CCC has evolved. What started as a simple transactional service – still in use today – through which rightsholders and users can exchange, one-by-one, permissions and royalties relating to the licensing of photocopying on an as-needed basis, is today an integrated licensing and copyright management organization. CCC offers global transactional and repertory licenses for traditional as well as digital uses to business and governmental organizations. We have also developed and currently operate RightsLink, an automated licensing facility that permits copyright rightsholders to issue licenses to use their materials directly from the point of content on their websites. We also provide other rights awareness and management tools to both rightsholders and users. Today, CCC manages hundreds of millions of rights to tens of millions of works,

² Copyright Works, p. 10.

and holds information relating to many more. We issue repertory licenses to thousands of businesses and other organizations with, collectively, more than 25 million employees. We operate high-volume transactional licensing services over the Internet.³ We cooperate with counterpart organizations in other countries to license millions of uses and users abroad, and we have distributed over \$1 billion to participating rightsholders over the past seven years. CCC also delivers on-site and online copyright education programs through collaboration with thought leaders, government agencies and policy makers.

Based on our development of these capabilities, plus our long track record of voluntary licensing and our permissioning technologies, we believe it is possible for a US Hub to serve the purposes of copyright law – namely, the creation, distribution and use of works through a balanced system of rewards for creators and convenient access for users. Such a Hub would encourage respect for copyright, help locate rightsholders wherever possible, and facilitate good faith use by users with copyright-consistent intentions.

Perhaps more importantly, CCC’s experience has proven that while the development and operation of such a system is feasible, as well as potentially convenient and valuable for rightsholders as well as users, the design, development and maintenance of such a network of resources cannot and must not be viewed as cost-free. A practical understanding of the economic realities of handling “big data” leads inexorably to the conclusion that a sustainable, interoperable, and publicly-accessible network of databases of rights and licensable works will require considerable and ongoing investment and technical expertise, especially to ensure interoperability and convenience.

CCC’s own existing systems for, and expertise in, managing rights and works and recording uses – originally designed to help rightsholders and users address a relative market failure (how to license high volumes of transactions of relatively low value) – are conceptually similar to the approach envisioned here. In essence, the opportunity for low-value, high-volume licensing where it does not now exist could be substantially addressed through creation of a Registry+Licensing facility, containing ownership and rights data/metadata created by networked databases in existing sector specific registries (such as those maintained by collecting societies for performance and mechanical reproduction rights in music; e.g. the Global Repertoire Database being created in the music industry;⁴ or the image registry maintained by PLUS, the Picture Licensing Universal System⁵) while providing federated research capability across the entirety.

A voluntary Registry+Licensing facility of this nature would provide important benefits to users interested in carrying forward copyright policy. And it would do so while imposing a minimal burden on copyright rightsholders and without altering the existing copyright registration system or implicating the prohibitions against formalities in the Berne Convention. In fact, it would provide users with a central source of information

³ Annually, tens of thousands of these licensing transactions are for amounts under \$100, that is, the category of high-volume, low-dollar-value licenses referred to in *Copyright Works*. Many of the transactions CCC processes are for zero dollars, per the business rules set by publishers.

⁴ <http://globalrepertoiredatabase.com/>

⁵ <http://www.useplus.com>

(supplemented, preferably through network connections, by the private-sector sources noted in the answers to specific questions below) that would help in finding a rightsholder even when the work at issue has not been registered in the Copyright Office. The Registry+Licensing facility, being voluntary, would not require the filing of new formal ownership or transfer documents, and yet has the potential to eventually provide users with precisely the information they need on how to find a rightsholder, and, when appropriate, to obtain a license.

The keys to meeting the core public interest goals embedded in the copyright system lie in technology, data, databases and registries. Fortunately, increasing amounts of data about works and rights, and technological advances in finding rights even in the absence of basic data, continue to make it easier to locate copyright holders. CCC believes that existing and new registries and licensing facilities, constantly updated by qualified and authoritative data, and interoperable among themselves, would well serve the public policy interests of all concerned. While we do not think all rights issues would be immediately solved by the creation of a Hub, making these systems more interoperable will over time both reduce the number of potential infringements and make it easier for users to either acquire necessary licenses with less effort or to exercise their fair use privileges with greater certainty.

III. QUESTIONS FROM THE USPTO/NTIA

CCC addresses below the six questions in the Request for Comment specifically relating to the government's role in improving the online licensing environment.

“Q.16. What are the biggest obstacles to improving access to and standardizing rights ownership information? How can the government best work with the private sector to overcome those obstacles?”

In the domain of rights information, the US Copyright Office continues to make major strides towards digitizing its rights information in order to make it available online. This policy direction was recently articulated by Register of Copyrights Maria Pallante⁶. Additionally, such international initiatives as the Linked Content Coalition and the EC-sponsored Rights Data Integration initiative⁷, as well as the PLUS Specification (for images)⁸, are making significant progress towards standardizing rights ownership description, including author information and works metadata. The domain of text publishing has made substantial progress as to the use of unique identifiers, although in the newly emergent sectors such as blogging and independently-generated (or self-published) content, fewer standards have as yet caught on. One standard that has caught on in text publishing is the Digital Object Identifier (DOI) system. DOI provides a

⁶ <http://www.copyright.gov/regstat/2013/regstat03202013.html>

⁷ <http://www.linkedcontentcoalition.org>

⁸ <http://ns.useplus.org/go.ashx>

standard and a system of implementation for identifying and navigating to authoritative locations of digital works. It is administered through a federated registry system, with nearly a dozen registries worldwide providing content identifiers in different domains, all under the auspices of the International DOI Federation (IDF).⁹ In the US, the CrossRef organization serves as the official DOI registry for scholarly content, with tens of millions of unique identifiers served.¹⁰ Similarly, ORCID¹¹ is a unique identifier for scholarly researchers created in large measure to solve name disambiguation issues; it provides authoritative information about individual researchers and links them with their research products (whether in publications or on websites). However, there is no “DOI for Everybody” nor an “ORCID for Everyone.” Other than the DOI, unique, persistent standard identifiers are still relatively uncommon at the article level and nearly non-existent for smaller units of content (e.g., tables, graphs, charts). In this context, we note that CCC’s RightsLink uniquely identifies each article for which the service is available (and is able to uniquely identify other units of content should a copyright holder choose to manage its rights in that way). Additionally, through use of CCC’s publicly accessible web site, copyright.com, *anyone* can check a title or publisher for any work known to our database, which now encompasses tens of millions of works. In the future, other identifiers such as the Uniform Resource Identifier¹² or even the humble UPC barcode may come to play a more important role in addressing the need for identifying information for works under copyright.

CCC participates in standards development through NISO and other organizations and is actively involved in international efforts such as the Linked Content Coalition and Rights Data Integration. However, the lack of broadly-distributed standardization is but one obstacle. Because, under US law, any eligible work in a “fixed form” is likely already subject to copyright, there are an unprecedented number of web-available works potentially falling within the scope of the Registry+Licensing facility. User-friendly tools for meeting this need should be crafted, and made freely available; in such a context, CCC would look forward to participating in development, publicizing and distribution efforts.

In CCC’s opinion, in addition to helping to coordinate development of the Registry+Licensing facility, i.e., a US Copyright Hub, the Federal Government can and should play an enabling role in facilitating and coordinating development and/or use of unique content identifiers for works protected by copyright, and through encouraging use of those identifiers through publicizing best practices and facilitating industry agreements. Ideally, these identifiers would be inexpensive and ubiquitous. This could be done in collaboration with other such initiatives, such as the UK Copyright Hub. Based on our experience and our skills, CCC would be prepared to participate, should any such initiative emerge.

⁹ <http://www.doi.org>

¹⁰ <http://www.crossref.org>

¹¹ <http://orcid.org>

¹² <http://www.ietf.org/rfc/rfc3986.txt>

“Q.17. To what extent is a lack of access to standardized, comprehensive, and reliable rights information impeding the growth of the online marketplace? What approaches could be taken to improve the situation?”

A copyright hub that provided seamless licensing would go a long way towards reducing the friction of rights commerce without impacting the value of protected content.

Online marketplaces for works under copyright, and for rights to use those works, have developed more rapidly in some contexts than in others. For example, as discussed in the Green Paper, robust legitimate markets are already in operation for rights to use music, movies and other video works. CCC’s site, copyright.com, while primarily intended for licensing rights to use text works, provides an example of another such marketplace, one which has been transacting licensing business for nearly 20 years. The distributed network of rights to use books and articles enabled by RightsLink licensing is another. Other leading aggregators of rights and works also offer searchable catalogs and licensing. Examples include: Online Computer Library Center, Inc. (OCLC); ASCAP; BMI; The Harry Fox Agency; CEPIC.org; the Internet Movie Database (IMDB, a division of Amazon); and SoundExchange.¹³

In the context of a copyright hub, a validated pool or “meta-catalog” of domain-authoritative and publicly searchable databases would itself amount to a new and valuable publicly-accessible resource. Deploying even basic interoperability across databases of rights and works – through APIs or other standard means – would provide important new value to the public.

While all of these disparate markets function effectively within their domains, the requirements of today’s complex works stretch well outside the scope of any one of them. What was once a print textbook incorporating rights to images from a dozen different providers and text from a dozen other courses, is now an integrated “learning object” including all of the foregoing, plus music, podcasts and videos. With the introduction of the Common Core in K-12 education, curricula and assessments are likewise required to include alternative media and alternative sources.

“Q.18. Are there other obstacles that exist to developing a more robust, effective, or comprehensive online licensing environment? If so, what are they?”

An overarching concern results from contemplating the sheer multitudes of rightsholders – certainly numbering in the hundreds of millions just for published works across media and just in the United States – multiplied by the variety of their appertaining rights. The complex and expansive nature of this problem – involving a multiplicity of parties and

¹³ <http://oclc.org> ; <http://www.ascap.com> ; <http://www.bmi.com> ; <http://www.harryfox.com> ; <http://www.ceplic.org> ; <http://www.imdb.com> ; <http://www.soundexchange.com> .

millions of works, both large and small, formally published and formally unpublished – will make this an extremely difficult system to envision creating a sustainable and cost-effective design for. Large, authoritative databases of rights and works – especially those with an e-commerce functionality that makes available a licensing facility, such as we provide at copyright.com – are no small undertaking to develop and maintain. Further, a requirement for such databases to interoperate in a network adds another layer of intricacy. Even just managing the complexity of the “bundle of rights” inherent in a single copyright itself amounts to a knotty problem. And as we have learned through the development and deployment of our online licensing service offerings across two decades (and the offline offerings that preceded and accompany them), even the customer service and invoicing aspects themselves represent significant undertakings.

The classic obstacle to the formation of marketplaces like a US Copyright Hub can be described as the “chicken and egg problem”: no one will shop in an empty marketplace, but there are few incentives to set up shop in a marketplace that no one visits. Fostering new markets like the digital hub requires participation from buyers *and* sellers. Established and trusted industry players, such as Collective Management Organizations (CMOs) – including Performance Rights Organizations (PROs), in the music space and Reproduction Rights Organizations (RROs) in the text space – are optimally positioned to provide sustainable solutions in this regard. Further, licensing only comes into play beyond the statutory authorization provided by fair use and other exceptions in the law. In any scenario, a continuing, sustainable directing body of industry and market participants would be critical to clarifying and iteratively addressing these issues. No party should succumb to the temptation to regard these issues and opportunities as easily resolved. It takes hard work – and significant investment of resources – to make copyright easy, and to get rights right. (And if you do get rights right, the market then changes.)

“Q.19. In addition to those efforts to develop standardized, comprehensive, and reliable rights databases and online licensing platforms described in the Green Paper, are there other efforts under way by the private sector or public entities outside the United States? If so, what are they?”

The work of the Linked Content Coalition¹⁴ is bearing fruit in the European Union in the form of the Rights Data Integration (RDI) project, a multi-million-euro European Commission project that brings together organizations from the text, still image, music, movie, and television industries to develop the first international copyright hub. Work on this two-year project is already underway, with CCC’s Product Evangelist serving as RDI’s technical coordinator and technical project manager.

The UK’s Copyright Hub¹⁵, mentioned previously, is progressing into the next phase of its development, having identified a CEO and begun the development of the core hub technology that transmits and translates rights and permission requests among a number

¹⁴ <http://www.linkedcontentcoalition.org>

¹⁵ <http://www.copyrighthub.co.uk>

of providers.

“Q.20. Would a “copyright hub” be a useful endeavor in the United States? If not, why not? If so, how can the government support such a project?”

The value of a Copyright Hub, as discussed in our introductory remarks above and throughout this Comment, lies in the recognition that the creators and distributors of today's content do not confine themselves to a single medium like text or video, but need to reach across the boundaries of today's content industries. A Copyright Hub would provide the capability to coordinate rights transaction activities among a host of providers, reducing the burden of copyright compliance and raising the value of content across the board, thus benefiting both users and rightsholders (who, in the new environment, are often in fact the same people in different roles at different times).

In the domain of text, CCC already covers this need for many traditionally published works. To make the completion of high-volume, low-value transactions efficient at scale and across media types would most likely *not* require a significant change in US copyright law (Title 17 U.S.C.). However, active encouragement by USPTO/NTIA and other involved federal agencies towards self-organizing and voluntary participation by major rightsholders would be a prerequisite to success. In CCC's own system of voluntary, collective licensing, the rightsholders set fees and decide in which services they will participate and with which rights. Our experience indicates this is the best route to sustainability. CCC believes that appropriate provision for cost-recovery in participating organizations is also a critical component.

“Q.21. What role should the United States government play in international initiatives at WIPO or elsewhere?”

21st century copyright is inevitably global. WIPO is an important and valuable component of international copyright and extremely helpful in providing direction and coordination between countries' efforts and exploring IP issues of global importance. The US should certainly continue its participation in WIPO and other global IP initiatives. Likewise, the US should endeavor to work with preexisting, related initiatives such as the UK Copyright Hub and the Linked Content Coalition.

IV. CONCLUSION

CCC looks forward to participating fully in any ongoing development coming out of this inquiry. Careful design and development of a voluntary, industry-maintained Registry+Licensing facility, a US Copyright Hub that is both interoperable and sustainable, should be seen as the cornerstone of any successful approach to the challenges and opportunities arising from this inquiry. In this way, the public interest may be served better, as all of us – rightsholders, users and intermediaries, as well as the

public at large – continue to work toward addressing these issues and opportunities while respecting the balance of interests inherent in copyright law.

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