

Registration of Copyright: Definition of Claimant
Docket No. 2012-3

Comment by David Keller
October 2, 2012

I'm in general agreement with the July 16, 2012 Comment by Public Knowledge.

I believe the Copyright Office can devise better and equitable regulations that address any legitimate concerns expressed by the trade association, the Picture Archive Council of America, Inc., without doing so to the detriment of the public. I disagree with PACA's argument that "when it comes to photographs, there is no real meaningful and accurate record under the current registration practices" is a reason to continue the current practices. I see this as another reason the Copyright Office needs to improve practices to promote accurate records and effectively combat fraud in current and future copyright registrations including through liaison with the Department Of Justice, Anti-Trust Division and other federal agencies such as the Federal Trade Commission and the FBI's White Collar Crime Division. The Copyright Office's ultimate responsibilities are to serve the public and engage in its tasks in a manner consistent with the Constitution of the United States and the public welfare.

The Interim Regulation's footnote should be eliminated. It serves no necessary or proper purpose and is conducive to fraud, waste and abuse. It can reasonably be speculated that the footnote contains some typographical error(s) or even that its inclusion was an error such as unintentional failure to omit a portion of a draft of the Interim Regulation while revising draft language of the Interim Regulation to create the final draft of the regulation as intended to be published. It is known that even the administrative agency which created the Interim Regulation doesn't understand why the footnote exists, how to interpret the footnote and has strong concerns about very serious harms this ambiguous footnote may lead to. Commendably that agency, the Copyright Office, is proposing to eliminate the problematic footnote.

As a member of the public who has read that footnote a number of times in the past either in the regulation itself or quoted elsewhere such as in Copyright Office circulars I have always found it unclear, confusing and in apparent contradiction to one or more sections of the USC. I have had strong concerns about its potential for abuse. It is primarily memorable to me for these reasons and one of my concerns has been how courts may interpret it. Recently I read an appellate court case in which all the justices agreed on a principle that every word of an act is included because it means something and the majority and dissenting opinions spent around a dozen pages analyzing some obscure sentences to reach a decision based on legislative intent. The legislature essentially reenacted the law with a new section stating the statute was to clarify that the court had

been mistaken about the legislative intent and the critical sentences hadn't been intended to change the meaning of the law as it had been prior to a minor rewording. The sentences the court had considered so critical really were "surplus wordage" and a couple other sentences with undisputed meanings were the only words intended to actually change anything.

The wording of the Interim Regulation's footnote appears to be flawed or to extend beyond the powers validly delegated to the Copyright Office. At best, it is simply confusing without more context and tends to promote misleading, inaccurate public records, corruption or the appearance of corruption, incorrect perception of copyright restrictions by the public, improper claims of copyright made either in good faith or with fraudulent intent to violate anti-trust laws and incidentally or deliberately suppress the exercise of Constitutionally protected rights.

In every case, an improper claim of copyright provides the appearance of lawful authority to exercise a limited monopoly that Congress is permitted but not required to create statutes to implement. In stark contrast, the First Amendment of the Constitution of the United States expressly prohibits Congress from making laws which abridge the rights of freedom of speech and press. Improper claims of copyright also create conflicts or potential conflicts with the Fourth, Fifth, Sixth, Eighth and Nine Amendments.

I approve of the Copyright Office amending its regulations governing the definition of a "claimant" for purposes of copyright registration by eliminating the footnote to the definition of a "claimant" in 37 CFR 202.3(a)(3)(ii).