

COPYRIGHT OFFICE MAKES FINAL DECISION ON CATALOG RECORD

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SUMMARY

The content of the Copyright Office's online public catalog has evolved from detailed records of the '70s and '80s to streamlined records of the '90s, and more recently to the practice of using only the copyright application as a source for transcribing cataloging information (a temporary measure to deal with the backlog) to future plans for a drastically changed record with little bibliographic description. For the past six years, the Copyright Office has been involved in planning for a reorganization designed to improve public service. Copyright Office staff who work with the public had requested that the reengineering process consider users' needs and provide for a catalog record with more complete bibliographic information taken from both the copyright application form and the deposited copy of the work (i.e. the book, piece of music, work of art, etc.) The Register of Copyrights decided instead in March 2005 and again in her revised decision of February 2006, that the record should contain less bibliographic data and should be limited mostly to the legal facts of the registration taken from the application. She argues that bibliographic information is available on the Internet or in other databases and that too much bibliographic data muddies a clear statement of the copyright facts. This paper argues that standard bibliographic descriptions are needed to make the copyright records both coherent and useable, and to provide some continuity, consistency and integrity in our online public catalog.

Register of Copyrights Marybeth Peters and Special Legal Advisor for Reengineering Nanette Petruzzelli announced a final decision on the catalog record, also called the public record or the registration record, in a memo to Office staff dated February 2, 2006. Although a few changes were made in this recent announcement, the Register's original decision to eliminate universally recognized standards for bibliographic description from the public catalog remains basically the same (see *Catalogers Ponder Their Future: Copyright Office Guts Bibliographic Data from Public Record* in "Bulletin Board: The Voice of the Library of Congress Professional Guild, AFSCME 2910," May 9, 2005, also available online at www.guild2910.org).

In 2004, Robin Coreas (Coordinator of the Copyright Office Online Public Access Catalog Group) had requested that the reengineering process consider the needs of users who generally have in hand only a copy of the deposited work (the book, piece of music, work of art, etc.), which often has additional bibliographic data not found on the copyright application. She asked for a more complete catalog record with bibliographic data taken from both sources. The Register's initial decision, announced in a reply to Ms. Coreas in March 2005, indicated instead that the record should contain less bibliographic information. She argued that it should consist primarily of a statement of the legal facts taken from the application which should appear first in the entry, followed by only a few, if any, bibliographic facts taken from the deposit.

Her rationale outlined in that initial decision was that much of this information is available in other databases or on the Internet by doing a Google search and that giving too much bibliographic data obscures a clear statement of the copyright facts. In a meeting with Office staff several months ago, the Register also spoke about her vision of the newly reengineered Office, where an author would be able to file a copyright application electronically and receive the certificate back within a few days or a week (the process now takes several months).

Ms. Peters's initial decision included statements that physical descriptions and imprints are not relevant in a copyright registration record, and that only names of authors appearing on the application should be included or identified as authors in the record. However, the current decision indicates that short physical descriptions will be given for all works and that imprints will be given for sound recordings (the Motion Picture, Broadcast and Recorded Sound Division uses this information), and for other works where the publisher is different from the claimant (copyright owner).

The guidelines in the recent decision for listing and indexing names that appear only on the deposit seem a little less restrictive than those in the original decision. However, these individuals would not be identified in the record as authors, but would appear only at the end of the record under the heading "Names appearing on Deposit" with no explanation of their relationship to the work being registered. In other words, it would not be clear from the catalog record if individuals identified as "Names Appearing on Deposit" contributed text or editing, illustrations or photography, or if they composed or performed music or directed a motion picture, or were listed for some other reason. This decision was based on the fact that although these individuals may be authors in a bibliographical sense, they may not be the legal authors of

the material being claimed in a particular registration.

Between the time of the Register's original and final decisions, a Registration Records Task Group chaired by Nanette Petruzzelli met to make recommendations for revising the cataloging rules to reflect the Register's decision, and catalogers were given a copy of the preliminary recommendations. The preliminary recommendations contained statements that "the registration record is not a library record" and that its content is determined by "statutory requirements and the need for reasonable searching" and not by any "specific user group(s)" and that "a reasonable search does not necessarily mean a search consisting of only a few attempts to locate the record." Overall, however, the Task Group's recommendations seemed somewhat less drastic than what the Register had originally proposed.

The Register met with catalogers in June and July of 2005, and she was asked why she proposed such drastic changes to a public record that people have used in some form or another since 1790 and with which they must be at least fairly well satisfied. Ms. Peters agreed that these changes were revolutionary but that this was something we were going to try, and that if we find that the new proposed catalog record does not work, it would be changed. When asked whether the public would have a chance to comment on the proposed changes, Ms. Peters replied that she anticipated making an announcement in the Federal Register probably near the end of the summer of 2005. However, there has been no mention in the Federal Register about the proposed changes to the catalog record, as of this writing.

We still hope that a notice about the changes will be placed in the Federal Register. We believe that authors and copyright owners, the public and the Congress should be notified about such monumental changes to a catalog that they have relied upon for so long.

The Register has said that information on the copyright application is generally accepted as true by the Office and that she prefers that the facts be reflected as given by the remitter or applicant, unless they are changed by the registration specialist after consulting with the applicant. Since applications are often filled out by people who are unaware of copyright concepts or Office practices, this is likely to result in strange statements in the records or in a lot of time spent consulting with the applicants.

If remitters can be made aware of the changes and become more knowledgeable about Copyright Office practices, perhaps they will take more time and care to fill out applications correctly and completely. We hope that they will start including on the application all names on the deposit as either authors of the current claim or as contributors of preexisting material and that they will be more careful to describe and distinguish preexisting material from the current claim in clear, concise and understandable language. We hope that they will understand the concept of "a work made for hire" and will include on the application the names of the employees who prepared the work for an employer, who is legally considered the author.

We commend the Register and the Registration Records Task Group for allowing the record to

include physical descriptions and some imprints and some names appearing only on the deposit. However, we are disappointed that the record will contain only a few disconnected bits of bibliographic data from the deposit, tacked on at the end of the copyright facts, like an afterthought.

We are appalled that creators of works, who may have been the original copyright owners before they assigned their rights, or before they granted others permission to create derivative works, or who for various reasons allowed their works to fall into the public domain, are being given short shrift. We are mystified that the deposit, which is also part of the copyright registration along with the application and the \$30 (soon to be increased) fee, and which contains the authorship upon which the copyright claim is based, is largely being ignored.

Imagine that an unknown person writes a novel and that Warner Brothers buys the motion picture rights and hires the person who wrote the novel to write the screenplay. Imagine that the movie then wins an Oscar for best screenplay. The person who wrote the screenplay looks in the copyright database and finds a registration record for the motion picture but can't find himself mentioned, because the screenplay writer appeared only on the deposit and because the screenplay writer isn't always picked up anyway under the current streamlined rules for cataloging motion pictures. He finds a separate record for the screenplay registered as a work made for hire by Warner Brothers as the author and he does find his own name, but it's listed only at the end of the record under "Names Appearing on Deposit" without an explanation of why it is there.

We understand and agree that the primary purpose of the copyright record is to provide a record of the facts of registration. However, an adequate bibliographic description is also needed to identify and distinguish among similar works, different editions and works in various formats, as well as to create a record that is coherent.

Researchers should not have to look in multiple sources, including all over the Internet, to find what they are looking for and to try and make sense out of a lot of disconnected pieces of information.

In the beginning of reengineering, it seemed that the systems used by catalogers in the Copyright Office and catalogers in the rest of the Library would be more compatible and that catalogers would be able to share information more completely, but the Register indicated in her final decision of February 2006 that information from outside sources would not be included in the copyright record, because the information might not be applicable or it might be too hard to verify. In these days of tight budgets, we are puzzled that the Register did not want to follow the recommendations of the original consultant for the reengineering process, Price Waterhouse Coopers, to cooperate more fully with other parts of the Library, which also use the copyright records for their own preliminary cataloging or acquisitions purposes.

The Copyright Office receives many unusual and eclectic works which are not selected by the

Library for its main collections but which could become important to researchers someday. For these items, many of which are unpublished and are stored in the Copyright depository warehouse, the copyright records are likely to be the only catalog records in existence. As such, these records require adequate bibliographic descriptions to identify these works. The copyright catalogs do serve as a supplement to the Library's main catalogs, so in a sense, they are library records, contrary to what has been said.

Besides the article mentioned above, the Guild distributed to its members the results of a survey of copyright catalogers it conducted in late May of 2005. When asked if they thought the quality of the proposed registration record would be better, worse or the same, 92% of those who responded thought it would be worse or much worse. Catalogers find it disturbing that the Register ignored recommendations of Robin Coreas and Copyright Office staff who work with and are familiar with users' requirements.

As part of a planned reorganization, the Cataloging and Examining divisions will merge together and form the Registration Division. To allow for the redesign of their work space on Capitol Hill, they are now scheduled to move over the Fourth of July weekend to Crystal City in Arlington, Virginia, where they will remain for least a year. Since the Division cannot move a huge backlog to Crystal City, catalogers were directed beginning in May of 2005 to use only the copyright application as a source of cataloging information and to ignore the copyright deposits. Of catalogers who answered the survey distributed by the Guild last May, 100% indicated that they thought cataloging from the application only would adversely affect the integrity of the public catalog.

It was hoped that "cataloging from application only" would be a temporary measure until the backlog could be reduced to 50,000, but the backlog is now over 70,000, largely because of problems in converting the serials system to Voyager, the system used by the rest of the Library. However, the old Copyright system COPICS has been temporarily reopened to allow processing of the serials backlog before the move to Crystal City, so we hope that the backlog can be reduced sufficiently and that catalogers can return to cataloging from both the application and the deposit.

In October of 2005, catalogers and examiners began training each other to learn the skills needed to do each others' jobs. This training will continue while they are in Crystal City until they come back to Capitol Hill, when they will, if all goes according to plan, become "examilogers" or registration specialists who perform both examining and cataloging duties. Since catalogers have been involved in cross-training, they have not had as much time to devote to the backlog. Those who have retired or left the Library have not been replaced. Although catalogers and examiners are beginning to see the benefits of working more closely with each other, catalogers do have the sense that their work is being phased out and overshadowed by the examining function.

In addition to the causes for concern mentioned, we are troubled by the fact that the copyright database, already so full of inconsistencies, will now have even more obvious inconsistencies

with these new changes to the record.

The Register's February 2 memo directed a group of staff from Cataloging and Examining chaired by Nanette Petruzzelli to completely revise the cataloging rules to reflect her decisions by May 1, 2006, in order to give the SRA contractor the needed information to design the new electronic registration system. The Register and Nanette Petruzzelli explained that pilot programs and training in using the new rules would begin soon after May 1, although the new rules would not be fully implemented until mid-2007, when catalogers and examiners return to Capitol Hill.

We hope that if authors and copyright owners, members of the public, taxpayers, users of the catalog and members of Congress are unhappy with the new registration record, they will express their opinions to the Office of the Register of Copyrights and that it will be changed.

In conclusion, we believe and we suspect that authors and copyright owners, researchers, librarians and educators agree that the purpose of a catalog is to help users find what they are seeking. We don't believe that users should be expected to search all over the Internet, and to look in multiple sources and multiple databases, to try and figure out if various disconnected bits of bibliographic and copyright data are related to each other. We believe that authors and copyright owners who fill out applications, pay their fees and send us copies of their works, as well as authors, researchers and members of the public who pay taxes and want to make legitimate uses of these copyrighted materials, in addition to the Copyright Office staff and Library of Congress staff whose job it is to help these users, expect and deserve a catalog of copyright records that are concise but complete, reliable and accurate, useable and coherent. We respectfully ask the Copyright Office management to stop the direction in which they are moving and to consider the consequences of turning the public catalog into mere records of ownership, and increasingly meaningless records at that. We respectfully ask the Copyright Office management to let professional copyright catalogers return to doing professional copyright cataloging, so that we can truly serve the users and the public.

APPENDIX

The following examples were taken from the Copyright Office online public catalog (<http://www.copyright.gov/records>.) They show how the public record has changed over the years and illustrate the consequences of omitting bibliographic data from the public record.

THREE RECORDS FOR THREE EPISODES OF THE MOTION PICTURE STAR WARS SHOW HOW THE LEVEL OF BIBLIOGRAPHIC DETAIL HAS DECREASED FROM THE 1980s TO THE PRESENT:

1. Record for 1983 registration of Star Wars episode, with detailed bibliographic information from the motion picture deposit:

PA-172-810

Title: Star wars-episode VI : Return of the Jedi / a Lucasfilm, Ltd., production ; produced by Howard Kazanjian ; co-producers, Robert Watts, Jim Bloom ; directed by Richard Marquand.

Imprint: [s.l.] : A 20th Century Fox release, c1983.

Description: 7 film reels : sd., col. ; 35 mm.

Note: Deposit includes credits sheet (4 p.) & synopsis (3 p.)

Motion pictures, major cast members: Mark Hamill, Harrison Ford, Carrie Fisher, et al.

Motion pictures, credits: Screenplay by George Lucas & Lawrence Kasdan; story by George Lucas; music by John Williams; director of photography: Alan Hume; edited by Sean Barton, Marcia Lucas, Duwayne Dunham; visual effects: Dennis Muren, Ken Ralston, Richard Edlund.

Claimant: acLucasfilm, Ltd.

Created: 1983 Published: 25May83 Registered: 27May83

Author on (c) application: Lucasfilm, Ltd.

Miscellaneous: C.O. corres. Special Codes: 4/X/L

Cross Reference: acLFL. SEE Lucasfilm, Ltd.

2. Streamlined record for 1999 registration of Star Wars episode, with at least some bibliographic data to identify the work:

PA-933-148

Title: Star Wars episode I, The phantom menace / written and directed by George Lucas.

Description: 7 film reels ; 35 mm.

Claimant: acLucasfilm, Ltd. (employer for hire)

Created: 1999 Published: 11May99 Registered: 18May99

Previous Related Version: Screenplay prev. reg. 1999, PAu 2-347-317. Music & unpub. motion picture preexisting. Miscellaneous: C.O. corres. Special Codes: 4/X

3. Record cataloged from copyright application only for 2005 registration of Star Wars episode, with no bibliographic description from deposit. The only indication that this is a motion picture is the 4/X in Special Codes (The office has also received registrations for 13 other works of the same title by the same claimant and other claimants for music, artwork, books, games, etc., based on the Star Wars motion pictures):

PAu 1-271-437

Title: Star Wars: Revenge of the Sith : episode III.

Note: Cataloged from appl. only.

Claimant: acLucasfilm, Ltd.

Created: 20May05 Published: 3May05 Registered: 20May05

Special Codes: 4/X

SPECULATION ON RECORD OF THE FUTURE: We don't know yet exactly what the Copyright Office's reengineered record of the future will look like, but one might infer that a record for a future Star Wars episode might look something like the preceding "Revenge of the Sith" example, but with a few bits of bibliographic data taken from the deposit added at the end. For example, there might be a short physical description, an imprint if the publisher was different from the claimant, and a list of "Names Appearing on the Deposit," e.g. George Lucas, but without an explanation of how George Lucas or other individuals contributed to the work.

The following examples were also cataloged using only the copyright application as a source of information. They illustrate how important information is omitted from the record when this practice is used and catalogers are forced to ignore deposits.

(Note: "ac" in front of names indicates that they are both authors and claimants and are indexed as such).

1. In this example, Shortfuze looks like an alternative title on the application and in the catalog record, but it is the author's stage name, which is clear only from the deposit.

PAu 2-994-308.

Title: Maine reason : Shortfuze (album)

Note: Cataloged from appl. only.

Song lyrics only (collection)

Claimant: acMelinda Charleman (author of a work made for hire)

Created: 2005 Registered: 30Mar05

Special codes: 3/M

2. This work is in Russian, but that fact isn't noted on the application or in the record.

TX 6-109-236.

Title: 2004 International conference on actual problems of electron device engineering.

Note: Cataloged from appl. only.

Claimant: acIEEE

Created: 2004 Published: 15Sep04 Registered: 4Feb05 Special Codes: 1/B

3. "Third edition" and "George Washington University, Washington DC, Government Contracts Program" appeared on the deposited work but not on the application or in this record.

TX 6-109-238.

Title: Cost-reimbursement contracting.

Note: Cataloged from appl. only.

Claimant: CCH, Inc.
Created: 2005 Published: 1Feb05 Registered: 14Feb05
Author: all non-governmental text: John Cibinic & Ralph C. Nash, Jr.
Special Codes: 1/B

4. Application and catalog record make no mention of the fact that this work is based entirely on quotes from the writings or speeches of Donald Rumsfeld.

TX 6-108-491
Title: Pieces of intelligence.
Note: Cataloged from appl. only.
Claimant: acHart Seely
Created: 2003 Published: 9Jun03 Registered: 14Feb04
Special Code: 1/B
Previous version: Portions prev. pub.
Claim Limit: New Matter: introd. & compilation.

5. The fact that this work is "Book 1 in the Endora trilogy" appeared only on the deposit, so the information was not picked up by the cataloger in this example:

TX 6-108-447
Title: The Timedoor.
Note: Cataloged from appl. only.
Claimant: acThomas J. Prestopnik, 1963-
Created: 2000 Published: 1Dec04 Registered: 23Dec04
Special Code: 1/B
Prev. version: Prev. reg. as The visitors in Mrs. Halloway's barn, TX 5- 465-654, 2001.

6. No indication appears on the application or catalog record that this is a multimedia kit,

TX 6-108-492.
Title: Sensual Massage on a String.
Note: Cataloged from appl. only.
Claimant: acGordon Inkeles, 1941-
Creation: 2004 Publication: 1Jan05 Registration: 27Jan05
Special Code: 1/B

7. In another example, the application indicated that the work was a telephone book for Milledgeville, New York, but the deposit was actually a telephone book for Milledgeville, Georgia. Possibly, the wrong work was deposited or the correct work was mismatched with the wrong application, or the application was filled out incorrectly. These types of errors are overlooked and are not corrected when catalogers are required to ignore deposits and catalog from the application only.