

**Alter & Kendrick, LLP**  
Attorneys at Law

14 East 60th Street, Suite 704, New York, New York 10022  
Tel: 212.707.8377 • Fax: 212.707.8317 • www.alterandkendrick.com

**Lisa A. Alter\*#**  
lisa.alter@alterandkendrick.com

**James M. Kendrick#**  
jim.kendrick@alterandkendrick.com

**C. Katherine Baron**  
katie.baron@alterandkendrick.com

**Bianca Prikazsky#**  
bianca.prikazsky@alterandkendrick.com

\*also admitted in California  
#Also admitted in New Jersey

March 21, 2014

Library of Congress  
U.S. Copyright Office  
101 Independence Avenue SE  
Washington, D.C. 20559-6000

**Re: Comments on Strategic Plan for Recordation of Documents**

Our firm represents composers and songwriters, successors in interest to deceased composers and songwriters, and music publishers. Our clients include the owners of some of this country's greatest musical catalogues, including the legendary Ira Gershwin, Hoagy Carmichael, Vernon Duke, Billy Strayhorn and Arthur Schwartz, as well as prominent current songwriters and recording artists. Our work on behalf of these clients, as well as our music publisher clients, includes a wide range of transactional matters that often require analyses focusing on a myriad of copyright ownership and related rights issues. Accordingly, we frequently have occasion to search the Copyright Office online database, and to commission searches of documents recorded in the Copyright Office prior to 1978. We also submit documents, such as assignments and notices of termination, for recordation in the Copyright Office on a regular basis.

In the course of our work, we have frequently been frustrated by both the difficulty in accessing recorded documents, and the inability to rely on the catalog of documents available at the Copyright Office in conducting our research. In fact, in many cases documents we know, anecdotally, exist cannot be found in the Copyright Office - either because the documents were never recorded, or because the documents are improperly identified or indexed in Copyright Office records. As a result, it is sometimes simply not possible to identify a clear chain of title for a work. Not only does this make the copyright due diligence process more time consuming – and more costly to our clients - than it should be, it also puts both parties to a potential transaction at risk, and can cause legitimate confusion among the general public.

We respectfully submit the following comments in response to the Copyright Office Notice of Inquiry regarding the Strategic Plan for Recordation of Documents:

1. A Guided Remitter Responsibility Model of Electronic Recordation

We support the idea of a guided remitter responsibility model of electronic recordation. Since the party recording a document is inherently more familiar with the subject matter thereof than any Copyright Office personnel that reviews the document anew under the current system, shifting the burden of extracting the relevant information required for indexing purposes onto the remitter will make the recordation process more efficient on a macro level. Moreover, requiring the remitter to

provide the necessary indexing information with respect to recorded documents is likely to improve the accuracy of this information in Copyright Office records given that the remitter typically has an existing understanding of the details provided in the recorded document, such as the parties or works involved, whereas Copyright Office personnel that simply transcribe this information have no such prior knowledge of the facts to draw upon. The various forms of guidance proposed by the Copyright Office, such as offering drop-down menus, validating various entries and requiring essential information to be entered twice, will sufficiently safeguard against any potential for carelessness on the part of remitters to perpetuate more inaccuracy in the Copyright Office records than what results under the current system of transcription from paper documents. Included among these safeguards should be functionality that ensures certain fields are completed in order for a document to be accepted. Further, the efficacy of drop-down lists may be increased if such drop-down lists are specific not only to the type of document being recorded, but also the category of copyrighted work to which the document applies, taking into consideration the various industry standard agreements that apply to each category.

## 2. Structured Electronic Documents

It would be very useful if structured electronic documents were developed by industry and type (e.g., music publishing, sound recordings, book publishing, and motion picture). We would recommend that the Copyright Office enlist volunteer task forces of specialists/practitioners from various segments of the copyright practice to participate in the development of templates for structured electronic documents. The remitter should have the option of using the structured electronic document or recording a custom document. Further, remitters should be advised of the efficacy of using structured electronic documents where possible because of the ease of cross-identification.

## 3. Linking of Document Records to Registration Records

It would be very helpful if recorded documents were linked to registrations, where possible. However, in some cases registration information may not be available for a given work included in a recorded document. For example, since registration is not required in order for copyright protection to subsist in a work that was created on or after January 1, 1978, the requisite registration information may not exist. Similarly, many works of foreign origin were never registered in the US. Accordingly, we recommend that the Copyright Office implement a system that requires document remitters to provide copyright registration information in a standardized format to the extent such information is available, but that allows the remitter the option of including works without any copyright registration information. In the event that a work is included in a recorded document without copyright registration information, the Copyright Office could consider requiring the remitter to declare under penalty of perjury that upon reasonable investigation no such copyright information was found.

## 4. Use of Standard Identifiers

Standard identifiers can be a very efficient search tool, particularly for potential licensees of copyrighted works. However, unless it is possible to attach any such identifiers adopted by the Copyright Office retroactively to previously copyrighted works the immediate benefit would be very limited. Moreover, unless the identifiers adopted by the Copyright Office are compatible with those used in a particular industry the identifiers may not be that useful. Given that there are several existing systems of standard identifiers that have been widely adopted and accepted for various types of works across the industries related to those works, for example ISBN in the book publishing industry and ISWC in the music publishing industry, the leaders of the respective industries will likely be reticent to adopt a new coding system, which would presumably create costs to integrate into their existing systems.

5. Additional Statutory Incentives To Record Documents

While, in theory, we are in favor of creating incentives for recording copyright documents, it is important that such incentives are legally supportable and that they do not unduly prejudice the author of a work. Requiring the recordation of a document in order to effect a transfer of copyright is not supported by either statute or treaty. Moreover, making recordation a prerequisite to bringing an infringement action could have inequitable results. Typically the grantee or transferee is the party that records the transfer document. If failure to record is a bar to bringing an infringement action, a grantor/transferor who is entitled to a continued income participation from the grantor's exploitation of a work may wind up harmed by reason of the grantor's future inability to prosecute infringements by third parties. Moreover, the grantor may be precluded from bringing a claim against a grantor/infringer by reason of the infringer's inaction. An alternative approach might be to create an early termination right that may be executed by the author or his/her statutory heirs in the event that the transferee fails to record a document (say, within five (5) years after the date of the grant).

6. Additional Comment

While we understand that updating the Copyright Office database to include pre-1978 documents and registrations would be a time consuming process, we urge the Copyright Office to do so, perhaps working backwards by year. The time and expense currently involved in commissioning searches of pre-1978 Copyright Office records places a tremendous burden on authors, grantees and other interested parties.

In conclusion, we support the goal of creating a user-friendly cost-effective mechanism for the repository and accessibility of critical copyright data, including copyright registrations and transfers. If the tools are easy to work with and the cost is not excessive, the public will be more inclined to avail itself of the recordation system. While we hesitate to recommend sanctions for failure to record, particularly sanctions that may place an undue burden on authors and creators, we believe it would be worth considering incentivizing parties to record – perhaps by creating an early termination right with respect to unrecorded documents.

Respectfully submitted,



Lisa A. Alter, Esq.



Katie Baron, Esq.