January 10, 2019

Ms. Karen A. Temple
Acting Register of Copyrights and Director
United States Copyright Office
Library of Congress
101 Independence Ave., S.E.
Washington, DC 20559

Submitted Electronically at www.regulations.gov

Dear Acting Register Temple:

RE: INTA Response to USCO Notification of Inquiry on Registration Modernization


INTA is a global association of brand owners and professionals dedicated to supporting trademarks and related intellectual property to foster consumer trust, economic growth, and innovation. Copyrights are an increasingly important subject for INTA. INTA’s members include many of the most prolific creators, authors, and publishers of copyrightable content in the fields of movies, television, short-form videos, music, photography, software, books and magazines, other printed and downloadable matter, and other visual and auditory arts, as well as the in-house and outside counsel who represent these entities and individuals. INTA values its growing relationship with the Office in recent years, including our recent discussions on the intersection of trademark and copyright law.

In this spirit, INTA respectfully offers its response to the NOI (the “Response”).
A. **The Application Process: How Users Engage with the Registration System**

1. **New Solutions for Delivering Application Assistance: How should the Office integrate in-application support and assistance to users of the electronic registration system?**

INTA strongly supports the Office’s efforts to provide additional user support and assistance. We believe the “live chat” functionality will be of great benefit to users and will allow Office staff to assist multiple users at once.

INTA has identified a number of methods for USCO’s consideration to provide more robust and user-friendly support and assistance:

   a. Offer users the ability to preview and download their partially completed or completed application form prior to submission. This would allow users to proof-read for errors or omissions and should result in improved quality of submitted applications. Further, both the preview and download features should reduce the number of applications with errors, reduce the number of user inquiries (whether written or telephoned) to the Office, and reduce the number of communications between the users and examiners prior to the final disposition of an application.

   b. Include an automated validation system that will detect possible omissions or incorrect entries in the application form, before the form is filed with the Office.

   c. Embed links into the key terminology or fields of all online forms, especially the copyright application forms. These links would be the front line of providing “self-help” to users. When activated, each link would open a separate window containing a short definition or explanation of what is required and why, and provide a generic example of an acceptable user response. This is perhaps a more robust form of what the NOI describes as “placing an icon next to certain application terms that would expand to display one to two concise sentences of explanatory text.” The embedded links offered by the USPTO for the online federal trademark application “wizard” and application form are a good example of what this could look like.

   d. Have sample completed forms available online, as an exemplar for users.

   e. Continue to update the FAQs and Circulars published to the website, and provide more education as to what “circulars” are, where they are located, and the wealth of information they contain. Additionally, the circulars should be cross-referenced throughout the USCO website.

   f. For users requiring additional help or explanation, the Office could take the current instructions that appear as part of the individual paper application
forms, and, with suitable additional information, convert them into an online “Guide to Completing the Copyright Application Form.”

g. Update the telephone features for the USCO’s Copyright Public Information Office and provide increased staffing of suitably trained personnel to reduce wait time. We encourage engaging with those who staff the Office’s Public Information telephone on this topic, as they have a wealth of knowledge for improvements. Additionally, we recommend that each caller be advised of the approximate wait time, and that current wait times be posted and continuously updated on the website.

h. Provide the ability to communicate with the Office around the clock, except for legal holidays and emergency conditions such as weather that require the Office to close. However, INTA realizes that current USCO resources may not permit expanded hours of this magnitude. As an acceptable alternative, we suggest this service should at least be available from 8:00 a.m. until 9:00 p.m. U.S. Eastern Time (to accommodate the U.S. Pacific Time Zone).

2. Electronic Applications and Payments: Should the Office mandate the use of electronic applications and payments, and eliminate the paper application and payment options via check or money order?

Electronic Applications
INTA generally supports requiring electronic applications to streamline processes and reduce costs. However, we believe that paper applications should continue to be allowed under certain limited circumstances, such as (i) unavailability of the electronic system due to technical failures, severe weather, government shutdown, and other forces majeure – because application dates are time-sensitive (e.g. for pending or imminent litigation, both domestic and international); and (ii) other exceptional circumstances such as an applicant’s incarceration, physical limitations, or lack of Internet/computer access due to indigence or location.

As a practical recommendation, we encourage the Office to OCR any paper applications which would help offset additional costs associated with paper applications. We caution, however, that OCR is not an error-proof system and thus a form of review/correction process should be available.

Electronic Payments
We support the Office’s proposal to reduce, or eliminate, the use of checks and money orders, provided:

a. The Office accepts multiple forms of payments such as credit cards, debit cards, prepaid cards, and other widely accepted online payment options such as PayPal. INTA’s members believe this is important to ensure access for all populations.
b. The Office continues to allow the use of deposit accounts that can be replenished by check through Pay.gov or other mechanism. The deposit account system provides significant advantages for applicants, other users, and the Office. The detailed monthly statements listing each transaction allow applicants and other users to track and attribute specific payments to specific projects, matters, and/or internal business units.

3. **Electronic Certificates: Should the Office issue electronic certificates and offer paper certificates for an additional fee?**

We support the use of electronic or paper-issued certificates of registration that correspond to the format in which the application was received. For example, the “default” position would be that electronic applications receive an electronic registration certificate, and paper applications receive a paper certificate. To encourage electronic certificates regardless of application format, applicants should have the option to select “electronic-only certificate” and receive an appropriate reduction in their filing fee. To facilitate the use of electronic certificates as *prima facie* and credible evidence in court or elsewhere, an electronic certificate should have embedded authenticity features, such as a watermark.

We also support offering paper certificates, for an additional reasonable fee, as a replacement for or in addition to an electronic certificate. For example, a paper certificate may be more readily accepted than an electronic certificate as evidence of U.S. copyright ownership in other countries.

4. **Dynamic Pricing Models: Should the Office replace the Single, Standard, and group applications with a dynamic pricing model that scales fees based on the number and type of works submitted for registration?**

We believe that an incremental application fee system would discourage registrations and would create an undue hardship for users for the following reasons. Incremental fees could introduce unnecessary complexity causing applicant frustration resulting in unsubmitted applications and confusion leading to an increase in the number of errors the Office has to address because the applicant selected inappropriate options to reduce their fee. Additionally, if the court adopts the application approach in *Fourth Estate Public Benefit Corp. v. Wall-Street.com LLC.*, then the application fee must be predictable and transparent, allowing applicants to be certain they have met their statutory obligation when they finish their submission. Regardless, all fees must be reasonable; otherwise the fees may discourage applicants from submitting applications.

As an alternative, we recommend that the Office consider a yearly subscription service with a tiered pricing model. The subscriber would be able to choose a package tier that would allow for a certain number of filings per year. For example, a subscription package could be offered for Single/Standard applications, and a
different package offered for Group Registration applications. If subscribers exceed the number of filings permitted under their package, subscribers should be allowed to upgrade their package to one of the higher-tiered packages. Should a subscriber upgrade to the highest tier package available and still need to file additional applications during the subscription term, we suggest that the Office charge a modified fee for each additional application, higher than the per-application rate of the highest-tier subscription, but lower than the Office's filing fee for a one-off standalone application.

Additionally, we believe the Office has opportunities to create additional revenue streams by providing other popular services online, such as online assignment and/or transfer forms, and online change of name, change of address, and change of entity corporate status forms.

B. Application Information: The Information Requested on the Application for Registration

5. Authorship Statements and Administrative Classifications: Should the office eliminate the “author created” and “nature of authorship” sections of the application, and instead, require the applicant to identify the work being submitted for registration rather than the elements of authorship contained in the work?

INTA believes the Office should eliminate the “author created” section of the electronic application, and the “nature of authorship” section of the paper application, in favor of a form-agnostic requirement that an applicant provide a general statement identifying the work being submitted. In the situation of joint or multiple authors contributing to a single work, the general statement identifying the work being submitted should be available to each identified author, to differentiate that author’s original contributions to the work from the contributions of other author(s).

a. Should the office… allow the applicant to provide a general statement that appropriately describes the work as a whole?

Yes, we believe the applicant is in the best position to describe its work as a whole. We recommend a drop-down menu of possible options, to increase uniformity in selections and decrease the need for future clarifying correspondence with the Office examiner assigned to the application.

b. Should the office… allow the examiner to add a statement that appropriately describes the work submitted for registration?

No, we believe the examiner should not describe the work submitted for registration. Instead, the examiner should review the description provided by the applicant and, if needed, suggest/require revisions to the application.
Allowing the examiner to describe the work would inevitably invite applicant challenges to the assigned description, thereby causing additional correspondence between the examiner and the applicant.

c. **Should the office...develop a searchable, crowdsourced list of terms that could be used to describe the work – similar to the USPTO's trademark ID manual for identifying and classifying goods and services?**

In principle, INTA agrees with the Office’s proposal. But we are not in favor of a “crowdsourced” approach, as we believe the Office should retain its authority to select which terms enter the list of acceptable work descriptions. Instead, we recommend that the Office leverage its personnel’s collective knowledge and experience to develop a list of proposed general descriptions of a work, perhaps organized by category of eligible subject matter, and publish that list for public comment. While we believe the Office’s current administrative classes are appropriate, we defer to the Office on whether additional categories are needed to reduce confusion and applicant inquiries.

The general descriptions could have embedded drop-down menus for the applicant to select a more specific description at the time of application. Creation of a manual to provide additional information about each of the acceptable general descriptions is recommended, but the manual does not need to be as complicated or extensive as the USPTO’s trademark ID manual.

6. **Derivative Works: Should the Office require users to explicitly identify whether a work submitted for registration is a derivative work?**

INTA has several comments on whether the Office should require users to explicitly identify if a work is a derivative work.

a. We do not believe the Office should require users to explicitly identify whether a work submitted for registration is a derivative work, because novice users may not sufficiently comprehend the legal definition of a derivative work to provide accurate answers. The Office currently asks for this information on the paper version of Application Form PA, but not in the electronic version. An alternative would be for the application to ask whether the work is based on or incorporates preexisting work(s), and to ask the applicant to identify the preexisting work(s).

b. We believe the Office should ask users to identify any elements that should be excluded from the claim using their own words (or using a more robust, curated set of terms), rather than the five checkboxes currently provided.
c. The Office should eliminate the requirement to identify the new material that should be included in the application and assume that the user intends to register all copyrightable aspects of the work that have not been expressly disclaimed.

7. **Simplifying Transfer Statements: Should the Office restrict the transfer statement options to “by written agreement,” “by inheritance,” and “by operation of law”?**

Yes, INTA agrees that simplification of the transfer statement section of the application is a good proposal. Furthermore, since Copyright Act Section 201(d)(1) provides for transfer of an author’s interest only by written agreement, inheritance, or operation of law, limiting the transfer statement to these three categories is advisable. Additionally, we think the Office has made an excellent proposal to include automated validations, preventing an applicant from submitting an application without a transfer statement in cases where the names provided in the author and claimant fields do not match.

However, because some users may be confused by certain concepts of transfer, particularly the concept of transfer by operation of law, the Office should take steps to provide adequate explanations of the methods of transfer, and provide examples of the circumstances under which copyright ownership may be transferred by operation of law.

As a possible method to prevent entry of conflicting information in the application form, we suggest implementing a “halt” mechanism that would prevent a user from proceeding to finalize their application if conflicting information has been provided. In this instance, a pop-up window would appear advising, for example, that information provided in Section A and Section D were in conflict, with a prompt to review the information provided. Additionally, we recommend a window pop-up that alerts the user that there is a conflict at the time the conflict is created so users have real-time feedback. The pop-up should also alert users that to submit the application with conflicting information may delay the application and incur additional fees.

8. **In-Process Corrections: Should the Office permit applicants to make in-process edits to open cases prior to the examination of the application materials?**

INTA believes that whether and when in-process corrections are permitted depends on the outcome of the *Fourth Estate Public Benefit Corp. v. Wall-Street.com LLC*. Our comments address each of the two major outcomes that are possible.

   a. **Application Approach**

   If the court adopts the application approach to Copyright Act Section 411(a), which is the outcome INTA supports (see Response Section E(c)(ii) for additional information), then the copyright application is a document that must
be relied upon for its accuracy at the time of submission. Therefore, we believe that if the Office permits in-process corrections:

i. The user must certify that the application is not the subject of pending or prospective litigation. If the application is the subject of pending or prospective litigation, then no in-process corrections should be permissible unless the Office can weigh application accuracy against the potential abuse of an applicant.

ii. Corrections should be limited to sections of the application that do not impact the effective date of registration. Limiting in-process corrections to portions of the application that do not impact the effective date of registration is necessary as it would be burdensome to both the user and the Office. The applicant often relies on the effective date of registration and would not want a trivial correction to alter that date. Moreover, the Office would not want to track the effective date of registration based on when the latest version of the deposit material was uploaded or similar changes.

iii. Corrections should be permitted only during a specified timeframe. This is necessary so that all filers will know the exact period during which they can make permitted changes or supply additional information. For example, the Office states it will take a minimum of two months to process a claim. Thus, we know that no application will be approved in less than 60 days. A possible window for filing changes would be 45 days from the date of application. After this time, the application amendment window closes. This will allow all records 15 days to be updated before the examiner has the claim in hand.

b. Registration Approach

If the court adopts the registration approach to Copyright Act Section 411(a), then more extensive in-process corrections may be permitted. We strongly recommend that in-process corrections include designating an application for special handling. Often the user files an application shortly after the date of publication, or is filing an unpublished work, and infringement occurs before the Office has an opportunity to process the application. Under the existing system, the user must file a new application and select special handling to meet the registration method of some circuit courts. This new application could result in a registration date that is more recent than the original application submitted, but not marked for special handling.

If in-process corrections are permissible, the Office could charge a nominal fee for the service in addition to other applicable fees, such as for special handling.
9. The Rights and Permissions Field: Should the Office allow authorized users to make changes to the Rights and Permissions field in a complete registration?

INTA strongly supports making the Online Public Record a more dynamic system by allowing authorized representatives to update rights and permission information. In this regard, we have several recommendations to offer:

a. The Office should follow the Digital Millennium Copyright Act (“DMCA”) model and have those who update the rights and permission information do so as an authorized representative of the copyright owner, under penalty of perjury.

b. When a transfer statement is uploaded, it should prompt a change to the rights and permission information.

c. The Office should establish a corporate or umbrella account, so multiple users have authorized access to the same portfolio of corporate-owned works. Authorized users could include the specific applicant, additional employees, and authorized counsel. The creation of corporate accounts would facilitate a corporate copyright owner’s ability to keep the Online Public Record up-to-date.

10. Additional Data: What additional data should the Office collect on applications for registration: For example, should ISBNs or other unique identifiers be mandatory? Should the Office accept other optional data?

Unique Identifiers
Because unique identifiers such as the International Standard Book Numbers (“ISBNs”) are processed and issued by other governing offices or entities and on their own timelines, INTA believes that including such unique identifiers in an application should not be mandatory. Users might encounter delays to obtain such identifiers that would effectively delay the application process and create another significant obstacle for the user, particularly in matters of pending litigation.

If the identifier is available at the time of application, the user should be prompted to include it. The identifier could also be added as an in-process correction while the application is pending. If the user would like to add this information to the Online Public Record after registration, the opportunity should be provided and a nominal fee could be charged that balances the Office’s desire to obtain the information with the objective of a streamlined and faster application process.

Uploads of low-Resolution Works
We assume that the NOI is referring to low-resolution images and sound clips to be separately uploaded and provided voluntarily by the applicant, but not taken from the deposit material. INTA members believe developing a more robust Online Public Record through the uploading of these images and clips will be beneficial by
enhancing recognition of the work registered and will also aid in the licensing of those works. Alternatively, the application or Online Public Record could include a field that asks the user to submit a brief statement of the work submitted to augment the title of work.

**Other External Data**

INTA does not recommend that the Office take on the burden of allowing members of the public to propose additional data to be integrated into the Online Public Record. INTA values the reliability and integrity of the Online Public Record data, and does not believe that entities other than the applicant and the Office should be permitted to expand the Office’s records with respect to any given registered work.

**11. Application Programming Interfaces (“APIs”): What consideration should the Office take into account in developing APIs for the electronic registration system?**

INTA supports the Office’s decision to explore the creation and publication of APIs that expose and extend the functionality of the new electronic registration system (“Registration APIs”). We believe that the Office should create Registration APIs that provide as broad a set of functionalities as is possible for all users (general applicants, those who appeal, and the general public) of the Online Public Record. INTA also encourages the Office to use Registration APIs when building any applications for users.

With respect to “integrating external data into the official registry,” we believe that this functionality should be limited, at least initially, to (i) submission of application data by users, and (ii) updates to rights and permissions information so that the Office can extend the scope of data that can be integrated into the official registry.

In general, INTA believes that Registration APIs should enable applicants to submit an application, submit deposit materials, and pay the required fee all via the API. Enabling such functionality will allow public and private entities to create mobile applications, applications intended to serve the blind and visually impaired community, and other new technologies that automate the process of applying for a copyright registration. Such functionality will enable integration between existing technologies and the Office.

**Using Registration APIs to Build Applications**

INTA strongly supports the creation of the following technology solutions using Registration APIs: (a) a dashboard; (b) integrated submission for electronic deposits; (c) improved messaging system; (d) preview of a draft certificate prior to application submission; and (e) automated validations within the application. We believe these solutions, each of which is described below, will be excellent reference projects that other users and partner organizations can use to build solutions of similar importance and complexity. This approach will also help to ensure the robustness of the security model for Registration APIs, which necessarily will grant different levels of rights to the Office, the electronic registration system, and the Online Public Record.
a. **Dashboard.** INTA strongly supports the creation of both export and import interfaces for users drafting individual applications. INTA proposes that users be able to export information such as the status of an application, the name of the examiner, and the date of the last examiner action, similar to information provided by the Public Patent Application Information Retrieval system that the USPTO administers. This information will be of value to users who correspond with the Office on a regular basis and may wish to automate their internal application management procedures. Further, exposing this functionality to third parties will not only encourage the development of new, stand-alone technology solutions but also allow for the integration of the copyright application process into existing technologies. By limiting the access to individual applicants and to members of the Office, information about planned and pending applications will continue to be available only to individuals and entities with a need to know.

b. **Integrated submission for electronic deposits.** We support the use of electronic deposits via Registration APIs. Because of the sensitivity and potential commercial value of deposit materials, INTA recommends that Registration APIs not permit the retrieval (by the user or any third party) of previously submitted deposit materials. However, it would be valuable for Registration APIs to provide information about whether a deposit has been received by the Office and, in the case of digital deposits, to be able to retrieve checksum information (such as md5 and sha256 hash values) so that a user can validate that the proper material was submitted.

c. **Improved messaging system.** It would be helpful if the Office’s improved messaging system was integrated with and accessible through the Registration API(s). For example, if a user is reviewing something in the user’s application, e.g., checking to see if the deposit was received, it would be helpful to be able to send a message to the USCO saying, “I submitted my deposit on this date but it is not yet reflected in my application record,” without the need to log in or navigate to a separate messaging app within the USCO online system. The goal would be to avoid creating a messaging system/solution that is separate from and not accessible by Registration API(s).

d. **Preview of draft certificate prior to application submission.** INTA particularly favors this as it would allow users to proof-read for errors or omissions and should result in improved quality of application forms. In addition, a partially completed or a completed form should be downloadable, to be saved for further input or correction until completed and filed. Both the preview and download features should reduce the number of applications with errors, reduce the number of user inquiries (whether written or telephoned) to the USCO, and reduce the number of communications between the Office and users prior to final disposition of an application.
e. **Automated validations within the application.** INTA suggests that Registration APIs should enable external users to run validation procedures against the contents of a draft application for registration before that data is submitted via the APIs. Exposing these validation procedures will ensure that any improvements in application quality will carry over into applications submitted via Registration APIs. INTA believes that any validation procedures, whether performed via Registration APIs or via the electronic registration system, that reject an application should provide a written explanation of the reason(s) for rejection of the application, consistent with Copyright Act Section 410(b). INTA also believes that validation procedures for electronic applications, whether submitted via Registration APIs or via the electronic registration system, should be optional rather than mandatory, so that, consistent with Copyright Act Section 411(a), a user can challenge denial of a registration in court after the “deposit, application, and fee” have been “delivered to the Copyright Office in a proper form.” Because of the statutory requirements of Section 411(a), INTA believes that it would be inappropriate to prevent a user from submitting an application that the user believes should be accepted, even if the validation procedures would otherwise reject the application.

INTA further proposes that Registration APIs include functionality sufficient to generate reports about application processing times. Private and public entities may be interested in more granular statistics, such as processing times for particular administrative classifications or claims processed in the last month. Exposing summary data about processing times through Registration APIs will allow interested third parties to build reports specific to their interests.

**Online Public Record**

INTA believes that the Registration APIs should allow members of the public to obtain all information comprising the Online Public Record for a given registration. Members of the public currently have access to this information; making this information accessible via API will spark the development of new technologies and allow for integration with existing technologies. Rather than charging the Office with storing and maintaining extensions to the Online Public Record, public and private entities will instead be able to integrate the Online Public Record into their own data repositories that may “foster efficient licensing transactions in registered works and help detect the infringement of registered works.” To lessen the burden that these transactions might impose on Office infrastructure, the Office could limit the number of retrievals that any given user could request on a per-minute or per-hour basis.

INTA also proposes that the Office make it possible to obtain both uncertified and certified copies of registrations through the Registration APIs. Government entities, such as the Delaware Division of Corporations, offer both free and for-fee access to business information, including certified corporate documents. See https://icis.corp.delaware.gov/Ecorp/ValidateCert/authver.aspx (discussing online generation and validation of certificates). Allowing users to order and download digital certificates of registration through the Registration API will allow public and private entities outside the Office to integrate the copyright application process even more fully into new and existing technological solutions.
In addition, INTA believes that it would benefit the public if Registration APIs allow submission of updated rights and permissions information. Such data should be segregated from the core Online Public Record data, but could be linked to it in some way so that interested parties could obtain current rights and permissions information as well as the rights and permissions information submitted as part of the application.

C. Public Record: How Users Engage and Manage Copyright Office Records

12. The Online Registration Record: Should the Office expand the Online Public Record to include refusals, closures, correspondence, and appeals?

Yes, INTA believes at least three public policy reasons support the expansion of the Online Public Record to include documents and related correspondence between an applicant and the Office concerning submitted, fully-paid, pending applications and registrations, and concerning applications that are refused, withdrawn, or otherwise closed, along with appeals from refusals (collectively, the “Additional Information”). Further, this proposed expansion fits comfortably within the statutory authorization Congress has already given to the Office.

Public Policy Consideration Supporting the Expansion

The policy reasons supporting this increase of Additional Information available on the Online Public Record are as follows

a. The inclusion of the Additional Information would greatly improve the transparency of that Online Public Record. Transparency will not only add additional sunshine to the operations of the Office but will provide applicants, practitioners, and the public a better understanding of how the Office decides whether a work meets the legal and formal requirements for registration.

b. Expansion of the Online Public Record to include the Additional Information will improve the efficiency of registration application processing for the benefit of all. At present an applicant seeking to register a work has no ability to determine from the public record that a similar work has been rejected. Even if the prospective applicant has extrinsic knowledge that a similar work was rejected, the applicant can only guess at the reason. Similarly, the applicant has no way to ascertain from the public record that the Office has questioned the copyrightability of a similar work. But if the prospective applicant were given access to the rejected applicant’s file, as well as the files of pending applications, the prospective applicant could make a reasoned decision whether to abandon the application or make material changes to hopefully obviate a rejection. If those changes resulted in a registration, the copyright holder would benefit. If the applicant instead decided to abandon the application, the Office would benefit by saving processing time it can devote
to other applications.

c. In this digital age, an applicant seeking access to the Additional Information for purposes of protecting its intellectual property should not be required to incur the time and expense of first making a written request to the Office to inspect the information, and then traveling, sometimes for considerable distances, to that Office to review, especially where the Office could otherwise have made the information available with the click of a mouse. The Trademark Office has a robust public records policy where nearly every aspect of the registration and appeal process is available online. We urge the Office to take similar steps to allow digital access to the Additional Information.

If confidentiality or trade secret information will be implicated by this increased access, the Office could permit redactions similar to those already allowed in software registration applications. Further, we believe that the Online Public Record should not be further expanded to include unsubmitted, partially completed applications or completed but unpaid applications.

We understand that at present the Office, pursuant to 37 C.F.R. § 201.2(b)(5), permits third-party access to pending, paid applications that are being examined by the Office and open correspondence files with respect to those pending applications only in “exceptional circumstances,” a term not otherwise defined in that regulation. However, we believe that the reasons for the “exceptional circumstances” limitation have been remediated with the digitization of the Office’s records.

Lack of Statutory Bar
Sections 705 and 706 of the Copyright Act permit this proposed expansion of the public record. The Additional Information falls within the broad category of “records” of “other actions” the Register is required to “maintain” pursuant to Section 705(a) of the Copyright Act. Further, Section 705(b) makes “[s]uch records ... open to public inspection,” without limitation regarding the location of the inspection or whether it is to take place in person or by other means. Moreover, Section 706(a) provides that “[c]opies may be made of any [of these] public records,” again without restriction how the copies are to be made, whether by the Office or by the requester. Thus, there appears to be no statutory impediment to this increased expansion.

In sum, we enthusiastically support this proposed increase of the Online Public Record for the reasons stated above.
13. Linking Registration and Recordation Records: What considerations should the Office take into account in expanding the Online Public Record to connect registration and recordation records and provide chain of title information?

We strongly support expanding the Online Public Record to connect registration and recordation records and provide chain of title information. We believe that the Trademark Office’s system, which enables users to toggle back and forth between the registration to view the actual assignment document information (as well as, where available, copies of the actual assignment document) and information regarding the chain of title, provides a useful model. The system should alert the claimant, or a designated correspondent, when a new document is filed against the work. The system should also offer mechanisms to address typographical errors as well as documents erroneously (or maliciously) filed against a work. In addition, users should be able to update the records easily.

14. Unified Case Numbers: Should the Office issue one case number to track and identify a work or group of works through the registration and appeal process?

INTA believes the Office should use only one number to track an application from filing through to the issuance of the registration and the registration number. The Office could alleviate its burden by moving to an application numbering system which would eliminate the task of tracking and assigning service request numbers, case numbers, correspondence ID numbers, and thread IDs by utilizing application numbers. If the Office converts the current Case Number assigned at the onset of filing to an Application Number, it can increase efficiency by tracking and maintaining one number throughout the application life cycle. This proposal would significantly decrease the varied USCO number strings and help guard against human error from linking the wrong identification number to a record.

D. Deposit Requirements: The Deposit Requirements for Registration and Related Security Considerations

15. Digital First Strategy: Should the Office require only electronic and identifying material for all deposits for registration, thereby eliminating the need to submit physical deposits for the purposes of registration?

Yes, pursuant to its authority under Copyright Act Section 408(c)(1), and for all classes of works, the Office should encourage the use of electronic copies or phonorecords and identifying material to satisfy the deposit requirement for registration. However, requiring electronic-only deposit material is not appropriate at this time, as many deposits continue to be available in physical form only, such as books and encrypted deposit material. Further, with reference to INTA’s response to Question 2 above, to the extent that paper applications are allowed for special circumstances, so too should physical form deposits be allowed for these applicants.
We see opportunities to reduce the number of physical deposits made, namely: (i) adding a question on the application form asking if the deposit material is only available in physical form; (ii) adding application fields to identify multiple international standards numbers to alleviate the need of receiving physical deposits for the same work (e.g. the application would cover both the ebook and physical book with the ebook as the deposit material); and/or (iii) increasing the file size maximum for uploaded works to reduce the need for physical deposits of digital works via USB drives or other physical storage media.

If the user completes a paper application, that fee should include the processing charges of submitting a physical deposit. If the user completes an electronic application and opts to submit a physical deposit, then an additional fee may be assessed but one that does not exceed the cost of the paper application. However, the increased processing time associated with physical deposits may be sufficient incentive for electronic deposits whenever possible.

16. Digital Deposit Security

The security of digital deposit material is critical, especially for assets such as motion pictures and software code. We understand that a “one-size fits all” security solution is unlikely, but we encourage the Office to continue making security of digital deposits a priority.

E. Additional Considerations

INTA has identified several additional considerations we believe the Office should take into account during the registration modernization process. We list these additional considerations below.

a. Leveraging What Other IP Agencies Have Done

Many of the questions posed by the NOI are identical or very similar to issues previously considered by other federal government IP agencies. INTA wants to help USCO avoid the unnecessary expenditure of limited personnel resources and budgets through “reinventing the wheel.” There is a wealth of experience and knowledge within the federal government, and particularly within other federal agencies and offices that have intellectual property protection in their missions.

INTA specifically encourages USCO to consult with the Trademarks Branch of USPTO, and the Commissioner for Trademarks, to learn more about how the Trademarks Branch defined an issue, selected and developed a solution, and dealt with challenges encountered during implementation.

We also encourage the Office to look to the USPTO’s online trademark application/registration system as a model for how a system communicates with its
users, especially lawyers, so that information related to the application/registration can be easily printed, viewed, and forwarded outside of the system, and that clients can seamlessly electronically sign applications prepared by their lawyers.

b. **INTA Board of Directors Resolutions on Copyright Registration Issues**

INTA respectfully suggests that the Office consult prior resolutions by the INTA Board of Directors in the area of copyright that might affect implementation of a registration modernization system.

i. **Copyright Protection for Trademarked Material**

On September 12, 2017, the INTA Board of Directors adopted a Resolution titled “Copyright Protection for Trademarked Material” (the “Resolution”). The Resolution can be accessed on the INTA website at [https://www.inta.org/Advocacy/Pages/BR20170912_2.aspx](https://www.inta.org/Advocacy/Pages/BR20170912_2.aspx). The Resolution encouraged the Office to review and reconsider its policy and practice regarding the copyright registrability of artistic works such as design icons and logos and other trademarkable material, and to grant copyright registrations to such works. The Resolution explained that no inherent conflict should exist when granting protection to a work under both copyright and trademark law, recognizing the different purposes served by each legal regime.

ii. **Registration as a Precondition of Infringement Suit**

On November 7, 2017, the INTA Board of Directors adopted a Resolution titled “Copyright Registration as a Precondition of Infringement Suit” (the “Resolution”). The Resolution can be accessed on the INTA website at [https://www.inta.org/Advocacy/Pages/BR20171107.aspx](https://www.inta.org/Advocacy/Pages/BR20171107.aspx). The Resolution favored the approach adopted by some federal circuit courts of appeal that filing an application at USCO was sufficient to confer jurisdiction on a federal trial court to adjudicate claims of copyright infringement for the work that was the subject of the filed application. While INTA continues to support the Resolution’s position, we respectfully suggest that any change to USCO procedures and regulations on this issue should await the U.S. Supreme Court’s decision in *Fourth Estate Public Benefit Corp. v. Wall-Street.com LLC*, Case No. 17-571, cert. granted 06/28/2018.

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This concludes INTA’s Response to the NOI. Please do not hesitate to contact INTA’s Senior Director for Government Relations, Debbie Cohn (dcohn@inta.org) if the Office has any questions about our comments, or if we can provide additional information or be of further service.

Respectfully submitted,

Etienne Sanz de Acedo
Chief Executive Officer
International Trademark Association