

**February 23, 2012**

U.S. Copyright Office  
Office of the Register or Copyrights  
Attn: Christopher S. Reed, Senior Advisor for Policy and Special Projects  
Attn: David O. Carson, General Counsel  
101 Independence Ave. S.E.  
Washington, D.C. 20559-6000

*Submitted electronically via <http://www.copyright.gov/docs/smallclaims>*

**Re: Request for Written Comments from the Public Issued on January 24, 2012 by the U.S Copyright Office in connection with the U.S. Copyright Office’s Fees for Services [Docket No. 2012-1]**

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Dear Messrs. Reed and Carson:

The Independent Film & Television Alliance (IFTA) welcomes this opportunity to provide written comments to the U.S. Copyright Office (Copyright Office) in response to the Notice of Inquiry regarding its fees for services.<sup>1</sup> The Copyright Office seeks comment on two particular issues: (1) with respect to the basic registration fee, whether special consideration should be provided to individual author-claimants registering a single work that is not a work made for hire, and (2) any special services and corresponding fees that the Copyright Office should expand, improve or add to its offerings at this time, including, for example, additional expedited services and fee options.

In general, IFTA supports the services and fee structure provided by the Copyright Office which encourage copyright registration and strengthen chain of title documentation in and to audiovisual works that are financed, produced and distributed by the independent film and television industry. The lifeblood of independent producers and distributors is their intellectual property rights and their ability to secure financing to produce the film, to license exclusively for worldwide distribution, and to protect and enforce the exclusive rights to their works. Services which facilitate individual author-claimants registering a single work that is not a work made for hire (“Individual Author-Claimants”) promote and protect authorship and potentially sharpen the chain of title documentation relied upon by the independent sector of the film and television industry.

IFTA also supports additional services that the Copyright Office could expand, improve or add to its offerings. Producers and distributors as well as sales agents and financing

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<sup>1</sup> Copyright Office Fees; Notice of Inquiry, 77 Fed. Reg. 3506 (Jan. 24, 2012).

institutions all benefit from readily available information on copyright ownership and registration. The Copyright Office acting as a central depository of this information is valuable; however, the ease of access to the information should be increased so as to provide easy search and print functions for copies of registrations, transfers of ownership, notices of assignment and other recorded documents.

Lastly, the Copyright Office may want to consider offering a new category of services for multiple title registrations made by one individual or organization where the registrations result from a mass transfer of copyrights, such as when a catalog of films is transferred from one rights holder to another.

## **I. About IFTA**

Based in Los Angeles, IFTA is the global trade association of the independent motion picture and television industry. Our nonprofit organization represents more than 145 Member Companies in 19 countries consisting of the world's foremost independent production and distribution companies, many of which are small to medium-sized U.S.-based businesses that include sales agents, television companies and institutions engaged in film finance.<sup>2</sup>

For more than 30 years, IFTA Members have produced, distributed and financed many of the world's most prominent films, 19 of which have won the Academy Award<sup>®</sup> for "Best Picture," most recently *The King's Speech* (The Weinstein Company), *The Hurt Locker* (Voltage Pictures and Summit Entertainment) and *Slumdog Millionaire* (Pathé). Collectively, IFTA Members produce more than 400 independent films and countless hours of television programming each year and generate more than \$4 billion in sales revenues annually. Furthermore, the independent sector produces approximately 75% of all U.S. films<sup>3</sup>, with most of these films financed, produced and internationally distributed outside of the major Hollywood studios.

## **II. IFTA's Interest in the U.S. Copyright Office's Services**

The independent sector of the film and television industry relies on chain of title documentation that is supported and may originate by and through copyright registration. Unlike the major Hollywood studios, IFTA Members regularly secure financing and distribution for each project on a country-by-country basis by means of licensing deals with local distributors. After assessing the value of a project, local distributors enter into license agreements with the producer that provide minimum license fees to be paid in order to secure exclusive distribution rights to a project before production. Once enough minimum guarantees are secured through local distributors, those license agreements are collateralized by financial institutions which loan production funds to support the project. In exchange, these financial institutions typically retain the underlying copyright assignment of an audiovisual work until the production loan is repaid in full.

The United States often represents a significant share of the market for independent films, and parties routinely look to the integrity of the copyright chain of title in the United States as

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<sup>2</sup> A list of IFTA Member Companies is available online at: [www.ifta-online.org](http://www.ifta-online.org).

<sup>3</sup> IFTA analysis of weekly production listings published in *The Hollywood Reporter & Daily Variety* (2002-2008) and in Baseline Studio Systems and IMDB Pro (2009 & 2010).

strong evidence of its viability in other countries. This is especially true for independent motion pictures produced in the United States and exploited internationally. Therefore, promoting the registration of rights, strengthening chain of title documentation and providing easy accessibility to that information are important components in the financing, production, and distribution ecosystem of independent film and television and will have a positive impact on our industry and its financing and business models.

The industry must consistently identify works by providing specific information about the work to various distributors, broadcasters and government authorities when producing, licensing, and exporting/importing films as well as protecting their rights to the films. The industry identifies works by filing a copyright registration certificate (which provides certain benefits, including the legal presumption of ownership) and embedding information (so-called *meta data*) in the film's digital copies which assists in identifying a particular work as its exploited, controlled and monitored in the digital environment. IFTA also assists its Members with protecting their copyrighted audiovisual works and issues Certificates of Origin to identify individual audiovisual works being licensed in the worldwide marketplace. All of these examples of identifying information about a work are useful in licensing and protecting rights in the digital environment and always begin with copyright registration. Therefore, promoting copyright registration and strengthening chain of title documentation also directly promotes the ability of the rights holder to license, control and protect its rights to its copyrighted works, especially in a digital environment.

### **III. IFTA Supports the Establishment of a Category of Services for Individual Author-Claimants Registering a Single Work That Is Not a Work Made For Hire**

Individual Author-Claimants should be provided with an accessible and cost effective method to register each of their copyrights. Such measures will encourage registration of audiovisual works so that those registrations may enjoy the presumption of copyright ownership.<sup>4</sup> Timely registration also makes available statutory damages and attorney's fees for copyright infringements. It is important that all copyright owners, including Individual Author-Claimants, have access to means for protecting their exclusive rights under Section 106 of the Copyright Act. (See also IFTA's filing on Remedies for Small Copyright Claims Docket No. 2012-1, Comment No. 27).

Many independent motion pictures are produced from screenplays written by individual authors (so called "spec scripts") and then acquired by the independent producer, as opposed to screenplays commissioned from inception by a production company. These individual screenwriters are a classic case of the "individual author claimant." Any reduction in their registration cost could increase their incentive to register such works, thus enhancing protection for their works and increasing their marketability. It would also help independent producers in acquiring such screenplays, since they can look to the records in the Copyright Office to help establish chain of title and verify ownership prior to acquiring underlying materials.

The fee for Individual Author-Claimants can be less than that of a basic copyright registration because the simplicity of such registrations require minimal processing by the Copyright Office. Many rights holders are so called "small" rights holders and include

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<sup>4</sup> 17 U.S.C. § 410(c).

independent authors or independent rights holders that are small to medium sized enterprises. As such, the fees should be designed to promote registrations and the commensurate legal benefits should outweigh the cost of registration. The Copyright Office should strive to maintain a fee structure that is economical for all copyright holders and continue the current ease of filing for copyright registrations.

The Copyright Office should also consider offering online filing of such registrations by Individual Author-Claimants comparable to registrations for a basic copyright. In addition to online services, paper filings should continue to be permitted, perhaps at a higher fee, if necessary, to accommodate those copyright owners who are unable to file a copyright registration online. The fees charged for services offered to Individual Author-Claimants should be sufficient to cover all costs incurred by the Copyright Office in processing such registrations and in no event should any costs be subsidized by disproportionately raising the fees for other services provided by the Copyright Office.

#### **IV. Special Services and Corresponding Fees the Copyright Office Should Expand, Improve or Add to its Offerings**

IFTA recommends that the Copyright Office consider including four additional services in its revised fee schedule: (1) online access to copies of copyright registrations via the Copyright Office's website; (2) online access to copies of recorded documents via the Copyright Office's website; (3) a reduced fee for multiple works registered as a result of a single transfer of ownership; and (4) expedited services that do not require "special handling."

##### **1. Online Access to Copies of Copyright Registrations**

Rights holders often must supply a copy of a copyright registration before a motion picture or television program may be distributed, imported and/or censored or included in certain copyright protection programs, including the voluntary Copyright Alert Program in the United States. In the usual case, these need not be certified copies. In the past, IFTA Members have submitted copies of the "Form PA" sent to the Copyright Office for the respective audiovisual work. Such forms are not currently accessible on the Copyright Office website, but can be obtained via postal mail upon request to the Certifications and Documents Section of the Copyright Office, which must then locate or retrieve the requested records. Such retrieval is subject to an hourly fee of \$41.25 for each quarter hour, with a half-hour minimum charge. An alternative is to view or copy the original documents in person at the Copyright Office, but that is not practical given the worldwide marketplace for audiovisual works.

As a trade association with more than 145 Members worldwide, IFTA Members would be able to confirm underlying rights and also pursue protection of their copyrights more efficiently if copies of copyright registrations could be accessed and printed directly from the Copyright Office's website. Allowing for such online access would also be more cost efficient for the Copyright Office because, after any upfront costs and implementation, less staff time would be necessary for physical retrieval of such documents. IFTA understands that there may be an issue regarding whether the copies are "certified" as true and correct copies of the actual records by a Copyright Office official. In many cases, however, certified copies are not required. Thus, online access could specifically indicate that the documents are "not certified." However,

if possible, an additional method of electronic certification, perhaps for a small additional fee, should also be provided.

## 2. Online Access to Copies of Recorded Documents

A related service would be for the Copyright Office to provide online copies of recorded documents. Independent producers and distributors often need to examine recorded documents in the chain of title to decide whether to proceed with a transaction. This is because independent pictures often have “split rights” where certain exclusive rights are transferred or mortgaged to one party, while other exclusive rights are transferred or mortgaged to another party. Currently, an online search of the Copyright Office records can indicate that a transfer or mortgage has been recorded for a work, but its effect on a specific transaction cannot be fully evaluated without examining the recorded document to determine its full scope. Since the document cannot be viewed online, it is necessary to order a search and retrieval of the records, which requires additional time and expense. Moreover, in many cases, only one document in the chain of title is critical, yet multiple documents are retrieved in a standard search. It would greatly facilitate the use of the Copyright Office records if the entire recorded document could be viewed online. It would also help if the document could be printed, and the same comments above regarding certified and non-certified copies should be considered.

## 3. Reduced Fee for Multiple Title Registrations

The Copyright Office currently charges a \$105 fee to record documents pertaining to a copyright, such as a transfer of copyright, a will, a license, or a notice of termination. For such a fee, a document of any length may be recorded, but it may not relate to more than one title. Additional titles are \$30 for each group of 10 or fewer titles (not number of works). Additional transfers in a document are charged at \$105 each. In addition, electronic filing is not available for any of these services to record documents pertaining to copyright.

The current fees may be cost prohibitive to certain rights holders that have a group of works to register. In the independent motion picture industry, there is a long-standing business in purchasing and financing “libraries” of motion pictures. It would greatly facilitate this business if a single filing could be made to cover all works owned where the registrations result from a mass transfer of copyrights, such as when a catalog of films is transferred from one rights holder to another.

## 4. Expedited Services That Do Not Require Special Handling

IFTA also supports the Copyright Office in offering expedited services that are not classified as “Special Handling”, which are already provided for under certain circumstances (*i.e.* pending or prospective litigation, customs matters, or contract or publishing deadlines that necessitate the expedited issuance of a certificate), to target those copyright owners who are willing to pay a premium for such expedited service that does not meet the established criteria for “Special Handling.” However, such an offering must be careful not to compromise the

timely and efficient processing of other non-expedited services, including basic registration filings.

**V. Conclusion**

IFTA is pleased that the Copyright Office is actively seeking to encourage Individual Author-Claimants to register single audiovisual works. This effort will promote and strengthen documented chains of title for audiovisual works that are important tools for securing production, financing and distribution of independent product. IFTA supports the Copyright Office's establishment of additional services and remains available to provide further comments on or to assist with implementation of such services.

Thank you for your time and support of the intellectual property industries.

**Respectfully submitted on February 23, 2012**

INDEPENDENT FILM & TELEVISION ALLIANCE

/s/

Jean M. Prewitt, President & CEO  
10850 Wilshire Blvd., 9<sup>th</sup> Floor  
Los Angeles, CA 90024-4321