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Keeping Tabs on the Latest Copyright Developments

This past year has been a busy one for copyright compliance solutions and for government actions concerning copyright. The single most impressive and important release for compliance solutions in 2019 was Marketplace from Copyright Clearance Center (CCC). On the governmental side, there was the House of Representatives' approval of the CASE Act, among other events.

CCC'S NEW SOLUTION

In October 2019, CCC released the initial version of Marketplace, an e-commerce hub enabling users to find and purchase republication permissions and submit article reprint requests. They can access and identify content, usage and user types, volume, usage parameters, and format of reuse.

Marketplace illustrates CCC's ability to create copyright compliance solutions for its audience that not only embrace the digital age, but also simplify the interaction among rightsholders, publishers and authors, and potential re-

use customers. After CCC's founding in 1978, the organization existed primarily as a manual service offering customers a way to track copies made of copyrighted works. But as the landscape for publishers and publishing changed, CCC created solutions that addressed permissions management for rightsholders and users in the digital age, releasing RightsLink for Permissions in 2001.

Later, CCC launched the RightFind product suite, enabling users to easily identify internal and external sources of information and comply with copyright while reusing information. In October 2019, it released RightsLink for Scientific Communications, offering publishers an easy and flexible way to manage and collect article-processing charges (APCs) as well as other fees associated with transformative OA agreements.

CCC has always allowed users to purchase a variety of permissions using its website, including for electronic or print course materials, republishing in different types of media, interlibrary loan or document photocopy for business or

personal use, and sharing content electronically in email or via an intranet or extranet. A December 2019 Marketplace fact sheet included the following "improvements to what was supported on copyright.com" from the product's initial launch:

- Improved Search: Article and chapter-level search, advanced search and filter options
- Updated design and order workflow: Streamlined pricing questions, pre-populated questions when metadata available, automatic/responsive pricing
- Project template: Pre-population of reuse and new work details, increasing efficiency when purchasing multiple permissions
- Intuitive Special Requests workflow: Streamlined customer-to-publisher communication workflow

- Flexible invoicing and billing: Invoices in preferred currency, ability to consolidate orders, order-level billing address, ability to purchase on behalf of multiple clients
- License view: License generated and viewable for each item ordered
- Reprints request form: Submit pricing inquiries from within Marketplace search results

Marketplace's enhancements as of December 2019 are the ability for customers to edit items in their cart and to view and delete projects via the new Projects tab in the Manage Account section. Throughout 2020, Marketplace will continue to be upgraded to make the user experience even more intuitive. Currently, customers may still start at copyright.com to begin a transaction and will automatically be transferred to Marketplace. Over time and after further conversations with publishers, buyers, and partners, CCC plans to migrate more content and licensing services to Marketplace for orders.

GOVERNMENT NEWS

The Copyright Alternative in Small-Claims Enforcement (CASE) Act of 2019 was introduced in early May in the House of Representatives. It calls for a small-claims tribunal to be created within and administered by the U.S. Copyright Office to support smaller copyright holders who cannot afford the high price of a federal trial. Award amounts would be limited to \$15,000 for one claim and up to \$30,000 for two or more claims. Despite passing the House and the Senate Committee on the Judiciary, the bill awaits a vote by the full Senate. Hopefully, in 2020, the Senate will find the time to address this bill and approve it accordingly.

In January 2019, the Supreme Court heard *Fourth Estate Public Benefit Corp. v. Wall-Street.com, LLC, et al.*, a case concerning when a registration of a copyright with the Copyright Office actually becomes a true registration. Although not

LINKS TO THE SOURCE

Marketplace

marketplace.copyright.com

RightsLink for Permissions

copyright.com/publishers/rightslink-permissions

RightFind

copyright.com/business/rightfind

RightsLink for Scientific Communications

copyright.com/publishers/rightslink-scientific

December 2019 Marketplace fact sheet

copyright.com/wp-content/uploads/2019/12/Marketplace_December-Release-Notes_Final.pdf

The CASE Act of 2019

congress.gov/bill/116th-congress/house-bill/2426

Fourth Estate Public Benefit Corp. v. Wall-Street.com, LLC, et al.

supremecourt.gov/opinions/18pdf/17-571_e29f.pdf

Copyright Alliance blog post on the Fourth Estate ruling

copyrightalliance.org/ca_post/breaking-down-fourth-estate-what-the-supreme-court-ruling-means-for-creators

Music Modernization Act

congress.gov/115/plaws/publ264/PLAW-115publ264.pdf

Music Modernization Act bill summary

congress.gov/bill/115th-congress/house-bill/1551

Copyright Office actions under the Music Modernization Act

copyright.gov/rulemaking/mma-designations

CCC blog post on the Copyright Royalty Board

copyright.com/blog/top-ten-copyright-stories-of-2019and-what-to-expect-in-2020

required for sustainable copyright ownership, a valid registration is needed to initiate a lawsuit. Lower courts have decided differently as to what constitutes a sound registration. Given the lengthy time it takes for the Copyright Office to approve or decline a registration, some courts have ruled that once an application has been filed, registration is auto-

matic—while others have stated that a registration is only valid once the Copyright Office responds.

Many amicus briefs were filed—by entities including the Authors Guild and the Copyright Alliance—in favor of the “application” approach. Others submitted amicus briefs supporting the “registration” approach. The Supreme Court ruled in

favor of the registration approach, making it difficult for creators—both businesses regardless of size and individuals regardless of output volume—to fight copyright infringement. According to Terrica Carrington at the Copyright Alliance:

This is an important issue because once the application, deposit, and fee are submitted to the Copyright Office, it takes several months for the registration to be issued or denied. ... Damages aside, having to wait months to file a suit is especially significant because the rightsholder cannot pursue an injunction to stop the infringing activity during that timeframe. ... This is yet another reason that creators, to the extent they can afford to do so, should register as many of their works as possible and as early as possible. The sooner the application, deposit, and fee are filed, the sooner the registration can be completed and you can access those courthouse doors, if necessary.

Although the Orrin G. Hatch-Bob Goodlatte Music Modernization Act passed into law in October 2018, its implementation is still not complete. According to the bill's entry on congress.gov, it "updates copyright law by creating a new compulsory licensing system for digital music services that transmit sound recordings. It also provides for federal protection to sound recordings fixed before February 15, 1972, which are currently only covered by state law. It also authorizes royalties for producers, mixers, and sound engineers that made a creative contribution to a sound recording." In July 2019, the Copyright Office shared that it had "designated a mechanical licensing collective (MLC) and a digital licensee coordinator (DLC) to carry out key functions under the statute." According to a CCC blog post, on Nov. 14, the MLC and the DLC "notified the Copyright Royalty Board [CRB] that they reached a settlement regarding initial funding for the MLC. The settlement notification ... states that the parties have agreed to an initial assessment of \$33.5M for startup costs and an annual

assessment of \$28.5M per year starting in 2021. The CRB must still adopt the agreement."

REGISTER OF COPYRIGHTS DEPARTURE

2019 also witnessed the resignation of Karyn A. Temple, the 13th Register of Copyrights. Temple left on Jan. 3, 2020, to accept a position at the Motion Picture Association of America (MPAA) as its senior EVP and global general counsel. Carla Hayden, Librarian of Congress, has appointed Maria Strong, the Associate Register of Copyrights and the Copyright Office's director of policy and international affairs, to be the Acting Register.

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