

Cancelling Copyrights

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ABSTRACT

In the United States, registering a claim of copyright in a work of authorship is easy. Cancelling an existing copyright registration is not. This is a problem that requires attention. This Article makes those three important points and suggests what should be done.

U.S. copyright registration confers important benefits and legal protections on copyright owners. In any intellectual property regime with registered rights, mechanisms for correcting the record and removing rights granted in error are integral components of a functional system. While courts have the power to cancel invalid trademark registrations and patents, they do not have the power to cancel invalid copyright registrations, and the Copyright Office has no process that would allow third parties to challenge existing registrations. Copyright registrations may only be cancelled at the discretion of the Register of Copyrights. Consequently, few registrations are ever cancelled.

In this Article, we show that the lack of procedures for cancelling copyright registrations has contributed to an improperly high level of inaccuracy and error on the registry. This situation compromises a fundamental purpose of the registration system and has the potential to cause real harm. Using specific case examples and an empirical study of cancellation data from the Copyright Office, we demonstrate how and why the current mechanisms for correcting the registration record at the Copyright Office are inadequate. Finally, we recommend a series of legal and practical changes that would enable registration and recordation to serve their principal aims of providing accurate information and clearing title to support markets in works of authorship.

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INTRODUCTION

In the United States, registering a claim of copyright in a work of authorship is easy. Cancelling an existing copyright registration is not. This is a problem that requires attention. This Article makes those three important points and suggests what should be done.

Since 1909, registration has not been a condition of obtaining federal copyright protection.¹ The requirement of registration to maintain copyright protection for the maximum term was prospectively abolished in 1978, and retrospectively abolished in 1992 (affecting works published after 1963).² Nonetheless, registration of claims of copyright and recordation of documents pertaining to copyright remain important for authors, copyright owners, and the public. For authors and copyright owners, registration is necessary to obtain full protection for their works. For example, registration is required to collect statutory damages and attorney's fees.³ The copyright registration certificate constitutes prima facie evidence of the validity of the copyright and the facts stated in the certificate, provided that registration is made before or within five years after first publication of the work.⁴ While validity and ownership of copyright can still be challenged in the context of an infringement action, in practice, this prima facie evidence of ownership and validity is a powerful tool for copyright owners. For works originating in the United States, registration is even necessary to bring any infringement action.⁵ Registration of a claim of copyright in a work is also required to gain the full benefits of recordation of documents pertaining to copyrights, which includes protection against unrecorded transactions.⁶ Actual notice of a registration will likely trigger a three-year statute of limitations of disputing claims of ownership made in the registration.⁷

As the intended result of those incentives, a detailed public record of claims of copyright, and of transactions and other actions affecting the existence and ownership of works of authorship, is created and made available to the public. Over 40 million registration records have been created over the history of the U.S. registration system, and over 24 million of those have been created since 1978 (an average of over 500,000 per year).⁸ Those records represent an even greater number of works of authorship,

1. Act of Mar. 4, 1909, ch. 320, 35 Stat. 1075, § 9 (current version at 17 U.S.C. § 409) [hereinafter "Copyright Act of 1909"]; *Washingtonian Pub. Co. v. Pearson*, 306 U.S. 30 (1939) (holding that delay in depositing copies of a work after publication does not result in forfeiture of copyright).

2. See Copyright Act of 1976, P.L. 94—553, §§ 302, 303, 90 Stat. 2541, 2573–74 (Oct. 19, 1976) (providing for unitary terms of copyright without any need for registration for works created after 1977 and for works created but not published before 1978); Copyright Renewal Act of 1992, Pub. L. No. 102–307, 106 Stat. 264 (abolishing the requirement of renewal registration, affecting all works published after 1963).

3. 17 U.S.C. § 412; see *infra* Part I.B.5.

4. 17 U.S.C. § 410(c); see *infra* Parts I.B.1, I.B.3.

5. 17 U.S.C. § 411; see *infra* Part I.B.4.

6. 17 U.S.C. § 205(c)(2); see *infra* Part I.B.6.

7. See *infra* Part I.B.2.

8. See U.S. COPYRIGHT OFF., ANNUAL REPORT FY 2024, at 20 (2024), <https://www.copyright.gov/reports/annual/2024/ar2024.pdf> [<https://web.archive.org/web/20260106014830/https://www.copyright.gov/reports/annual/2024/ar2024.pdf>]. The registration records created since

since many of them are records of group registrations for multiple works. While similar historical numbers are not as easily available for recorded documents, in Fiscal Year 2024, the Copyright Office recorded 16,971 documents pertaining to copyright, relating to 1,738,530 works of authorship.⁹

In theory, both the public availability of registration and recordation records, and the legal advantages of registration and recordation, facilitate markets for and use of works of authorship by providing better information about ownership, while also clearing title and strengthening that ownership.¹⁰ However, the registration system provides those benefits only if registration records are accurate. Inaccurate records not only fail to provide any benefit, but they also damage markets, both by aiding particular false claims of ownership and by undermining trust in the entire system.¹¹ To be sure, the Copyright Office examines applications for registration. However, examination is necessarily limited; invalid or inaccurate claims can, and indeed do, reach the public record. When information on the registry is discovered to be invalid or incorrect, those registrations should be subject to challenge and correction, so that the copyright registry does not become littered with false claims and outdated information, thereby losing its efficacy as a source of accurate information and a support for copyright markets and use.

Unfortunately, under current law and practice, the mechanisms for challenging and correcting the copyright registry are severely limited, and they demonstrably enable false claims and information to remain on the record. Despite frequent substantive—and occasionally procedural—challenges to copyright registrations in the courts, there has been little academic attention given to the reality of cancellation procedures in the Copyright Office. In fact, some courts and commentators simply assume that the

1978 were created in electronic form and have been searchable online for some time. Although the registration records created before 1978 were originally created in paper form, the Copyright Office has been digitizing those records and making them available online as well. As of this writing, the post-1978 records and the records from 1898–1945 are searchable in the Copyright Office’s online Public Records System. U.S. COPYRIGHT OFF. PUBLIC RECORDS SYSTEM, <https://publicrecords.copyright.gov/> [<https://web.archive.org/web/20260112151209/https://publicrecords.copyright.gov/>] (last visited Jan. 23, 2026). Other earlier registration records are available in a Virtual Card Catalog system. U.S. COPYRIGHT OFF. VIRTUAL CARD CATALOG, <https://www.copyright.gov/vcc/> [<https://web.archive.org/web/20260112214502/https://www.copyright.gov/vcc/>] (last visited Jan. 23, 2026).

9. See U.S. COPYRIGHT OFF., ANNUAL REPORT FY 2024, *supra* note 8, at 6.

10. See Stef van Gompel & Saule Massalina, *Report: Survey on Voluntary Copyright Registration Systems* 67, WIPO (Apr. 23, 2021), https://www.wipo.int/edocs/mdocs/mdocs/en/wipo_crr_ge_2_21/wipo_crr_ge_2_21_report.pdf [https://web.archive.org/web/20250407124516/https://www.wipo.int/edocs/mdocs/mdocs/en/wipo_crr_ge_2_21/wipo_crr_ge_2_21_report.pdf] (“In addition to establishing a historical record of national cultural heritage, registration and recordation can be an important means for providing legal certainty to authors, rightholders and third parties.”).

11. For more detailed discussion of the harms of inaccurate registration records, see *infra* Part II.B.

Copyright Office *must* have some kind of administrative procedure for cancellation of invalid copyright registrations,¹² though others have noticed its absence.¹³

In this Article, we recommend a series of legal and practical changes that would enable registration and recordation to better serve their principal current purpose. Some of the changes, such as creating an administrative cancellation process or allowing courts to order cancellations, would require legislation. Others, such as creating a mechanism for anyone to inform the Copyright Office of possible grounds for cancellation, could be accomplished through issuing new regulations. Still others, such as recording court judgments that limit or invalidate registrations and properly indexing them by registration number, would only require the Copyright Office to comply with existing statutory mandates.

Part I of this Article explores the historical and contemporary purposes of copyright registration and identifies the principal current justification for copyright registration and recordation systems as providing accurate information and clearing title to support markets in works of authorship. Part II presents evidence that invalid and inaccurate copyright registrations still appear on the registry and explains how those inaccuracies can undermine the fundamental goals of the copyright system. Part III presents the current mechanisms for challenging and correcting inaccurate registration records and demonstrates their severe limitations. As part of our effort to understand actual Copyright Office practice in Part III, we present an empirical analysis of cancellation at the Copyright Office, based on records of all registration cancellations between 1978 and 2022. Part IV makes recommendations for improving the mechanisms for challenging and correcting registration records. We start with the easiest changes—those that the Copyright Office could make in their internal administrative procedures without needing to engage in rulemaking. We then consider changes that fall within existing statutory grants of rulemaking power to the Copyright Office. We close with changes that would require legislation. Part V concludes.

In summary, the lack of effective procedures for correcting inaccurate information and cancelling invalid copyrights in the registry creates a profound imbalance in the overall framework of U.S. copyright law and requires remedial action. We suggest the form that action should take.

12. See Keith Stephens, *Xerox Finally Wakes Up, but Is It Too Late?*, 6 SANTA CLARA COMPUT. & HIGH TECH. L.J. 407, 414–15 (1991) (noting that “[t]he Copyright Office regulations . . . provide an express administrative remedy. A proper avenue to Federal District Court review would entail Xerox requesting an initial administrative review before the Copyright Office, and then appealing an adverse decision to a Federal District Court.” (citing 37 C.F.R. § 201.7)).

13. See Dave Fagundes & Saurabh Vishnubhakat, *Copyright’s Administrative Law*, 68 J. COPYRIGHT SOC’Y U.S.A. 417, 463 (2021) (calling for “more robust third-party involvement in the almost entirely *ex parte* system of securing and vetting rights in creative expression.”).

I. THE HISTORICAL AND CURRENT PURPOSES AND LEGAL BENEFITS OF COPYRIGHT REGISTRATION

The purposes of a system of registering works of authorship, or of claims of copyright in those works, can be many, depending upon the way the system is constructed and the legal consequences of registration or of failure to register. Historically, registration has served, at various times, to: (1) facilitate censorship; (2) maintain a publishing oligopoly; (3) test whether copyright was needed to incentivize the creation of a particular work; (4) aid in the enforcement of other copyright formalities, such as the requirement of proper copyright notice on publicly distributed copies; (5) protect users of material that is not eligible for copyright protection from meritless infringement litigation; (6) relieve courts of the burden of litigation about uncopyrightable material and give them the benefit of expert agency opinion on copyrightability; (7) provide accurate information about the ownership and copyright status of a work, including information about limitations of ownership claims that examination of copies of the work might not make clear; (8) facilitate clearing or quieting title in a work; and (9) provide owners of copyright with enhanced remedies. We argue that the principal modern justification of copyright registration in the United States is strengthening markets in and facilitating use of works of authorship through a combination of the last three of these purposes. This part first explores the varied historical purposes of copyright registration. It then goes on to explain the current legal benefits of registration, and how registration and recordation currently serve the purpose of supporting markets in and use of works of authorship.

A. THE VARIED HISTORICAL PURPOSES OF REGISTRATION

Registration has its distant source in the English requirement of applying to the Stationers' Company to publish a book.¹⁴ Exclusive rights in all published books were held by the Stationers—the private guild of London booksellers established in the fifteenth century—and the holders of printing patents.¹⁵ There, the requirement of pre-publication registration served both the purpose of censorship—the applicant could be denied a license to publish the book if the contents were deemed objectionable—and of the maintenance of an oligopoly in publishing—only members of the Company could file such applications.¹⁶ In the late sixteenth century, the Star Chamber required

14. JOHN FEATHER, *A HISTORY OF BRITISH PUBLISHING* 38–39 (1988). For some additional history of formalities in the prehistory of copyright, see STEF VAN GOMPEL, *FORMALITIES IN COPYRIGHT LAW: AN ANALYSIS OF THEIR HISTORY, RATIONALES AND POSSIBLE FUTURE* 55–71 (2011).

15. Printing patents, where the sovereign granted an exclusive right to print a work, existed concurrently with Stationers' copyright. See LYMAN RAY PATTERSON, *COPYRIGHT IN HISTORICAL PERSPECTIVE* 78–113 (1968).

16. See Ian Gadd, *The Stationers' Company in England Before 1710*, in *RESEARCH HANDBOOK ON THE HISTORY OF COPYRIGHT LAW* 87, 92 (Isabella Alexander & H. Tomás Gómez-Arostegui eds., 2016); CHRISTOPHER MAY & SUSAN SELL, *INTELLECTUAL PROPERTY RIGHTS: A CRITICAL HISTORY* 88, 90–91 (2006); MARK ROSE, *AUTHORS AND OWNERS: THE INVENTION OF COPYRIGHT* 11–16 (1993); CYPRIAN BLAGDEN, *THE STATIONERS' COMPANY: A HISTORY 1403–1959*, 19–23, 67 (1960).

all works to be licensed by the Stationers' before printing,¹⁷ putting the Company in a powerful position, which it maintained even after the dissolution of the Star Chamber by means of various Licensing Acts.¹⁸

The first copyright act, Great Britain's Statute of Anne, separated the legal protection of literary property from the exercise of pre-publication censorship by vesting rights in the authors of books.¹⁹ For authors to take advantage of its protection, however, they were required to register their works prior to publication; censorship continued, though it was no longer the responsibility of the Company.²⁰ After 1710, copyright registration continued to be based at Stationers' Hall, where the Company had kept a registry of all new publications and reprints by reason of delegated governmental authority since receiving its royal charter in 1557.²¹

The early U.S. copyright acts, modeled on the Statute of Anne, eschewed both censorship and enforcement of oligopoly.²² In the early United States, some viewed copyright protection as a necessary component of the creation of an informed public in a democratic society.²³ Advocates for copyright laws in the early United States, such as Noah Webster, highlighted the need for copyright protection in order to develop a

17. *Star Chamber Decree, Westminster (1586)*, PRIMARY SOURCES ON COPYRIGHT (1450–1900) (L. Bently & M. Kretschmer eds.), https://copyrighthistory.org/cam/tools/request/showRecord.php?id=record_uk_1586 [https://web.archive.org/web/20260109052823/https://www.copyrighthistory.org/cam/tools/request/showRecord.php?id=record_uk_1586] (last visited Jan. 23, 2026).

18. *An Ordinance for the Regulation of Printing, London (1643)*, PRIMARY SOURCES ON COPYRIGHT (1450–1900), (L. Bently & M. Kretschmer eds.), https://copyrighthistory.org/cam/tools/request/showRecord.php?id=record_uk_1643a [https://web.archive.org/web/20260123191330/https://copyrighthistory.org/cam/tools/request/showRecord.php?id=record_uk_1643a] (last visited Jan. 23, 2026) (“It is therefore Ordered by the Lords and Commons in Parliament . . . Nor other Book, Pamphlet, paper, nor part of any such Book, Pamphlet, or paper shall from henceforth be printed, bound, stitched or put to sale by any person or persons whatsoever, unless the same be first approved of and licensed under the hands of such person or persons as both, or either of the said Houses shall appoint for the licensing of the same, and entred in the Register Book of the Company of Stationers, according to ancient custom, and the Printer thereof to put his name thereto.”)

19. “Act for the Encouragement of Learning (Statute of Anne),” 8 Ann., c. 19 (1710) (Gr. Brit.) [hereinafter “Statute of Anne”].

20. *Id.* at § 2; see also Stef van Gompel, *Les formalités sont mortes, vive les formalités! Copyright Formalities and the Reasons for their Decline in Nineteenth Century Europe*, in PRIVILEGE AND PROPERTY: ESSAYS ON THE HISTORY OF COPYRIGHT 157, 194 (Ronan Deazley, Martin Kretschmer & Lionel Bently eds., 2010).

21. BLAGDEN, *supra* note 16, at 19–23 (1960); CHRISTOPHER MAY & SUSAN SELL, INTELLECTUAL PROPERTY RIGHTS: A CRITICAL HISTORY 88 (2006). Interestingly, Section 3 of the Statute of Anne provided for rights in a book where the “clerk of the said company of stationers for the time being, shall refuse or neglect to register, or make such entry or entries,” suggesting both that registration of eligible books was mandatory and that problems with the Company’s management of the register were, to some degree, anticipated. See Statute of Anne, § 3.

22. ROSE, *supra* note 16, at 16; see also Edward C. Walterscheid, *The Nature of the Intellectual Property Clause: A Study in Historical Perspective*, 83 PAT. & TRADEMARK OFF. SOC’Y 769–71 (2001).

23. Stephen Wilf, *Copyright and Social Movements in Late Nineteenth-Century America*, 12 THEORETICAL INQ. L. 123, 137–38 (2011) (noting that in the nineteenth century copyright was seen as promoting the diffusion of knowledge necessary to creating informed citizenry).

national literature and clear national identity.²⁴ Copyright was a tool in the education of the voting members of a young republic; it protected the heavy investment in instructive texts, like Webster's own grammar books and dictionaries, allowing them to be published and distributed. Proponents of copyright in the early United States portrayed the legal protection of literature as necessary to achieve the goals of broader education and the development of a cohesive national culture.²⁵

Registration in the early American copyright acts reflected these goals of free transmission of literature and development of national identity. While the acts still required pre-publication notification to the government as part of the process of obtaining federal copyright protection, the government officials who received the notification had no power to stop publication on the basis of the contents of a book, chart, or map.²⁶ (Indeed, at that time they had no opportunity to examine the contents of the work, because at the time of application no copy of the work had yet been deposited.)²⁷ Because any U.S. citizen could record the title of a book, chart, or map and claim to be its owner, registration also no longer served the purpose of maintaining an oligopoly, though, in fact, publishers were still most often the parties registering works under the first U.S. copyright acts.²⁸

While the system of copyright registration in the early United States successfully promoted the new country's values, it would take time before registration would fulfill the modern goal of facilitating markets in, and uses of, copyright works. Burdensome formalities may have, albeit imperfectly, served the purpose of "distinguish[ing] authors whose expressive activities are motivated by copyright from authors for whom copyright was an afterthought."²⁹ However, those formalities meant that only a small

24. Noah Webster, *First Memorial to the General Assembly of Connecticut* (Oct. 24, 1782), Noah Webster Papers, Box 8 (N.Y. Pub. Lib., papers related to Webster's struggle for copyright laws) ("To . . . the whole is annexed a short account of the history of America, the time of the settlement of each State, with an epitome of their respective constitutions as established since the revolution, which is designed to diffuse a political knowledge of this grand confederation of republics among that class of people who have not access to more appropriate means of information.").

25. See Jane Ginsburg *A Tale of Two Copyrights*, 64 TUL. L. REV., 991, 1002–05 (1990).

26. See Act of May 31, 1790, ch. 15, 1 Stat. 124 (hereinafter "Copyright Act of 1790"); *Copyright Act, New York (1790)*, PRIMARY SOURCES ON COPYRIGHT (1450–1900) (eds. L. Bently & M. Kretschmer, https://www.copyrighthistory.org/cam/tools/request/showRecord.php?id=record_us_1790 [https://web.archive.org/web/20260115185734/https://www.copyrighthistory.org/cam/tools/request/showRecord.php?id=record_us_1790] (last visited Mar. 2, 2026)).

27. From the first Copyright Act of 1790 through the Acts of 1831 and 1870, Congress required copyright owners to *record the titles* of their works before publication. See Copyright Act of 1790, §§ 1, 3; Act of Feb. 3, 1831, ch. 16, 4 Stat. 436, §§ 1, 4 [hereinafter "Copyright Act of 1831"]; Act of July 8, 1870, ch. 230, 16 Stat. 198, §§ 87, 90, 92 [hereinafter "Copyright Act of 1870"]. The district courts—and later the Library of Congress and the Copyright Office—received and granted each recordation request before they ever had a copy of the work in question to examine. In many cases, the work whose title had been recorded was never published, leading to "ghost" records of planned but never accomplished publications. See also Zvi S. Rosen & Richard Schwinn, *An Empirical Study of 225 Years of Copyright Registrations*, 94 TUL. L. REV. 1003, 1019 (2019) (presenting a chart which shows that between 1878 and 1908, between 20 and 60 percent of title recordations were not followed by deposit of copies of the works in question).

28. Rosen & Schwinn, *supra* note 27, at 1019.

29. Douglas Lichtman, *Copyright as a Rule of Evidence*, 52 DUKE L.J. 683, 724 (2003). On the "filtering" function of formalities in granting copyright only to those works whose creation was motivated

percentage of works were registered, and the 1790 Copyright Act provided very little incentive to register some of the most popular forms of publication of the time, such as almanacs, periodicals, and pamphlets.³⁰

Over time, the Copyright Office began to undertake substantive examination of deposit copies as part of the registration process.³¹ In part, this helped in determining whether the deposit copy, which was supposed to be representative of published copies, displayed a copyright notice, which the law of the time required.³² Copyright notice was supposed to make users of the copy aware that copyright was indeed claimed in the work embodied in the copy; to provide the user with the name of the copyright owner; and to inform the user of the year of the work's publication, which, because the copyright term was set as a fixed number of years after publication, enabled the user to determine whether that term had ended, leaving the work in the public domain.³³ Thus, yet another purpose of registration was to aid in the enforcement of other formal requirements of copyright law—although by now those formal requirements are greatly diminished, and copyright notice, in particular, is no longer required and has very little legal effect.³⁴

B. THE DEVELOPMENT OF THE CURRENT LEGAL BENEFITS OF REGISTRATION

It is now received wisdom that registration has become less important over the history of U.S. copyright law, and in one respect that is true. Registration is no longer a condition of obtaining or maintaining federal copyright protection. As mentioned above, registration has not been a condition of obtaining federal copyright protection since 1909.³⁵ The requirement of registration to maintain copyright protection for the

by copyright, see also Christopher Sprigman, *Reform(aliz)ing Copyright*, 57 STAN. L. REV. 485, 502–28 (2004); VAN GOMPEL, *supra* note 14, at 31–34.

30. Oren Bracha, *Commentary on the Copyright Act 1790*, PRIMARY SOURCES ON COPYRIGHT (1450–1900) (L. Bently & M. Kretschmer eds.) (2008), https://www.copyrighthistory.org/cam/tools/request/showRecord.php?id=commentary_us_1790 [https://web.archive.org/web/20260105010205/https://www.copyrighthistory.org/cam/tools/request/showRecord.php?id=commentary_us_1790] (“Much of the development of print culture and democratic discourse in the early republic happened outside the boundaries of copyright protection.”).

31. See generally Zvi S. Rosen, *Examining Copyright*, 69 J. COPYRIGHT SOC'Y U.S.A. 481 (2022) (providing a historical study of the development of the copyright examination process).

32. See Benjamin Kaplan, *Copyright Revision: Study No. 17, The Registration of Copyright*, in STAFF OF THE S. COMM. ON THE JUDICIARY, 86TH CONG., COPYRIGHT LAW REVISION STUDIES 41, 45 (Comm. Print 1960).

33. See, e.g., Arthur J. Levine & Jeffrey L. Squires, *Notice, Deposit and Registration: The Importance of Being Formal*, 24 UCLA L. REV. 1232, 1236–53 (1976) (discussing the requirements and functions of copyright notice under the Copyright Act of 1909 and the original Copyright Act of 1976).

34. See U.S. COPYRIGHT OFF., CIRCULAR 3: COPYRIGHT NOTICE (Mar. 2021), <https://www.copyright.gov/circs/circ03.pdf> [<https://web.archive.org/web/20260105012832/https://www.copyright.gov/circs/circ03.pdf>]. As Kaplan noted, the registration process can also aid the applicant, to the extent that the examiners alert to applicant to noncompliance with formal requirements, and the applicant can act to comply. Kaplan, *supra* note 32, at 27–28, 41.

35. See *supra* text accompanying note 1.

maximum term was prospectively abolished in 1978, and retrospectively abolished in 1992 (affecting works published after 1963).³⁶ In every other respect, however, registration has become more important, gaining in legal and practical significance.³⁷ It was the Copyright Act of 1909 that created for the first time a system under which a registration application was accompanied by contemporaneous deposit of copies of the works in which copyright was claimed.³⁸ Ever since then, with a few isolated exceptions, the significance of registration has cumulatively increased.³⁹ In this section, we will review each significant legal consequence of registration and its development over time.

1. Registrations as Prima Facie Evidence of the Facts Stated in the Certificates

The Copyright Act of 1909 first made registration certificates prima facie evidence of the facts stated in the certificate. Courts had previously frequently raised evidentiary barriers to proving all the facts necessary to have a valid claim to federal copyright. It was hard to prove, for example, that a thirty-year-old painting had never previously been published, and thus was still eligible for federal protection,⁴⁰ or that a plaintiff had received a complete assignment of the U.S. copyright in a play, giving them standing to sue for infringement, rather than merely rights to perform it.⁴¹ The statutory presumption was intended to provide a kind of title enhancement that would assist with those evidentiary problems. The registration certificate could be presented as evidence of whatever facts it stated, and unless there was other evidence to the contrary, the certificate would be sufficient.

Although the presumption has been in place continuously since 1909, it has gained in breadth as new facts have been added to registration certificates. In the original 1909 Act, the only facts required to be included on all certificates were the title of the work; the name and address of the claimant; and the date of deposit of the required copies.⁴² Four years later, Congress added the name of the country of which the author was a citizen; the place of U.S. residence of a foreign author; and the date of publication of

36. See *supra* text accompanying note 2.

37. See John Tehranian, *The Emperor Has No Copyright: Registration, Cultural Hierarchy, and the Myth of American Copyright Militancy*, 24 BERKELEY TECH. L.J. 1399, 1408 (2009) (“While formalities for subsistence may have been eliminated under the 1976 Act, formalities for effective enforcement of a copyright actually increased.”).

38. Copyright Act of 1909, §§ 10, 11.

39. Exceptions include the abolition of the renewal requirement and the creation of an exception for foreign works from the requirement of registration before commencement of a civil lawsuit.

40. See, e.g., *Bosselman v. Richardson*, 174 F. 622 (2d Cir. 1909).

41. *Lederer v. Saake*, 166 F. 810 (E.D. Pa. 1909); *rev'd*, *Saake v. Lederer*, 174 F. 135 (3d Cir. 1909). See also Kaplan, *supra* note 32, at 29 (mentioning the evidentiary problem that the statutory presumption was intended to cure, and citing these cases).

42. See Copyright Act of 1909, § 55. Section 55 also required the certificate to contain “such marks as to class designation and entry number as shall fully identify the entry [in the Copyright Office record books],” and for books and the affidavit that the publicly distributed copies were manufactured in the United States. *Id.*

the work, if any.⁴³ In 1947, Congress added the name of the author.⁴⁴ The Copyright Act of 1976 added additional facts, such as whether or not the work was a work made for hire; the date of creation of the work; the date of death of any deceased author; a statement about how the claimant acquired copyright if the claimant was not the author; and “in the case of a compilation or derivative work, an identification of any preexisting work or works that it is based on or incorporates, and a brief, general statement of the additional material covered by the copyright claim being registered.”⁴⁵ Thus, the information that receives the benefit of the statutory presumption has substantially expanded since its creation in 1909.⁴⁶

The 1976 Act did introduce one limitation. It provided that the presumption would only apply if registration was made within five years of the publication of the work; the evidentiary weight of a registration made more than five years after publication was left to “the discretion of the court.”⁴⁷ As the Senate Report mentioned, this limitation was “based on a recognition that the longer the lapse of time between publication and registration the less likely to be reliable are the facts stated in the certificate.”⁴⁸ In practice, since the vast majority of registrations that result in litigation are filed before or within five years after publication, the five-year limit does not seriously curtail its operation.⁴⁹

43. See Act of Mar. 2, 1913, ch. 97, 37 Stat. 724–25 (current version at 17 U.S.C. § 409).

44. See Act of July 30, 1947, ch. 391, 61 Stat. 666 (current version at 17 U.S.C. § 409).

45. 17 U.S.C. § 409 (Copyright Act of 1976). The 1976 Act also empowers the Copyright Office to add other facts to the certificate, by stating that it shall include “any other information regarded by the Register of Copyrights as bearing upon the preparation or identification of the work or the existence, ownership, or duration of the copyright.” *Id.*

46. The only change since 1976 has been the elimination of information about the place of manufacture of books, since U.S. copyright law no longer contains requirements or incentives for books to be manufactured in the United States. See Pub. L. No. 97-215, 96 Stat. 178 (1982) (extending the date of expiration of the manufacturing requirements of the Copyright Act from July 1, 1982 to July 1, 1986).

47. 17 U.S.C. § 410(c). See, e.g., C.J. Prods. LLC v. Snuggly Plushez LLC, 809 F. Supp. 2d 127, 143 (E.D.N.Y. 2011).

48. S. Rep. No. 983, at 188 (1974).

49. To test the claim that most works are registered within five years of publication, we used the dataset of copyright registrations created by Robert Brauneis and Dotan Oliar for their article *An Empirical Study of the Race, Ethnicity, Gender, and Age of Copyright Registrants*, 86 GEO. WASH. L. REV. 46 (2018). That dataset covers all original valid monograph registrations from 1978 through 2012, a total of 14,598,621 registrations. See *id.* at 52. (The dataset is available at <https://doi.org/10.7910/DVN/F6OLFG>.) It includes 6,735,542 registrations of unpublished works—works that were obviously registered within five years of publication, since they were registered before publication—and 7,820,544 registrations of works that contained enough information to calculate whether registration was made within five years of publication. (Some registration records state that they are registrations of published works, but contain no year of publication; others do contain a year of publication, but a year that is more recent than the year of registration.) Of those 7,820,544 usable registration records of published works, 7,612,075, or 97.33%, were registered within five years of publication. Add in the registrations that were made for works before publication, and 98.57% of all registrations filed from 1978 through 2012 were filed before or within five years after publication.

2. Registrations as Triggering a Three-Year Limitations Period on Ownership Claims

Section 507(b) of the Copyright Act requires civil actions under the Act to be brought within three years of the accrual of the claim.⁵⁰ Although § 507(b) seems to be directed to infringement actions, courts have consistently held that it applies to ownership claims as well. Thus, a claim to own or co-own copyright in a work may be barred if the claimant does not file suit within three years of the accrual of the claim. Filing a registration application, or obtaining a registration, may play a role in claim accrual. In general, a claim accrues when a potential plaintiff is put on notice of a repudiation of their ownership interest by a potential defendant. Some cases have language suggesting that registering a claim of copyright that was inconsistent with a potential plaintiff's ownership interest would itself be sufficient to start the three-year limitations period running. For example, in holding that a defendant's claim of co-ownership of copyright was barred, the First Circuit stated that the plaintiff's registration "put the world on constructive notice as to the [plaintiff's] ownership of the copyright and of the facts stated in the registration certificate," and accordingly the defendant "had constructive notice of [the plaintiff's] claim of exclusive ownership of the copyrights."⁵¹

However, there is also strong precedent stating that registration, by itself, will not trigger the accrual of a claim of ownership. As Judge Pierre Leval concluded in *Wilson v. Dynatone Publishing Co.*, a rule that issuance of a registration would trigger the accrual of an ownership claim:

would mean that after authoring a work, an author would need to constantly monitor the Copyright Office registry to be sure that no one has registered a spurious claim of authorship, on pain of losing their ownership of the copyright three years after the spurious registration. Defendants' interpretation would thus impose on authors an intolerable and unrealistic burden, and would open fertile opportunities for thieves to steal copyrights by simply filing baseless registrations for previously created works.⁵²

While the weight of authority thus suggests that issuance of a registration will not by itself start the three-year limitations period running, giving actual notice of a registration to someone that excludes any ownership interest in a work on their part undoubtedly does start that period running. That raises the issue of whether obtaining a registration irrevocably places the burden of timely litigation on the person whose ownership interest is excluded by that registration.

50. See 17 U.S.C. § 507(b).

51. *Saenger Org. v. Nationwide Ins. Licensing Assocs.*, 119 F. 3d 55, 66 (1st Cir. 1997); see *Willsea v. Theis*, No. 98 Civ. 6773, 1999 WL 595629, at *5 (S.D.N.Y. Aug. 6, 1999) ("[O]nce an author registers his copyright, any co-author exercising reasonable diligence should be aware that another person has claimed authorship and thus know of his alleged injury.")

52. *Wilson v. Dynatone Publ'g Co.*, 908 F. 3d 843, 844 (2d Cir. 2018); see *Gaiman v. McFarlane*, 360 F. 3d 644, 654–55 (7th Cir. 2004) (registration alone does not trigger accrual of ownership claim); *Brownstein v. Lindsay*, 742 F. 3d 55, 71–72 (3d Cir. 2014) (same).

3. Registrations as Prima Facie Evidence of the Validity of the Copyright

The role of the registration certificate as prima facie evidence of the validity of the copyright is complex. It gained some judicial recognition under the 1909 Act and was then made explicit in the 1976 Act. “Validity of the copyright” has been taken to mean two things. First, it means that the work contains copyrightable subject matter: that it displays a modicum of creativity and has copyrightable expression that is not merely facts, ideas, or functional features. Second, it can also mean that the presumption regarding the “facts stated on the certificate” is broad enough to encompass certain legal conclusions.

a. *The Presumption of Copyrightable Subject Matter*

The presumption of validity regarding copyrightable subject matter is connected to the Copyright Office’s role in examining deposits submitted with registration applications. If the Copyright Office has the authority to reject registrations when it determines that the deposit does not contain copyrightable subject matter, and if it exercises that authority, then the grant of a registration certificate suggests that the registered work in fact contains copyrightable subject matter. As Zvi Rosen has explored thoroughly,⁵³ the Office’s authority to examine for copyrightable subject matter, and to reject registration applications for lack thereof, was in some doubt for the first several decades of the 1909 Act, and that doubt is reflected in Benjamin Kaplan’s 1958 Copyright Revision Study on The Registration of Copyright.⁵⁴ However, the Copyright Office’s substantive examination authority was confirmed by the D.C. Circuit in 1958,⁵⁵ and the Copyright Office produced a separate Copyright Revision Study on The Authority of the Register of Copyrights to Reject Applications for Registration, which solidified its position that the Office actually had such authority.⁵⁶ The Report observed, “[I]f the Copyright Office were to register claims and issue certificates without regard to the copyrightability of the material, the result would be to mislead the applicant and the public. What materials are copyrightable is a rather esoteric question on which the general public is not well informed.”⁵⁷

The Copyright Office position was that a basic level of substantive examination is required to keep the record from becoming crowded and to protect the public; it proceeded to exercise its authority by rejecting a small but substantial percentage of applications. Prof. Rosen’s statistics, gathered from reports of the Office’s Examining

53. See Rosen, *supra* note 31.

54. See Kaplan, *supra* note 32, at 27 (stating that the 1909 Act provisions “do not make it clear how far the Register is entitled to exercise judgment in issuing or refusing particular certificates or in defining by general regulations what are registrable works.”).

55. See *Baillie v. Fisher*, 258 F. 2d 425, 426 (D.C. Cir. 1958).

56. See Caruthers Berger, *Copyright Revision: Study No. 18, Authority of the Register of Copyrights to Reject Applications for Registration*, in STAFF OF S. COMM. ON THE JUDICIARY, 86TH CONG., COPYRIGHT LAW REVISION STUDIES 85 (Comm. Print 1960).

57. *Id.* at 95.

Division, show that the Office rejected about 2.5% of all registration applications over the twenty years from 1957 to 1977.⁵⁸ The rejection rates range widely between different types of works, from only about 1% of applications to register musical works, to 9% of applications to register works of the visual arts.⁵⁹ Those rejections were not all made for lack of copyrightable subject matter, but an Examining Division report from 1960 suggests that about half of them were rejected on that basis.⁶⁰

The 1976 Act placed the Copyright Office's examination authority on firmer textual ground. It explicitly grants authority to the Register of Copyrights to refuse registration applications either for lack of copyrightable subject matter or for any other reason that the application is invalid, and it also explicitly extends the statutory presumption to cover "the validity of the copyright."⁶¹ Since 1978, the Copyright Office's examination practice has continued, resulting, for example, in a rough average of 9,000 rejections a year from 2000–2015.⁶² Interestingly, the number of rejections appears to have risen since 2015, with 25,000 rejections reported in 2018.⁶³

Although the Copyright Office can now be confident in its legal authority to refuse registration of noncopyrightable subject matter, there is the question of how much deference federal courts will give to its registration decisions based on substantive legal requirements for copyright protection, such as minimum creativity or functionality. Courts have been inconsistent in the deference they have accorded to Copyright Office decisions of this kind, both across the circuits and depending on whether they are dealing with registration denials versus grants.⁶⁴ While some courts have highlighted Copyright Office expertise and granted *Skidmore* deference,⁶⁵ others have pointed out the lack of meaningful examination at the Copyright Office and reviewed its decisions accordingly.⁶⁶ The United States Court of Appeals for the Fourth Circuit expressed particular skepticism when it observed that the "Copyright Office's practice of summarily issuing registrations (perhaps even the day of filing the application, as in

58. See Rosen, *supra* note 31, at 535.

59. See *id.* at 536–37.

60. See *id.* at 539. Together, the rejections for "no copyrightable matter," "blank forms," "ideas, systems, methods, etc.," "devices," and "utilitarian articles only" come to 40%. Other major categories include lack of copyright notice (34%) and lack of publication (17%). See *id.*

61. See 17 U.S.C. § 410(b) ("In any case in which the Register of Copyrights determines that, in accordance with the provisions of this title, the material deposited does not constitute copyrightable subject matter or that the claim is invalid for any other reason, the Register shall refuse registration and shall notify the applicant in writing of the reasons for such refusal."); 17 U.S.C. § 410(c) (providing the presumption).

62. See Rosen, *supra* note 31, at 546.

63. Regan A. Smith, *Curious Cases of Copyrightability Before the Copyright Office*, 43 COLUM. J.L. & ARTS 343, 344 (2020).

64. See 2 NIMMER ON COPYRIGHT § 7.26 (2025); see also Fagundes & Vishnubhakat, *supra* note 13, at 449–51, 472 (2024) (noting courts have applied inconsistent levels of deference and those reviewing registration denials have been unclear as to why such deference is proper).

65. Varsity Brands, Inc. v. Star Athletica, LLC, 799 F.3d 468, 479 (6th Cir. 2015), *aff'd*, 580 U.S. 405 (2017) (holding that "the Copyright Office's determination that a design is protectable under the Copyright Act is entitled to *Skidmore* deference").

66. I.C. *ex rel.* Solovsky v. Delta Galil USA, 135 F. Supp. 3d 196, 212–13 (S.D.N.Y. 2015) ("The Court must accordingly make an independent determination as to whether plaintiff's design is entitled to copyright protection.").

this case) counsels against placing too much weight on registrations as proof of a valid copyright.”⁶⁷

Where an application for registration is for a work of borderline copyrightability, the Copyright Office has much stronger incentives to grant the registration rather than refuse it; it is official Office policy to grant registrations when there is some doubt that a court would come to same conclusion on copyrightability.⁶⁸ As Thomas Field has pointed out, “[r]easons for issuing certificates are rarely available, but refusals must be explained”⁶⁹ to comply with the statutory requirements.⁷⁰ When the Copyright Office refuses to grant a registration, there is an internal procedure for disappointed applicants to request reconsideration of the decision, and they can also appeal the decision to reject under the Administrative Procedures Act (“APA”).⁷¹ When the Copyright Office *grants* a registration, however, no parties have standing to challenge that decision. This fact, in addition to the presumption of validity and deference afforded to Copyright Office decisions in infringement actions (despite such actions *not* falling under the APA), where the plaintiffs usually have registrations, provide incentives to the Copyright Office to err in favor of granting registration for works when questions of substantive validity are at all uncertain.

b. The Presumption of Legally-Infused “Facts” in the Registration Certificate

The presumption that a registered work has copyrightable subject matter has come to be only one part of the “presumption of validity” of copyright in a work, because courts have interpreted the combined presumption of validity and presumption of facts stated in the certificate to cover other legally significant matters. For example, if a person is named as author on the certificate, there is a presumption that that person independently created copyrightable subject matter contained in the work.⁷² Moreover,

67. See *Universal Furniture Int'l, Inc. v. Collezione Europa LLC*, 618 F.3d 417, 428, 430 (4th Cir. 2010) (finding the plaintiff's design process to have satisfied the low burden for originality by demonstrating “some creative spark”); *cf. Boyds Collection, Ltd. v. Bearington Collection, Inc.*, 360 F. Supp. 2d 655, 661–62 (M.D. Pa. 2005) (district court in the Third Circuit giving little deference to letters from an examiner at the Copyright Office explaining the denial of registration of costumes as useful articles).

68. See U.S. COPYRIGHT OFF., *COMPENDIUM OF COPYRIGHT PRACTICES* § 607 (3rd ed. 2021) [hereinafter “COMPENDIUM (THIRD)”]. See also Marybeth Peters, *The Copyright Office and the Formal Requirements of Registration of Claims to Copyright*, 17 U. DAYTON L. REV. 737, 742 (1992) (“The Copyright Office will register the claim even though there is a reasonable doubt about the ultimate action which might be taken under the same circumstances by an appropriate court’ with respect to whether the material deposited for registration constitutes copyrightable subject matter.” (quoting U.S. COPYRIGHT OFF., *COMPENDIUM OF COPYRIGHT PRACTICES* § 108.07 (2d ed. 1984)).

69. Thomas Field, *Judicial Review of Copyright Examination*, 44 IDEA 479, 518 (2004).

70. 17 U.S.C. § 410(b) (requiring the Register to “notify the applicant in writing of the reasons” for refusing a registration).

71. 37 C.F.R. § 202.5(c), (g) (2018).

72. See *Wihtol v. Wells*, 231 F.2d 550, 552–53 (7th Cir. 1956) (holding that, although the plaintiff had admitted that he had drawn the melody of his work from an old Russian folk song, the registration certificate gave rise to the presumption that the plaintiff had created a distinguishable and copyrightable variation on that tune); *Remick Music Corp. v. Interstate Hotel Co.*, 58 F. Supp. 523, 531 (D. Neb. 1944) (holding that a registration certificate that included the name of the author was prima facie evidence of the originality of the

if only one person is named as author on the certificate, there is a presumption that no other person can claim to be joint author of that work.⁷³

c. Registrations without Prima Facie Significance—Issued under the “Rule of Doubt”

The Copyright Office maintains that, because it has the sole power to issue registration certificates that are prima facie evidence of the validity of the copyright and the facts stated therein, it also has the power to issue certificates that do not carry a presumption of validity.⁷⁴ It does so primarily when it is unable to examine the deposit copy to determine whether it contains copyrightable subject matter, because the deposit copy is, for example, a computer program in object code that is not human-readable, or because the deposit copy has been redacted to preserve trade secrets.⁷⁵

4. Registrations as a Prerequisite of Filing an Infringement Suit

Since 1909, obtaining a registration has been a prerequisite of filing a copyright infringement suit.⁷⁶ While some courts had decided that merely filing an application satisfied the prerequisite, the Supreme Court held in 2019 that filing was not sufficient; the Copyright Office must take final action on the application before an infringement suit can be filed.⁷⁷ As a result, the owner of any work that has been registered can sue immediately upon learning of infringement, while owners of unregistered works must first file a registration application and wait until it has been granted or denied. That final action can take months, and although expedited processing is available, the fee for such processing is (as of this writing) \$800 per claim.⁷⁸ From the point of view of a potential user of the work, the appearance of a work in copyright registration records means that in case of a dispute about whether the use amounts to infringement, swift legal action is more likely.

The Berne Convention Implementation Act excepted works of foreign origin from the requirement of obtaining final action on a registration application before filing an

work, since “authorship presumptively connotes originality”), *aff’d*, 157 F. 2d 744 (8th Cir. 1946), *cert. denied*, 329 U.S. 809 (1947).

73. See *Jerry Vogel Music Co. v. Forster Music Publisher*, 147 F. 2d 614, 615 (2d Cir. 1945) (affirming the district court’s rejection of a claim of joint authorship and noting that the appearance on the registration certificate of a single name is prima facie evidence of sole authorship).

74. See COMPENDIUM (THIRD), *supra* note 68, at § 607.

75. See *id.* See also, Zvi Rosen, *The Future Was Then: The Recurrent History of AI Authorship*, INDIANA L. REV. (forthcoming 2026) (discussing the history and application of the Rule of Doubt at the Copyright Office).

76. See Copyright Act of 1909 § 12 (“No action or proceeding shall be maintained for infringement of copyright in any work until the provisions of this Act with respect to the deposit of copies and registration of such work shall have been complied with.”); Copyright Act of 1976 § 411(a).

77. See *Fourth Est. Pub. Benefit Corp. v. Wall-Street.com, LLC*, 586 U.S. 296 (2019).

78. U.S. COPYRIGHT OFF., CIRCULAR 4: COPYRIGHT OFFICE FEES (Nov. 2024), at 4, <https://www.copyright.gov/circs/circ04.pdf> [<https://web.archive.org/web/20251230060107/https://www.copyright.gov/circs/circ04.pdf>].

infringement suit,⁷⁹ because the Berne Convention, which the United States joined in 1989, prohibits conditioning copyright protection on formalities.⁸⁰ However, the other advantages of registration—the presumptions of validity and of the truth of facts stated in the certificate, and the availability of statutory damages and attorneys' fees—still apply to foreign works, and there are therefore still powerful incentives to register valuable foreign works.

5. Registrations as a Prerequisite of Obtaining Statutory Damages and Attorneys' Fees

If, and only if, a work is registered before infringement commences, or within three months after publication, the copyright owner is eligible for the enhanced remedies of statutory damages and attorneys' fees.⁸¹ This provision was added by the Copyright Act of 1976 as a further incentive to make public records of copyright claims through registration.⁸² Statutory damages are important because they provide a monetary recovery even when no actual damages can be proven. Attorneys' fees, though not guaranteed, will often exceed damages. Thus, the appearance of a work in registration records signals the availability of a potentially very large monetary award if a judge or a jury decides that infringement has occurred.

6. Registrations as a Prerequisite for Establishing a Recorded Chain of Title

In many substantial copyright transactions, including sales and secured financing transactions, it is vital that the copyright owner be able to establish a recorded chain of title, showing that every transaction in the chain that leads to that owner's title has been properly recorded in the Copyright Office. That recorded chain of title gives constructive notice to the world of each transaction, and gains protection against other possible transactions involving those works. Under the Copyright Act of 1909, registration was not a prerequisite of the constructive-notice effect of recording a document pertaining to a copyright.⁸³ The Copyright Act of 1976 made registration of a work such a prerequisite, so that now, no recorded chain of title gives protection against other potential transactions without registration of the work in question.⁸⁴

79. Berne Convention Implementation Act of 1988, Pub. L. No. 100-568, § 9(b)(1), 102 Stat. 2853, 2859 (1988). Works whose country of origin is the United States continue to be subject to the requirement of registration before filing an infringement suit, since the Berne Convention does not regulate the conduct of its signatories towards their own citizens and domestically incorporated companies.

80. Berne Convention for the Protection of Literary and Artistic Works art. 5(2), Sep. 9, 1886, as revised at Paris July 24, 1971, S. Treaty Doc. No. 99-27 (1986) [hereinafter "Berne Convention"].

81. 17 U.S.C. § 412.

82. See H.R. REP. NO. 94-1476, at 158 (1976).

83. See Copyright Act of 1909, § 44.

84. See 17 U.S.C. § 205(c)(2).

7. Summary

From the time that recordation of title became registration in 1909, registration has incrementally gained in significance. The presumption of facts stated in the registration certificate, added in 1909, has grown in breadth as more facts have been added to the certificate and as the 1976 Act made explicit a presumption of validity that encompasses such matters as the presence of copyrightable subject matter and of independent creation by the named authors. It has also gained in power as the chance that a registration would be invalidated by inaccuracies has been limited, including by legislation in 2008 and a Supreme Court decision in 2022. The necessity of registering before filing an infringement suit, also created in 1909, hardened in 2019 when the Supreme Court held that filing an application was not sufficient, and only final action by the Copyright Office would suffice. The role of registration as qualifying a copyright owner for the enhanced remedies of statutory damages and attorneys' fees was added in the 1976 Act. The 1976 Act also added the requirement of registration to have a chain of title be protected by the Copyright Act's recording provisions.

As a number of scholars have commented, rights in a work that appears in the copyright registry are now far stronger than those in an unregistered work.⁸⁵ John Tehranian has argued that this creates a "cultural hierarchy," privileging the elites who know how to use the registration system over the ordinary people who do not.⁸⁶ Miriam Markowitz-Bitton and Emily Michiko Morris argue that both copyright and trademark registration systems create two-tiered rights systems that disadvantage women, minority, and other marginalized creators.⁸⁷ This Article is not focused on the problems arising from inequalities between the owners of registered copyrights and those of unregistered copyrights. Rather, our point is that when copyright registrations have so much more relative significance, as they do today, inaccuracies in registrations can do greater damage. An inaccurate registration record that overclaims property rights is much more likely to prevent public use when it shouldn't. Potential users will be concerned about the risk of losing an infringement lawsuit—heightened by the presumptions of validity and of facts stated in the certificate—and scared by the enhanced remedies available if they do lose.

C. THE CENTRAL PURPOSE OF MODERN COPYRIGHT REGISTRATION: SUPPORTING MARKETS AND USE

The current registration system serves a variety of purposes. For example, requiring substantive examination by the Copyright Office before filing an infringement suit protects potential defendants from meritless suits. It also relieves courts from the burden of meritless litigation, and it gives courts the benefit of the Copyright Office's

85. See *supra* Section I.B.

86. See *generally* Tehranian, *supra* note 37 (arguing that the copyright registration system unfairly privileges sophisticated parties).

87. See Miriam Marcowitz-Bitton & Emily Michiko Morris, *The Distributive Effects of IP Registration*, 23 STAN. TECH. L. REV. 306 (2020).

expert opinion on the copyrightability of a work.⁸⁸ However, the central purpose of a registration system that provides accurate information to the public, offers a method for clearing title, and grants enhanced remedies for copyright owners who register, is to support markets in and use of works of authorship.⁸⁹

1. Providing Accurate Information

Providing accurate information about the existence and scope of copyright in a work, and about its ownership, is essential to supporting markets in and use of works of authorship. The role of registration in providing accurate information has only become more important after the abolition of the copyright notice requirement. When copies of some published works no longer contain a copyright notice, registration steps in to provide information about who the owner of copyright is, as well as who the author of the work is and when the work was published, facts that may be necessary to determine whether the work is still under copyright.

Fulfilling the purpose of providing accurate information requires easy public access to registration records; the better and more complete access of the public to those records, the better the informational purpose is served.⁹⁰ In that regard, the Copyright Office has, over time, provided increasing public access to registration and recordation records. It provided public access to its registration books and maintained a public card catalog of registrations from very early on, but those were only available in one place—the Library of Congress—which limited public access.⁹¹ Beginning in 1891, the Copyright Office started publishing books of registration records, first under the title *Catalog of Title Entries*, and then starting in 1906 under the title *Catalog of Copyright Entries*.⁹² Those were distributed to selected libraries around the United States, and continued publication in paper form until 1978, and in microfiche until 1982.⁹³ In 1978, the Copyright Office began keeping registration and recordation records in electronic form, and it started making those available on the internet in 1997.⁹⁴ In 2010, the Copyright Office began to digitize pre-1978 records and make them available online.⁹⁵

88. See, e.g., Nicole Pottinger & Brian L. Frye, *Registration Is Fundamental*, 8 IP THEORY 1, 2 (2018) (“While eligibility for registration is an issue for only a tiny minority of works, the Copyright Office has extensive experience in determining whether works qualify for registration. Courts do not.”).

89. See van Gompel & Massalina, *supra* note 10, at 67–68.

90. Many of the other historical and current purposes of registration do *not* require easy public access to registration records; censorship and oligopoly maintenance do not require public access, and neither do the goals of protecting users from meritless lawsuits or providing courts with expert opinions on copyrightability.

91. See Rosen & Schwinn, *supra* note 27, at 1018–20.

92. *Id.* at 1017, 1020.

93. *Id.* at 1024.

94. *Copyright Office Operations, Accomplishments, and Challenges: Hearing Before the Subcomm. on Courts & Intell. Prop. of the H. Comm. on the Judiciary*, 105th Cong. 5 (1998) (statement of Marybeth Peters, Register of Copyrights).

95. *Historical Public Records Program*, U.S. COPYRIGHT OFF., <https://www.copyright.gov/historic-records/> [<https://web.archive.org/web/20251226192003/https://copyright.gov/historic-records/>] (last visited Jan. 23, 2026).

Thus, many registration records are now available in searchable form online, and that provides pretty good public accessibility, although we will have some suggestions below.

Providing good public access to registration records, however, by no means guarantees that those records cover all available works, nor their accuracy. Since registration has become voluntary, and since copyright has expanded to cover both published and unpublished works, most works under copyright are not registered. There are many incentives to register, but those incentives are not sufficient to induce registration for an uncountable number of works of modest value, and even many works of substantial value. The problem of encouraging registration is an important one, and there are many possible measures that could be taken, but they are not within the scope of this Article.

The accuracy of registration and recordation records, however, is very much the focus of this Article. In Part II, we will consider the incidence of inaccuracies in the copyright registry, and their effects on markets in and use of works of authorship. These include inaccuracies about whether materials that are the subject of the registration contain copyrightable subject matter; inaccuracies about who the owner of copyright is, and who the author of the work is; and inaccuracies about other facts that could affect the existence and term of protection, such as the publication year of a work and its country of origin. In Part III, we will address in detail the mechanisms that address accuracy, and their limitations. In particular, we consider the role and limitations of examination of registration applications; the necessary role of third-party corrections after the registration record has been published; and the barriers to correction that exist in current law and practice.

2. Clearing Title

While it is helpful to provide accurate information about the copyrightability, ownership, authorship, and publication of putative works of authorship, those facts are sometimes difficult to ascertain. As a result, the task of facilitating markets in and use of works of authorship cannot be accomplished merely by ensuring that the facts are available in the public record. There should also be processes for resolving open factual questions to the extent possible, thus removing uncertainties and enabling either ownership, assignment, and licensing of works—or the free use of works if they are determined not to be original or are no longer under copyright. Registration can and does serve that purpose as well.

The presumptions of validity and of the truth of facts stated in the registration certificate are part of a set of rules that serve that purpose. Those presumptions are sometimes seen as a benefit granted to encourage people to register claims of copyright, and indeed from the perspective of applicants they may have that effect (and may thereby also serve the purpose of supporting markets and use by increasing

participation in registration).⁹⁶ However, those presumptions are hardly unrelated benefits, as, for example, a cash payment to applicants for filing successful applications might be. Rather, the presumptions also help to solidify title, thus enabling transactions. The creation of those presumptions was motivated in part by the experience of those who probably were the owners of copyright in works, but who had lost the documentary evidence to prove that they were; the presumption helped them move forward so long as no contrary evidence surfaced.⁹⁷

3. Providing Enhanced Remedies

Those who register their works in a timely manner also get the benefit of the enhanced remedies of statutory damages and attorneys' fees.⁹⁸ Like the presumptions of validity and of the truth of the facts stated in the certificate, enhanced remedies could be seen as carrots dangled to induce greater participation in the registration system, which they are. But, like the presumptions, the benefits to the copyright owner are not merely to incentivize registration. Providing the copyright owner with additional remedies is another way of hardening ownership and supporting markets; users are more likely to bargain rather than infringe if their infringement will be treated more harshly.

As we detailed above, these presumptions, conditions, enhanced remedies and other benefits have continued to gain in significance even after their initial creation, making the accuracy, completeness, and reliability of the information contained in copyright registrations even more important than it once was.

II. INACCURACIES IN COPYRIGHT OFFICE REGISTRATIONS AND THEIR IMPACT ON THE COPYRIGHT SYSTEM

In this Part, we first provide examples of how inaccuracies have remained on the Copyright Office registry even after discovery and adjudication. We then discuss how those inaccuracies negatively impact the copyright system.

A. INACCURATE COPYRIGHT REGISTRATIONS

The information available in the registry kept by the Copyright Office can be criticized for its lack of comprehensiveness—many copyright owners do not register their works—and for not containing useful information that would serve the aims of facilitating markets, such as up-to-date contact information for owners to allow for ease in licensing. The accuracy of registrations can also be questioned because

96. See Rosen, *supra* note 31, at 486 (describing the presumption of validity as “the most fundamental benefit of a copyright registration in the United States”).

97. See, e.g., Edward A. Sargoy, *Comment on Study No. 17*, in STAFF OF S. COMM. ON THE JUDICIARY, 86TH CONG., COPYRIGHT LAW REVISION STUDIES 74–75 (Comm. Print 1960) (making the case for copyright registrations conferring prima facie of validity and ownership to limit the plaintiff's burden in litigation).

98. See 17 U.S.C. § 412.

applicants often get away with overclaiming the scope of their rights by failing to disclose the extent to which their works are derived from the public domain or other works. Yet, in addition to these failings, it is arguably even more troubling that the registry contains copyright registrations for works that are unprotectable or that are not owned by the party who appears on the registration. It is impossible to know exactly how many those registrations are on the registry—we cannot independently investigate the copyrightability or true ownership of millions of registrations, which is precisely what gives a registration system its power. However, we can show that even when federal courts have determined that a work is uncopyrightable or the claimed owner of the work is not the true owner, the registration often stays on the registry unaltered. This section provides a number of examples of such registrations.

In *Carol Barnhart Inc. v. Econ. Cover Corp.*, the Second Circuit Court of Appeals determined that mannequins of partial human torsos were utilitarian articles and not copyrightable, despite being registered with the Copyright Office.⁹⁹ The copyright registrations for the claimed works VA0000136780 and VA0000136782 still appear as registered works in the online catalog, with nothing to indicate that a federal court deemed the plaintiff's copyright claims invalid.¹⁰⁰

In the case of *Sensory Path v. Fit and Fun Playscapes*, a jury determined that the defendant's copyright registration for a game was "erroneous and injurious" to the plaintiff. Ordering the defendant to voluntarily seek cancellation of its own registration, the district court stated:

While the authority to cancel a copyright registration resides exclusively with the Copyright Office, the Court "can issue an order directing a party in a copyright infringement lawsuit to request from the Copyright Office that the Office cancel the party's own copyright registration through the voluntary cancellation procedure dictated by the Copyright Office." Here, the Court directs Sensory Path and Holly Clay to voluntarily withdraw Copyright Registration No. VA 2-204-079.¹⁰¹

Although the defendant's motion for a new trial was denied and an appeal was dismissed,¹⁰² Copyright Registration No. VA2204079 still appears in the online catalog.¹⁰³

In *Nason Homes LLC v. Singletary Construction LLC*, the court determined that the plaintiff had not owned the copyright by means of assignment when it applied for copyright registration; therefore the court found its registration for an architectural design "The Alder" was invalid so it could not meet its burden of showing

99. 773 F.2d 411, 418 (2d Cir. 1985).

100. See *Men's Chest*, Registration No. VA0000136780 (U.S. Copyright Office Dec. 7, 1982), https://publicrecords.copyright.gov/detailed-record/voyager_18711076; *Women's Chest*, Registration No. VA0000136782 (U.S. Copyright Office Dec. 7, 1982), https://publicrecords.copyright.gov/detailed-record/voyager_18711078.

101. No. 3:19-cv-00219-GHD, 2023 WL 2095936, at *2 (N.D. Miss. Feb. 17, 2023) (citations omitted).

102. Memorandum Opinion at 8, *Sensory Path Inc. v. Fit & Fun Playscapes LLC*, No. 3:19-cv-00219-GHD (N.D. Miss. June 5, 2023) (Dkt. No. 355) (denying motion); Dkt. No. 364 (dismissing appeal).

103. See *The Original Sensory Path*, Registration No. VA0002204079 (U.S. Copyright Office Oct. 10, 2019), https://publicrecords.copyright.gov/detailed-record/voyager_31569565.

infringement.¹⁰⁴ The registration for “The Alder,” No. VA0001888774, still appears on the online catalog, though there is a note in the record indicating “C.O. correspondence.”¹⁰⁵

In the extraordinary case of *Canadian Standards Association v. P.S. Knight Co., Ltd.*, the court granted the plaintiff’s request for declaratory judgment on the invalidity of the defendants’ copyright registration No. TX0008892018 because it was clearly fraudulently obtained.¹⁰⁶ The court ordered the defendants to cancel the registration TX0008892018 with the U.S. Copyright Office.¹⁰⁷ Although the defendants brought a successful appeal on other grounds, they did not appeal the cancellation order, which stood.¹⁰⁸ Nevertheless, the defendants’ registration TX0008892018 remains on the online catalog.¹⁰⁹

According to *Patry on Copyright*, “If the holder of the certificate fails to request cancellation by the Copyright Office, that party may be held in contempt. (There is no reason to believe the Copyright Office will refuse to honor such a request.)”¹¹⁰ Whether courts are simply failing to enforce their orders for parties to request cancellation or the Copyright Office is indeed failing to honor the court-ordered requests of copyright owners to cancel their own copyrights, these orders do not appear to be having the desired effect. Moreover, following a cancellation order from a court, the parties may settle in such a way that the adversary will not enforce the cancellation order, provided they have no liability for infringing the invalid copyright. Thus, the registration can remain on the registry, continuing to provide prima facie evidence of the validity of the copyright against third parties unaware of the nature of the legal proceedings and/or settlement.

B. POTENTIAL HARMS OF INACCURACIES ON THE COPYRIGHT REGISTRY

The previous section sets out just a small set of examples of the kinds of inaccurate copyright registrations that remain on the registry even after litigation has made the legal status of those registrations crystal clear. But can those inaccuracies actually cause harm?

Since copyright is an intellectual property (“IP”) right that arises without the requirement of formalities, and many copyright works are never registered anyway, one might question whether inaccuracies on the registry are really a problem. The validity of copyright in a work and the validity of the copyright registration are separate

104. *Nason Homes, LLC v. Singletary Constr., LLC*, No. 3:14-CV-1656, 2016 WL 6952257, at *6 (M.D. Tenn. Jan. 29, 2016).

105. *The Alder*, Registration No. VA0001888774 (U.S. Copyright Office Jan. 23, 2014), https://publicrecords.copyright.gov/detailed-record/voyager_26499424.

106. 649 F. Supp. 3d 334, 355 (2023).

107. *Id.* at 356.

108. 112 F.4th 298, 302 n.7 (5th Cir.), *cert. denied*, 145 S. Ct. 1135 (2025).

109. *Canadian Electrical Code, Part One*, Registration No. TX0008892018 (U.S. Copyright Office Sep. 1, 2020), https://publicrecords.copyright.gov/detailed-record/voyager_31755645.

110. *An Action to Cancel a Registration*, 5 PATRY ON COPYRIGHT § 17:108 (Sep. 2025 update).

lines of inquiry so one might ask whether the incompleteness and inaccuracy of the registry alone can cause real harm.

In this section, we argue that these inaccuracies *can* harm the copyright system in several ways: by compromising the registration system's goal of facilitating markets, by undermining the trust in the Copyright Office upon which judicial notice, presumptions, and deference are premised, and by providing incentives and opportunities for overclaiming of rights and other rent-seeking behaviors by parties who hold invalid or overbroad registrations.

1. Failing to Achieve the Goals of Registration

"A database of obsolete data serves no one."¹¹¹

The first way that the inaccuracies on the registry cause harm is by frustrating the main goal of the registration described above, which is to facilitate markets in, and use of, copyright works. IP registration systems are very costly for governments to maintain; they do so because of their perceived benefits. A good IP registration system can provide the benefits of public notice at the same time as it facilitates transactions in the property rights it records.¹¹² With effective notice, members of the public can determine whether or not an artifact is protected and act accordingly.¹¹³ Infringement is discouraged and the information costs of licensing decrease, to the benefit of IP owners.

To serve these dual functions of a registration system, Copyright Office registration and recordation information would ideally be both complete and accurate. Unfortunately, they are neither.

The non-mandatory nature of copyright registration means that the registry cannot be comprehensive; members of the public cannot safely rely on the information it provides to conclude that a work is not protected.¹¹⁴ Additionally, the nature of copyright protection means that the information provided by the registry gives the

111. Maria A. Pallante, *The Curious Case of Copyright Formalities*, 28 BERKELEY TECH. L.J. 1415, 1422 (2013).

112. See Aaron Perzanowski, *The Limits of Copyright Office Expertise*, 33 BERKELEY TECH. L.J. 733, 737 (2018) (noting the benefits of maintaining a register to allow "the public to reliably determine whether a work is protected in the first place. It also facilitates transactions, making sure creators can be paid for their work.").

113. See Peter S. Menell & Michael J. Meurer, *Notice Failure and Notice Externalities*, 5 J.L. ANALYSIS 1, 2 (2013) (discussing the importance of notice since IP "can be difficult to navigate because of the amorphous nature of intangible boundaries, the difficulty in determining whether an intangible resource is already 'owned,' and the complex rights associated with intangibles"); Lionel Bently, *Requiem for Registration? Reflections on the History of the United Kingdom Registered Designs System*, in 1 *PERSPECTIVES ON INTELLECTUAL PROPERTY: THE PREHISTORY AND DEVELOPMENT OF INTELLECTUAL PROPERTY SYSTEMS* 1, 35–36 (Alison Firth ed., 1997) ("A registration system operated as a functional equivalent of possession or title deeds—fixing ownership in and marking boundaries of a particular asset. Registration thus made the whole idea of intangible property much less threatening.").

114. See Sprigman, *supra* note 29, at 500 (discussing the lack of reliability of the information provided by non-mandatory copyright registration, in contrast with real estate title registries).

public little guidance in terms of what they can or cannot legally do with the registered work.¹¹⁵ The boundaries of the claimed rights are unclear because “the subject matter of copyright is too abstract to be formulated in a representative claim, the law cannot require a copyright claimant to indicate precisely for which elements of a work he claims protection.”¹¹⁶ The limited information in the registration increases transaction costs, but it can also work to the unfair advantage of some copyright owners. The trust placed on the applicants’ assertions, combined with a strong presumption of validity, can incentivize applicants to overclaim and/or omit information about prior works from which their own work is derived.¹¹⁷

The current system of copyright registration in the United States is not achieving the basic goals of providing public notice and lowering transaction costs. Thus, it is failing to achieve the main aim of a modern copyright registration system that we have identified, which is to facilitate markets in, and use of, copyright works. Under these circumstances, it is reasonable to ask whether the benefits of a registration systems are worth the public and private costs of maintaining federal copyright registration when the Copyright Office registry may be falling short of the broader goals of IP registration systems.

2. Effects on the Application of the Presumption of Validity

Beyond justifying its cost, one must ask whether the lack of cancellation procedures in the existing registration system at the Copyright Office causes harm. There is evidence to suggest that it does.

The presumption created by registration is inconsistently, and sometimes problematically, applied by the courts.¹¹⁸ Supporters of the existing system are quick to point out that the owner of a copyright registration must still meet the burden of showing ownership of a valid copyright to prevail in court. Nevertheless, there is the possibility that some courts may give the presumption more weight than is reasonable based on the level of examination at the Copyright Office. To avoid harms arising from inaccurate registration information, all the interested parties—not to mention the

115. See *Tehrani*, *supra* note 37, at 1413, 1426–34 (claiming “the entire notion that registration will serve a notice function to potential infringers is vastly exaggerated”).

116. VAN GOMPEL, *supra* note 14, at 37. See also Ben Depoorter & Robert Kirk Walker, *Copyright False Positives*, 89 NOTRE DAME L. REV. 319, 348 (2013) (observing “the issuance of a registered copyright certificate offers little guidance as to the extent of an author’s property rights in the work, or even if the work contains protectable expression at all”).

117. Howard B. Abrams & Tyler T. Ochoa, *The Application for Registration and the Certificate of Registration: Accuracy and Errors*, in THE LAW OF COPYRIGHT § 10:37 (2025) (“Copyrights can be extremely valuable and the registrant-created nature of the certificate of registration together with the evidentiary presumptions and remedial advantages that attach to a certificate resulting from a timely registration . . . provide incentives for claims that may be less than accurate.”); see also *Misuse*, 5 PATRY ON COPYRIGHT § 17:128 (noting that the doctrine of copyright misuse has been applied to registrations that failed to disclose the derivative nature of a work).

118. See 2 NIMMER ON COPYRIGHT § 7.26 (2025) (describing courts’ inconsistent approaches to the presumption of validity of the copyright from the Fourth Circuit’s caution that registrations should not be given too much weight to the Sixth Circuit’s application of *Skidmore* deference).

federal courts—must appreciate the realistic limitations of the presumption of validity conferred by registration.

There are compelling reasons to believe that many copyright owners, internet platforms, members of the public, and even federal courts may *not* understand the limitations of the presumption of validity. The Copyright Office engages in limited substantive examination when granting applications for registration, so it is reasonable to question whether the presumption is wholly justified.¹¹⁹ The presumption should be easy to rebut, however, that may not always be so.¹²⁰ Reliance on copyright registrations as *prima facie* evidence of validity is particularly troubling with regard to criminal copyright infringement proceedings.¹²¹

One concern is that the federal courts do not treat the presumption of validity consistently when dealing with essentially legal questions, such as utilitarian functionality and originality. The Court of Appeals for the Second Circuit provided an example of this in *Samara Bros., Inc. v. Wal-Mart Stores, Inc.*¹²² While the *Wal-Mart v. Samara Bros.* litigation is best known to legal scholars for reaching the U.S. Supreme Court on the issue of trademark protection for product design trade dress,¹²³ little attention has been paid to Samara Brothers' successful copyright infringement claims. In addition to federal and state unfair competition claims, Samara Brothers brought copyright claims against Wal-Mart and the other retail defendants based on thirteen federal copyright registrations related to the designs of the garments.¹²⁴ After a jury trial, Samara was awarded \$912,856.77 in damages for the copyright infringement alone.¹²⁵ The district court rejected Wal-Mart's motion for judgment as a matter of law, which claimed that several of Samara's registered copyrights were facially invalid.¹²⁶

On appeal to the Second Circuit, Wal-Mart argued that Samara's copyright claims based on appliques of strawberries, daisies, hearts, and tulips lacked originality and were therefore unprotectable.¹²⁷ The Second Circuit rejected Wal-Mart's arguments on the basis of the *prima facie* evidence of validity offered by Samara Brothers' copyright

119. See 18 C.J.S. COPYRIGHTS § 59 (“The Copyright Office need not substantively examine copyright applications to verify the originality of works.”); van Gompel & Massalina, *supra* note 10, at 28 (stating the U.S. process involves determining “whether the legal and formal requirements of the law have been met, including whether a work submitted for registration constitutes copyrightable subject matter”).

120. See, e.g., *Universal Furniture Int'l, Inc. v. Collezione Europa USA, Inc.*, 618 F.3d 417, 430 (2010) (“[T]his presumption is fairly easy to rebut because the Copyright Office tends toward cursory issuance of registrations.”); see Rosen, *supra* note 31, at 486 (“This rebuttable presumption of validity is hardly insurmountable for a defendant with a legitimate attack on the copyrightability of the work.”).

121. See Susan M. Richey, *The Troubling Role of Federal Registration in Proving Intellectual Property Crimes*, 50 AM. CRIM. L. REV. 455, 488 (2013) (“A conclusion of validity based solely upon issuance of a copyright registration strains credulity because the process involves virtually no substantive examination of applications.”); Robert Aloysius Hyde, *A Reckless Disregard of the Ordinary Infringer? Moving Toward a Balanced and Uniform Standard for Willful Copyright Infringement*, 35 U. TOL. L. REV. 377, 393–94 (2003).

122. 165 F.3d 120 (2d Cir. 1998).

123. *Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, 529 U.S. 205 (2000).

124. *Samara Bros., Inc. v. Judy-Philippine, Inc.*, 969 F. Supp. 895, 896 (S.D.N.Y. 1997).

125. *Id.*

126. *Samara Bros.*, 165 F.3d at 132.

127. *Id.*

registrations, citing *Folio Impressions, Inc. v. Byer California*.¹²⁸ According to the majority, Wal-Mart was required to produce “evidence at trial challenging the validity of the copyright registrations,” and “[s]pecifically . . . evidence to show that the works were not ‘independently created by its author, and not copied from someone else’s work.’”¹²⁹

Judge Newman dissented from the majority on several issues, including the originality of five of the designs which depicted “such common items as strawberries, tulips, daisies, and hearts.”¹³⁰ He criticized the majority for focusing on whether the designs at issue had been copied from another’s work instead of directly addressing Wal-Mart’s argument that the designs lacked the degree of minimal creativity required for protection under *Feist Publications, Inc. v. Rural Telephone Service Co.*¹³¹ At trial, Wal-Mart had indeed produced evidence to support its assertions that the designs were of commonplace, public domain shapes, presenting “exhibits depicting hearts, flowers, and strawberries in the ordinary shape and design displayed in Samara’s copyrights.”¹³² In Judge Newman’s view, “a court could take judicial notice of the fact that the outline of an unadorned heart is sufficiently common to lack minimal originality,” even without the exhibits Wal-Mart presented at trial, but he thought they had provided “ample evidence” of the lack of originality of five of the designs.¹³³

The Second Circuit had previously held that “the presumption of validity may be rebutted ‘[w]here other evidence in the record casts doubt on the question,’” which could include “evidence that the work had been copied from the public domain or by evidence that the work was a non-copyrightable utilitarian article.”¹³⁴ The Court of Appeals for the Third Circuit has also found the presumption of validity arising from registration to be “of little force . . . where the only issue is the copyrightability of a particular item that is incontestably original.”¹³⁵

While the Copyright Office has established its authority to examine on minimal creativity, and it clearly does not examine on the basis of independent creation, the Supreme Court in *Feist* identified that *both* criteria are constitutionally required for copyright protection.¹³⁶ Yet both the presumption of validity arising from registration and the unspecified level of deference given to Copyright Office decisions to grant registrations combine to limit the willingness of some courts to address some legal aspects of validity analysis when brought before them.

The District Court and the Court of Appeals majority in *Samara Bros. v. Wal-Mart* arguably erred by failing to analyze whether or not Samara Brothers’ claimed works

128. *Id.*; 937 F.2d 759, 763 (2d Cir. 1991).

129. *Samara Bros.*, 165 F.3d at 132.

130. *Id.* at 133.

131. *Id.* at 136 (citing *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991)).

132. *Id.* at 136–37.

133. *Id.*

134. *Fonar Corp. v. Domenick*, 105 F.3d 99, 104 (2d Cir. 1997) (citing *Durham Indus., Inc. v. Tomy Corp.*, 630 F.2d 905, 908 (2d Cir. 1980)).

135. *Masquerade Novelty, Inc. v. Unique Indus., Inc.*, 912 F.2d 663, 669 n.7 (3d Cir. 1990).

136. *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 358 (1991).

actually did satisfy the minimal creativity requirement.¹³⁷ It may be appropriate to give some deference to Copyright Office expertise on the question of minimal creativity, but the Copyright Office's conclusion should not be the final word on the matter, particularly in light of its default policy to grant registration if there is legal doubt.¹³⁸ In order to satisfy the constitutional requirement of originality as set forth in *Feist*, there needs to be some way for a defendant to shift the burden back to the plaintiff claiming copyright protection based on a registration. While scholars have differed on the question of whether courts may infer lack of originality based on evidence of plaintiff access to works from the public domains and substantial similarity, such evidence could be used to rebut the presumption of validity.¹³⁹

The inconsistent, and occasionally too weighty, application of the presumption of validity by the courts is one way that inaccurate registrations have the potential to cause harm in the broader copyright ecosystem.

3. Judicial Notice of Copyright Office Registration Information and the Online Catalog

Another area where inaccuracies in the Registry may cause harm arises from the fact that courts sometimes take judicial notice of information from the Copyright Office's online catalog.¹⁴⁰ Federal Rule of Evidence 201 allows courts to "judicially notice a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."¹⁴¹ While this is often simply a question of authenticating the copyright registration (which may or may not contain accurate information),¹⁴² there have been other cases where judicial notice was taken of evidence from the Online Catalog to prove copyright ownership.¹⁴³

137. See, e.g., *Universal Furniture Int'l, Inc. v. Collezione Europa USA, Inc.*, 618 F.3d 417, 430 (2010) ("[T]he presumption of validity may be rebutted where other evidence in the record casts doubt on the question, such as 'evidence that the work had been copied from the public domain or by evidence that the work was a non-copyrightable utilitarian article.'" (citing *Fonar Corp.*, 105 F.3d at 104)); but see *Masquerade Novelty*, 912 F.2d at 668–69 (in which the court of appeals gave the registration prima facie presumptive force on the issue of originality).

138. See *supra* Part I.B.3.c.

139. Compare Jessica Litman, *The Public Domain*, 39 EMORY L.J. 965, 1001–03 (1990) (arguing defendants are not entitled to an inference of the non-originality simply by showing the plaintiff had access to the public domain work), with Russ VerSteeg, *Rethinking Originality*, 34 WM. & MARY L. REV. 801, 874–75 (1993) (suggesting defendants may rely on circumstantial evidence of plaintiff access to a public domain work and substantial similarity).

140. See, e.g., *Brooks-Ngwenya v. Indianapolis Pub. Schs.*, 564 F.3d 804, 808 (7th Cir. 2009).

141. FED. R. EVID. 201(b)(2).

142. *Kaseberg v. Conaco, LLC*, 360 F. Supp. 3d 1026, 1029 (S.D. Cal. 2018) (taking judicial notice of the plaintiff's printouts from the online catalog); *White v. Alcon Film Fund, LLC*, 52 F. Supp. 3d 1308, 1316 n.9 (N.D. Ga. 2014) (observing that "courts have taken judicial notice of true and correct copies of the Copyright Office's online record of registration"); *Obodai v. YouTube LLC*, 840 F. Supp. 2d 714, 715 (S.D.N.Y. 2011) (taking judicial notice of the plaintiff's online copyright registration record).

143. *Sony Music Ent. v. Cox Commc'ns, Inc.*, No. 1:18-cv-950, 2019 WL 13298888, at *1 (E.D. Va. Oct. 18, 2019).

Given the trust that the Copyright Office places on the information provided by the applicant during the registration process, and the minimal examination, one would think that the reliability of the information would, to some extent, be dependent on the element of public assertion of the facts contained. If factual information is asserted publicly, its reliability and accuracy could be challenged by members of the public who hold the relevant information and are able to make contradictory claims. When there is no mechanism for interested members of the public to challenge the facts made in a public assertion or to make competing claims, there is little basis to trust the information it contains.

Where courts have acknowledged that “the Copyright Office has neither the facilities nor the authority to rule upon the factual basis of applications for registration or renewal,”¹⁴⁴ it may reasonably seem inappropriate for courts to judicial notice of the facts contained therein. Based on the evidence of inaccuracies described above, courts should more carefully consider whether they can safely rely on the accuracy of information taken from the online catalog without additional confirmation.

4. DMCA Takedowns, Copyright Misuse, and Chilling Effects

Inaccuracies on the registry can also further exacerbate familiar, systemic problems arising from copyright over-enforcement, such as copyright misuse and chilling effects on fair/non-infringing uses of works. Where a copyright registration exists, there is a strong incentive for the party accused of infringement to settle rather than to challenge the plaintiff’s claims to copyright ownership. As discussed above, registration allows for statutory damages awards. Such awards can be extremely high, particularly in the case of digital infringement, because, for example, someone using file-sharing software or training an artificial intelligence model may have copied a very large number of works. Provided it is registered in a timely manner, a work with minimal licensing value can actually be more valuable in litigation than it would have been from legitimate licensing.¹⁴⁵ Given the risk of a significant award, an accused infringer in the digital context may be well-advised to consider settlement, even where the underlying copyright is of questionable validity, rather than face the expense of a trial and an uncertain outcome.¹⁴⁶

In addition to the threat of statutory damages awards, the fact that the claimant is the owner of a copyright registration can make it appear more meritorious or “official” to an unsophisticated party than it truly is. Courts have suggested that promoting the speedy settlement of infringement claims is a key purpose of having a copyright

144. *Cadence Indus. Corp. v. Ringer*, 450 F. Supp. 59, 65–66 (S.D.N.Y. 1978).

145. See Michael P. Goodyear, *A Shield or a Solution: Confronting the New Copyright Troll Problem*, 21 TEX. REV. ENT. & SPORTS L. 77, 83–84 (2020).

146. See Ben Depoorter, *Copyright Infringement in the Digital Age: When the Remedy Is the Wrong*, 66 UCLA L. REV. 400, 404, 408 (2019); Orit Fischman Afori, *Flexible Remedies as a Means to Counteract Failures in Copyright Law*, 29 CARDOZO ARTS & ENT. L.J. 1, 2 (2011) (discussing the chilling effects of copyright protection due to parties avoiding the use of a work or seeking unnecessary license as a rational, risk-averse behavior).

registration system: “Registration promotes orderly resolution of copyright disputes because it creates a permanent record of the protected work, putting the world on constructive notice of the copyright owner’s claim.”¹⁴⁷ But successful settlements encourage plaintiffs, including those who have invalid copyrights, to continue to assert their rights against other users in future.

Copyright registrations are also powerful tools for copyright owners using the Digital Millennium Copyright Act (“DMCA”) to protect their works.¹⁴⁸ The existence of a copyright registration has significant weight in the back-and-forth of take-down procedures, particularly when used against unsophisticated parties, who may or may not actually be infringing.¹⁴⁹ In markets where individuals and businesses rely on social media platforms as their chief means of reaching their clients, overclaiming based on a copyright registration (for example, claiming rights in individual public domain photographs based on a copyright registration for a compilation of said photographs) can be abused to harm competitors and engage in rent-seeking by means of DMCA take-down procedures.

Moreover, as previously mentioned, applicants for copyright registration may fail to acknowledge prior works from which their own work is derived and overclaim their rights because they have every incentive to do so.¹⁵⁰ Some scholars have recommended sanctioning copyright registrants who overclaim in order “to preserve the integrity of the registration system and avoid improper extensions of copyright into material in which the registrant has no legitimate rights.”¹⁵¹

The Supreme Court may have inadvertently increased the incentive for less-scrupulous applicants to overclaim with its holding in *Unicolors*.¹⁵² By protecting copyright holders from losing their registrations due to unintentional mistakes of fact or law, the consequences of “accidental” inaccuracies provided by the applicants themselves are unlikely to be serious—if they are, in fact, ever detected. Even if inaccuracies in the registry are detected, without adequate mechanisms for challenging and correcting inaccurate registrations, the effects of errors can be widespread.

147. *Salinger v. Random House, Inc.*, 811 F.2d 90, 93 (2d Cir. 1987).

148. *See* 17 U.S.C. § 512.

149. *See* Wendy Seltzer, *Free Speech Unmoored in Copyright’s Safe Harbor: Chilling Effects of the DMCA on the First Amendment*, 24 HARV. J.L. & TECH. 171, 177 (2010) (“The threat of secondary liability induces service providers to comply with the DMCA’s notice-and-takedown provisions, making it more difficult for speakers to post material that challenges someone who can potentially make a claim to copyright.”).

150. *See* Philip Abromats, *Nondisclosure of Preexisting Works in Software Copyright Registrations: Inequitable Conduct in Need of a Remedy*, 32 JURIMETRICS J. 571 (1992); Deepa Varadarajan, *The Uses of IP Misuse*, 68 EMORY L.J. 739, 771, 798 (2019) (describing how courts have identified copyright misuse where threats of litigation have been made on the basis of unprotectable elements of registered copyrights).

151. Abromats, *supra* note 150, at 572.

152. *Unicolors, Inc. v. H&M Hennes & Mauritz, LP*, 595 U.S. 178 (2022).

III. REGISTRATION ERROR AVOIDANCE AND CORRECTION MECHANISMS—AND THEIR LIMITATIONS

We have shown how the copyright registry includes many registrations that are invalid or that contain material errors, even after courts have issued final judgments declaring them invalid or erroneous. We suspect that the registry contains many more invalid or erroneous registrations, and we have shown how the presence of those registrations undermines markets in and use of works of authorship (or of materials that don't actually qualify as works of authorship).

We now focus on *why* the registry includes invalid or erroneous registrations, by considering the current mechanisms in law and Copyright Office practice that avoid error or allow error correction, and by scrutinizing their limitations. We start with pre-issuance error avoidance tools: examination and deterring sanctions. We then continue with post-issuance correction tools: cancellations, registration of adverse claims, and the recording of litigation judgments. Each of these mechanisms turns out to have severe limitations under current law and practice.

A. EXAMINATION: MINIMAL CREATIVITY AND DEPOSIT COPY CONSISTENCY, BUT NOT INDEPENDENT CREATION, OWNERSHIP, OR AUTHORSHIP

The Copyright Office examines all registration applications, and when the Copyright Registration Specialists conduct their examination, they have usually both the application and the deposit copy of the work that is the subject of that application in front of them.¹⁵³ That means that they can decide whether the work in which copyright is claimed exhibits some minimal creativity, and they can see whether information on the deposit copy, if any, about ownership, authorship, and publication is consistent with facts stated on the application. However, they cannot determine whether the work is in part or in whole an independent creation or whether the claims about ownership and authorship are true.

1. Originality—Examining for Creativity, but not Independent Creation.

The Copyright Act extends protection to “*original* works of authorship.”¹⁵⁴ The Supreme Court has held that “originality,” in that sense, includes two elements: “independent creation plus a modicum of creativity.”¹⁵⁵ Applicants must typically submit a copy of the work in which copyright is claimed.¹⁵⁶ (In limited circumstances, they can submit identifying material rather than a copy, such as a photograph of a sculpture rather than a copy of the sculpture itself, but that too can be examined.)¹⁵⁷ Copyright Registration Specialists in the Copyright Office can therefore examine the

153. See COMPENDIUM (THIRD), *supra* note 68, at §§ 602.4(a)–(b).

154. 17 U.S.C. § 102(a).

155. *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 346 (1991).

156. See 17 U.S.C. § 408(b).

157. See 17 U.S.C. § 408(c); 37 C.F.R. § 202.21 (“Deposit of Identifying Material Instead of Copies”).

deposit copy or the substitute to determine whether the work in which copyright is claimed indeed displays a “modicum of creativity.” They can also determine whether the features that display a modicum of creativity are separable from any functional aspects of the work, or ideas presented by the work, that the Copyright Act states in § 102(b) are not protected by copyright. If, in their judgment, the work does not display a modicum of creativity that is separable from functional elements or ideas, they will reject the application.

However, the examination for copyrightable subject matter is subject to a very serious limitation. A work is “original” and hence eligible for copyright protection only if it both displays a “modicum of creativity” and was “independently created.” The creative or expressive elements that make the work eligible for copyright protection must have been chosen *by the claimed author of the work* and not copied from some other preexisting work. The Copyright Registration Specialists cannot effectively examine for independent creation. Unlike patent examiners, they have no databases of prior art—or in this case, prior authorship—to search, and even if they did, they could not conclusively determine whether the features in the work they were examining that were identical to some prior work were in fact copied from that work, rather than being independently created and coincidentally similar. Thus, in practice, the Copyright Office conducts no examination of the “independent creation” element of originality. Someone could copy some or all of a previously-created work, or works, and as long as the result appeared to contain a modicum of creativity, the Copyright Office would issue the registration. In other words, “the Copyright Office is not equipped to gauge the author’s originality versus copying, and will not reject an application, even if a strikingly similar work has been previously registered.”¹⁵⁸

2. Ownership, Authorship, and Publication: Examining for Deposit Copy Consistency, but not for Truth.

Copyright Registration Specialists also check to see whether the information submitted on the application form, including the name of the claimant (the copyright owner), the name of the author, and the date of publication, are consistent with information on the deposit copy.¹⁵⁹ Consistency is one step in an important potential mechanism for ensuring accuracy of copyright registration records. If published copies of the work make false statements about authorship or ownership, it is far more likely that the true author or owner will become aware of those false claims and will seek to correct them. Thus, checking for consistency can be a valuable part of error correction. However, it will only work if it also easy for the true author or owner to challenge the

158. *M&D Int’l Corp. v. Chan*, 901 F. Supp. 1502, 1510 (D. Haw. 1995) (quoting *NIMMER ON COPYRIGHT*, § 12.11[B] at 12–170.1 (1994)).

159. See *COMPENDIUM (THIRD)*, *supra* note 68, at § 602.4(b) (explaining that many types of copies, such as published books, will almost always include information about authors, copyright owners, and publication dates. Many other types of copies, such as copies of photographs or other graphic works, often omit that information because there is no requirement to include it. Without it, Copyright Registration Specialists cannot check for consistency, but they will not reject applications for that reason.)

registration. The more difficult that challenge becomes, the less effective any check for consistency is. Thus, we will have to consider below how difficult it is for an author or owner who becomes aware of a false claim on a published copy to object to that claim.

Beyond checking for consistency, however, the Copyright Office does not typically engage in fact checking. As the Compendium of Copyright Office Practices puts it, “[o]rdinarily, the Office does not conduct investigations or make findings of fact to confirm the truth of any statement made in an application, such as whether a work has been published or not.”¹⁶⁰ It states one caveat: “[T]he Office may take administrative notice of facts or matters that are known by the Office or the general public, and may use that knowledge to question an application that appears to contain or be based upon inaccurate or erroneous information.”¹⁶¹ However, that is likely to happen very rarely, and even when it does, it is not clear that the Copyright Office would reject an application if the applicant denied any falsity when questioned.

B. DETERRING PENALTIES: NARROW AND WEAKENED OVER TIME

Another mechanism for ensuring that the copyright registry is accurate is the imposition of criminal or civil penalties on applicants for providing inaccurate information on applications and deposited copies. Sufficiently harsh penalties could significantly decrease the incidence of inaccuracies in the registry. However, penalties have always had a scienter requirement that is difficult to meet, and they have been reduced over time.

Criminal sanctions for knowingly making false statements on a registration application have in theory existed since 1909, when Congress created the penalties of forfeiture of copyright protection and a fine of up to a thousand dollars.¹⁶² However, as Jason Mazzone has shown, there have rarely been prosecutions under those provisions,¹⁶³ and the 1976 Act narrowed the sanctions, dropping the forfeiture of copyright protection, and limiting the fine to \$2,500—far less than the inflation-adjusted value of \$1,000 in 1909 dollars in 1978, and even less today.¹⁶⁴ Given the scienter requirement, the high burden of proof for criminal conviction, and the exceeding rarity of prosecutions, the prospect of a fine of no more than \$2,500 seems

160. See COMPENDIUM (THIRD), *supra* note 68, at § 602.4(c).

161. *Id.*

162. See Copyright Act of 1909, § 17; Act of July 30, 1947, ch. 391, 61 Stat. 658, § 18 (1974); 17 U.S.C. § 18.

163. See Jason Mazzone, *Copyfraud*, 81 N.Y.U. L. REV. 1026, 1036–1037 n.57 (2006) (stating that § 506(d) and (e) are “all bark and no bite” and noting that in a four-year period from 1999 through 2002, only two prosecutions were brought for violation of § 506(e), and it is not clear that they ended in convictions).

164. See 17 U.S.C. § 506(e). According to the U.S. Bureau of Labor Statistics Inflation Calculator, \$2,500 in January 1978 had the same buying power as \$392 in January 1913 (the first available date for the calculator). Thus, the new maximum fine set in 1978 was about a third of the 1909 Act fine in inflation-adjusted dollars. \$2,500 in January 2023 has the same buying power as \$81.89 in January 1913, which means that the maximum fine today has less than a tenth of the deterrent power of the original 1909 Act maximum. See *CPI Inflation Calculator*, U.S. BUREAU OF LAB. STATS., https://www.bls.gov/data/inflation_calculator.htm [https://web.archive.org/web/20260113152914/https://www.bls.gov/data/inflation_calculator.htm] (last visited Jan. 13, 2026).

like a very weak guarantee that false statements will not find their way into registration records.

For many years, civil consequences took the form of a common-law “fraud on the Copyright Office” doctrine, under which a registration would be invalidated if the holder of the registration “knowing[ly] fail[ed] to advise the Copyright Office of facts which might have occasioned a rejection of the application.”¹⁶⁵ At the extreme, on one occasion a district court held that a failure to disclose that the work to be registered was derivative of another public domain work rendered the entire copyright in that work unenforceable.¹⁶⁶ However, that order was eventually rescinded,¹⁶⁷ and the more common remedy was invalidation of the registration, which could result in a dismissal of the lawsuit (with a possibility of refiling if and when a new registration could be procured) and in the loss of statutory damages and attorneys’ fees, because any new registration would bear an effective date later than the commencement of the infringement.¹⁶⁸ Pressure from copyright holders to narrow the doctrine eventually bore fruit with the passage of the PRO-IP Act in 2008, which, pertinently for present purposes, added § 411(b) to the Copyright Act.¹⁶⁹ Section 411(b) limits the legal effect of inaccuracies in registration certificates on satisfying the § 411 condition for filing an infringement lawsuit, and on obtaining statutory damages and attorneys’ fees under § 412. It also provides that such inaccuracies will render the certificate ineffective only if:

- (A) the inaccurate information was included on the application for copyright registration with knowledge that it was inaccurate; and
- (B) the inaccuracy of the information, if known, would have caused the Register of Copyrights to refuse registration.¹⁷⁰

As to the second condition, the statute provides that the court must ask the Register of Copyrights to opine on whether registration would have been refused if the inaccuracy would have been known.¹⁷¹ The legal effect of inaccuracies was further narrowed in 2022 when the Supreme Court held that registration applicants’ mistakes of law, as well as mistakes of fact, were subject to the limitations of § 411(b).¹⁷² As a

165. *Russ Berrie & Co. v. Jerry Elsner Co.*, 482 F. Supp. 980 (S.D.N.Y. 1980).

166. *Ashton-Tate Corp. v. Fox Software, Inc.*, 760 F. Supp. 831, 831–832 (C.D. Cal. 1990).

167. *Id.* at 832.

168. See 17 U.S.C. § 412 (providing that statutory damages and attorneys’ fees will be awarded only if the plaintiff registered an unpublished work before the commencement of the infringement, or a published work within three months after publication).

169. See *Prioritizing Resources and Organization for Intellectual Property Act of 2008*, Pub. L. No. 110-403, § 101(a), 122 Stat. 4256, 4257 (Oct. 13, 2008). See also H.R. 897, 103rd Cong., § 5(b) (“Copyright Reform Act of 1993”) (proposing an amendment to § 410 that would add a statement: “Any error or omission made in good faith or upon reasonable reliance on counsel shall not affect the validity of the registration. In no case shall an incorrect statement made in an application for copyright registration invalidate the copyright.”).

170. 17 U.S.C. § 411(b)(1).

171. 17 U.S.C. § 411(b)(2).

172. See *Unicolors, Inc. v. H&M Hennes & Mauritz, LP*, 142 S. Ct. 941 (2022).

result of all of these developments, registrations have been held valid even when they mislead the public about the nature and scope of the registrant's claim. Thus, for example, the failure to state that the work being registered is a derivative work has been held on a number of occasions not to invalidate the registration.¹⁷³ In one case, which may be an outlier, a registration application that stated that the "Nature of the Work" was a "catalog" and the "Nature of Authorship" was "photographs and text" was held to be sufficient to cover the designs of jewelry depicted in the catalog, because the failure to include the jewelry designs was a "minor mistake."¹⁷⁴

As a result of the relaxation of legal consequences of inaccurate statements on registration applications, there are fewer incentives to be careful about accuracy, to be careful about using limiting language when the copyright claimed is narrower than can be ascertained from the deposit copy, or to deter applicants from using properly broad language when the claim is unexpectedly broad: for example, covering items depicted in a catalog in addition to the catalog itself. Thus, the threat of sanctions is unlikely to be sufficient to keep the copyright registry reasonably accurate.

C. CANCELLATIONS AND SUPPLEMENTARY REGISTRATIONS

While copyright registrations can contain many kinds of incorrect information—the address of the claimant might be wrong, for example—we are particularly concerned about two types of core inaccuracies. The first is inaccurate information about ownership and authorship of copyright in a work. (Because the Copyright Act empowers authors to terminate transfers under certain conditions, authorship may indicate future ownership; because the term of copyright in works authored by natural persons is measured by the life of the author, identifying the author is necessary to determine whether the work is still under copyright.) The second is information about whether a work contains copyrightable subject matter. The very existence of a registration implies that it does, but it may not. If ownership or authorship information is incorrect, or if the work does not contain copyrightable subject matter, how can the copyright registry be corrected, either by the Copyright Office, or by a federal court? This section describes Copyright Office cancellation procedures. It also covers federal court precedents on ordering cancellation or supplementation of copyright registrations. Finally, it describes actual Copyright Office practices, based on an empirical study of all Copyright Office Catalog records of cancelled registrations from 1978 through June 2021.

Copyright Office procedures turn out to be very limited. The Office asserts the power to cancel or supplement registrations itself, but it does so rarely and mostly for reasons unrelated to correcting core information about ownership, authorship, or copyrightability. Under leading federal court precedent, a court does not have the power to order the Copyright Office to cancel or correct a copyright registration.

173. See, e.g., *Donald Frederick Evans & Assocs. v. Continental Homes, Inc.*, 785 F.2d 897, 904 (11th Cir. 1986); *Architects Collective v. Pucciano & English, Inc.*, 247 F. Supp. 3d 1322, 1339–1340 (N.D. Ga. 2017).

174. *Yurman Studio, Inc. v. Castaneda*, 591 F. Supp. 2d 471, 493–494 (S.D.N.Y. 2008).

Courts do have the power to order a claimant to cancel or correct its own registration. However, that power is not well known, is used rarely, and even when it is, is often avoided due to strategic settlements or lack of enforcement. The Copyright Office does cancel registrations from time to time, both on its own initiative and in response to requests from registrants, including court-ordered requests. However, the vast majority of cancellations are not related to validity, ownership, or authorship.

1. Cancellation by the Copyright Office: Authority, Procedure, and Review

Under current regulations, the Copyright Office can cancel an issued copyright registration under only three circumstances:

- (1) It is clear that no registration should have been made because the work does not constitute copyrightable subject matter or fails to satisfy the other legal and formal requirements for obtaining copyright;
- (2) Registration may be authorized but the application, deposit material, or fee does not meet the requirements of the law and Copyright Office regulations, and the Office is unable to get the defect corrected;
- or (3) An existing registration in the wrong class is to be replaced by a new registration in the correct class.¹⁷⁵

The Copyright Office will consider a request from the registrant to cancel the registration, but it will act on that request only if it determines that the registration is invalid.¹⁷⁶ The Copyright Office provides no internal administrative means to challenge a pending application or an existing registration, or even to provide the Copyright Office with information that might lead it to question a registration.

While the Copyright Office “does not invite, and will generally not respond favorably to, requests to cancel a completed registration by a party other than the owner of the copyright,”¹⁷⁷ third parties, or their lawyers, could attempt to inform the Copyright Office of known inaccuracies in existing registrations informally.¹⁷⁸ Even if this does occur—and the evidence on this point is largely anecdotal—allowing “backdoor” notifications in a government agency would be a questionable practice. Since the published guidance from the Copyright Office clearly discourages non-owners of copyright registrations from being involved with the cancellation process, only particular parties or lawyers—those “in the know”—would have access to this informal process. A discretionary approach to *ex parte* communications, where the Register may take notice of information provided by some parties and counsel but not by others, could potentially violate due process rights of copyright owners whose registrations are subsequently cancelled.

175. 37 C.F.R. § 201.7.

176. COMPENDIUM (THIRD), *supra* note 68, at § 1807.4(E).

177. Cancellation of Completed Registrations, 50 Fed. Reg. 33,065, 33,067 (August 16, 1985); see COMPENDIUM (THIRD), *supra* note 68, at § 1807.4(E).

178. See *An Action to Cancel a Registration*, 5 PATRY ON COPYRIGHT § 17:108 (“On a critical issue—how the Office becomes aware of facts warranting cancellation—the regulation is purposefully vague, although it does permit third parties to submit information about the validity of a registration.”).

In one case of disputed copyright registrations, the defendant's counsel met with representatives of the Copyright Office; the meeting was followed by the Office cancelling the plaintiff's registrations.¹⁷⁹ The plaintiff requested that the Copyright Office reconsider its decision to cancel the registrations; when the Office refused, the plaintiff brought a suit in federal court challenging the Office's administrative action.¹⁸⁰ Shortly after the commencement of the plaintiff's suit, the Copyright Office changed its mind and decided to reinstate the plaintiff's cancelled registrations.¹⁸¹ The plaintiff sought attorney's fees and costs, arguing the opposing counsel's *ex parte* contacts with an Assistant General Counsel at the Copyright Office "violated Copyright Office regulations insofar as improper legal advice was extended concerning conflicting claims to a copyright" and that the Office lacked the power to cancel the registrations and had acted arbitrarily in failing to conduct examinations of the deposits before cancelling the registrations.¹⁸² The court granted the plaintiff's request for attorney's fees and costs under the Equal Access to Justice Act; it was "struck by the Copyright Office's failure to examine properly the deposits of each of the works before acting to cancel them all," and found that the "[d]efendant's summary treatment of important property rights [fell] clearly outside the bounds of reasonableness."¹⁸³ After *Kiddie Rides*, it would be understandable if Copyright Office policy actively avoided cancelling registrations on the basis of private, third-party information due to the potential due process concerns.

Nevertheless, if the Copyright Office becomes aware of facts suggesting a registration is materially inaccurate or should not have been issued, it has a procedure for considering cancellation.¹⁸⁴ It writes to the registrant, explaining what the inaccuracy or grounds for cancellation, and gives the registrant thirty days to respond. If the Office "receives no reply to its correspondence within thirty days of the date the letter is sent, or the response does not resolve the substantive defect, the registration will be cancelled."¹⁸⁵ As the Compendium of Copyright Office practices states, "[t]he Office does not conduct interference or adversarial proceedings. Likewise, the Office does not adjudicate factual or legal disputes involving claims to copyright. If there is a

179. *Kiddie Rides U.S.A., Inc. v. Curran*, Civ. A. No. 85-1368, 1986 WL 13452, at *5 (D.D.C. June 23, 1986) (The defendant's counsel brought "the existence of certain registration certificates owned by the plaintiff" to the attention of the Copyright Office, following which, the "Office proceeded to examine the deposits for two of the articles, Helicopter and Goldrake. Based upon this examination, the Copyright Office then cancelled the registrations for all six of the plaintiff's works.")

180. *Id.* at *1-3.

181. *Id.* at *3 (stating that "the Copyright Office" had "reconsidered the procedure followed in cancelling [the] registrations and . . . reinstated the registrations.")

182. *Id.* at *4.

183. *Id.* at *6.

184. For example, the Copyright Office learned about the AI authorship of *Zarya of the Dawn* from statements made by the ostensible author on social media. Letter from U.S. Copyright Office to Vary Lindberg, Attorney at Taylor English Duma LLP (Feb. 21, 2023), <https://www.copyright.gov/docs/zarya-of-the-dawn.pdf> [<https://web.archive.org/web/20260120042439/https://www.copyright.gov/docs/zarya-of-the-dawn.pdf>]; see also Rosen, *supra* note 75.

185. 37 C.F.R. § 201.7(c)(4).

dispute between two or more parties, it is the responsibility of each party to pursue their claims in an appropriate court.”¹⁸⁶

The procedure for fixing errors, updating, and/or amplifying the information in existing copyright registrations through supplementary registration is also very limited.¹⁸⁷ Supplementary registration, which involves filing a form and paying a fee, allows registrants an opportunity to correct certain kinds of errors (e.g., misspellings), update basic data (e.g., contact information), and to clarify the scope of their copyright claims.¹⁸⁸ Only authors, copyright claimants, copyright owners, and their agents can file an application for a supplementary registration, and they are not meant to be used by rival claimants to bring adverse claims.¹⁸⁹ The expense and effort involved in filing supplementary registrations means that copyright owners have little incentive to update or correct the information in their registrations.¹⁹⁰ Supplementary registrations exist alongside the original registration; the original, incorrect registration is not itself cancelled or amended, though, in theory, approved supplementary registrations should be cross-referenced.¹⁹¹

All actions of the Copyright Office are subject to the Administrative Procedure Act (“APA”) and the judicial review attendant to the APA,¹⁹² with the Register’s discretion reviewable only under an abuse of discretion standard.¹⁹³ Review of the Register’s discretion in the courts has arisen in cases where registration was refused and the refusal subsequently challenged, but it is difficult to see how a non-applicant would have standing to challenge the Register’s discretion *not* to cancel a copyright registration, even in the most extreme circumstances.¹⁹⁴

186. COMPENDIUM (THIRD), *supra* note 68, at § 1808.

187. See Rosen, *supra* note 75 (providing the example of Registration No. TX0009315600, supplement to No. TX000923593, which provided additional information about the scope of the generative AI contribution to the work).

188. COMPENDIUM (THIRD), *supra* note 68, at § 1802 (“The basic registration and the supplementary registration coexist with each other in the public record, and the supplementary registration augments—but does not supersede—the information set forth in the basic registration.”).

189. *Id.* at § 1802.7(H).

190. Robert Brauneis, *Transforming Document Recordation at the United States Copyright Office: A Report to the Register of Copyrights* 128 (2014), <https://www.copyright.gov/docs/recordation/recordation-report.pdf>

[<https://web.archive.org/web/20260120043800/https://www.copyright.gov/docs/recordation/recordation-report.pdf>] (finding supplementary registration fees discouraged copyright owners from updating their contact information with the Copyright Office).

191. U.S. COPYRIGHT OFF., CIRCULAR 8: SUPPLEMENTARY REGISTRATION (Mar. 2021), at 1, <https://www.copyright.gov/circs/circ08.pdf>

[<https://web.archive.org/web/20251219123727/https://www.copyright.gov/circs/circ08.pdf>].

192. 17 U.S.C. § 701(e) (“Except as provided by section 706(b) . . . all actions taken by the Register of Copyrights under this title are subject to the provisions of the Administrative Procedure Act.”).

193. 17 U.S.C. § 701; 5 U.S.C. § 706.

194. See Fagundes & Vishnubhakat, *supra* note 13, at 463 (observing that the cancellation process at the Copyright Office completely excludes “third parties who may often have private information that is adverse to the validity of copyright registrations, information that copyright claimants themselves may lack or may have little incentive to discover or disclose.”).

2. Cancellation by the Courts

Leading precedent holds that courts have no power to order the Copyright Office to cancel a registration. In *Brownstein v. Lindsay*, the U.S. Court of Appeals for the Third Circuit held that “courts have no authority to cancel copyright registrations because there is no statutory indication whatsoever that courts have such authority.”¹⁹⁵ While federal courts can invalidate underlying copyrights, they cannot force the Copyright Office to take an affirmative action to cancel a copyright registration when it is not a party to the action.¹⁹⁶ According to the Third Circuit, a determination of invalidity “is a determination of *ownership* which does not disturb the registration of a copyright.”¹⁹⁷

What a court *can* do is order a registrant to request cancellation of their own registration.¹⁹⁸ However, that remedy is not as well-known as it should be, and some courts have even refused to recognize it as a legal remedy.¹⁹⁹ Even when courts do order registrants to request cancellation at the Copyright Office, these orders are often not followed.²⁰⁰ Neither courts nor successful litigants may understand that a judgment declaring registered works not to be copyrightable or not owned by the registrant does not itself result in cancellation of the registration. Although, in theory, the Copyright Office does get notified of all such judgments (as we will describe below), it does not typically take action to cancel the registration under its § 201.7(c)(4) procedure. Thus, there are many cases in which courts have declared that a registered work does not enjoy copyright protection, or is not owned by the claimant, and yet the invalid or inaccurate registration remains in the copyright registry.²⁰¹

For example, in *Feist Publications Inc. v. Rural Telephone Service Co.*, the Supreme Court concluded that Rural Telephone Service Co. could not protect “the names, towns, and telephone numbers” in its telephone directory because “copyright protects only those constituent elements of a work that possess more than a *de minimis* quantum of creativity.”²⁰² Rural held copyright registration TX0001005875 only on the claimed

195. *Brownstein v. Lindsay*, 742 F.3d 55, 75 (3d Cir. 2014).

196. Among its reasons for concluding that it had no authority to order the Copyright Office to cancel a registration, the Third Circuit in *Brownstein* mentioned that it had no authority “to order a legislative branch agency that is not a party to the litigation to take an affirmative action.” *Id.* at 77. This suggests that the *Brownstein* court was of the view that the Copyright Office, in exercising its authority to administer the copyright registration system, is acting as a legislative branch agency. In that respect, the court was almost certainly wrong.

197. *Id.* Other courts have determined that ordering cancellation of a copyright registration would constitute an unlawful advisory opinion. See *PK Studios, Inc. v. R.L.R. Invs., LLC*, No. 2:15-CV-389-FTM-99CM, 2016 WL 4529323, at *10 (M.D. Fla. Aug. 30, 2016).

198. See, e.g., *Sensory Path Inc. v. Fit & Fun Playscapes LLC*, No. 3:19CV219-GHD-RP, 2023 WL 2095936, at *2 (N.D. Miss. Feb. 17, 2023); *Chambers v. Green-Stubbs*, No. 1:19-CV-093-GHD-DAS, 2021 WL 107252, at *5 (N.D. Miss. Jan. 12, 2021).

199. *Sellpoolsuppliesonline.com LLC v. Ugly Pools Ariz.*, No. CV-15-01856-PHX-BSB, 2017 WL6420464, at *1, *8 (D. Ariz. 2017) (denying the defendants’ motion for an injunction directing the plaintiff to cancel or amend its registration with the Copyright Office because the court was not persuaded that “filing a motion in the district court [was] the proper procedure to obtain their requested relief”).

200. See *infra* Part III.C.2.

201. See *supra* Part II.B.

202. *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 363 (1991).

basis of “New Matter: ‘revisions, additions, and deletions.’”²⁰³ The Copyright Office reacted to this important clarification of constitutional standards for copyrightability by establishing a committee to address the impact of the case on its policies and practices.²⁰⁴ The process resulted in the Copyright Office “no longer registering any claims limited to the white pages of telephone directories; similar works are also rejected.”²⁰⁵ Notably, the Register of Copyrights did not take steps to cancel the existing registrations of unprotectable telephone directories. Thus, it seems that most pre-1991 registrations for white pages telephone directories still have a presumption of validity in federal court, despite Supreme Court precedent stating that sweat of the brow copyright protection is unconstitutional. This is not ideal.

Even more troublingly, when courts do order the registrant to request cancellation of a registration, it seems that more often than not, the registration *still does not get cancelled*, and remains in the catalog as a valid registration.²⁰⁶ While that may seem incomprehensible, the truth is that such a court order does not enforce itself. If the registrant does not obey the order, it is the prevailing party that must initiate contempt proceedings, and that party has little incentive to spend additional resources on ensuring that the registration record is corrected. It has prevailed in the litigation, and the registration no longer has any force against it. Correcting the record only benefits the public, non-parties to the litigation, whom the prevailing party has no direct reason to care about. For the same reason, after the prevailing party obtains a court order directing the registrant to request cancellation, it may pursue a settlement under which it agrees not to pursue cancellation of the registration, in exchange for some other concession that benefits it more particularly and directly. At that point, the public loses, because the interests of the prevailing party diverge from those of the public. That reveals a profound weakness of judicial orders directed to a registrant to request cancellation, as compared with judicial orders directed at the Copyright Office to cancel a registration. As a disinterested government office, the Copyright Office is much more likely to routinely comply with such an order. The registrant has an interest in not complying, and the prevailing party has little incentive to expend further resources on ensuring compliance.

203. *Agra, Kan., . . . et al. telephone directory, 1982-1983*, Registration No. TX0001005875 (U.S. Copyright Office Nov. 9, 1982), https://publicrecords.copyright.gov/detailed-record/voyager_13600061. Telephone Company’s registration still appears to be valid and on the registry. *Id.*

204. *See, e.g.*, Peters, *supra* note 68, at 743.

205. *Id.*

206. *See, e.g.*, Canadian Standards Ass’n v. P.S. Knight Co., 112 F.4th 298, 302 n.7 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 1135 (2024) (court ordered the defendant to request cancellation of the registration TX0008892018, which still appears in the Catalog as a valid registration); Sensory Path Inc. v. Fit & Fun Playscapes LLC, No. 3:19CV219-GHD-RP, 2023 WL 2095936, at *2 (N.D. Miss. Feb. 17, 2023) (ordering the defendant to request cancellation of registration VA 2204079, which still appears in the Catalog as a valid registration).

3. Cancellation Practice: An Empirical Study.

To get a better sense of cancellation practice over the history of the 1976 Copyright Act, we obtained a dataset consisting of all of the records of copyright registrations that were cancelled between January 1, 1978 and June 16, 2021, which turns out to include 52,008 records.²⁰⁷ By way of rough comparison, from 1978 through 2021, the Copyright Office issued 23,037,726 registrations.²⁰⁸ Thus, about one in every 450 registrations, or a little over 0.2% of registrations, were subject to cancellation for some reason. The grounds for those cancellations are memorialized in a “cancellation note” field in the dataset, which as far as we can tell did not employ consistent terminology.²⁰⁹

207. We thank Dr. Brent Lutes, Chief Economist of the U.S. Copyright Office, for providing us with this data (on file with author). The electronic Copyright Office Catalog generally covers only transactions on or after January 1, 1978, the effective date of the Copyright Act of 1976, so that provides us with a starting date. June 16, 2021 is the most recent “latest transaction date” entered in MARC field 005 in this dataset.

208. See U.S. COPYRIGHT OFF., ANNUAL REPORT FY 2021, at 35. The comparison is rough because some of the registrations cancelled between 1978 and 2021 were issued before 1978, and some registrations issued between 1978 and 2021 were or will be no doubt cancelled after 2021.

209. Each cancellation record includes the number of the registration that was canceled; the number of any new registration if the claim was reregistered; the title of the work in which the claim was registered; the date of cancellation (with some complications that we will explain); and a “Cancellation Note” field in which a Copyright Office employee could enter a short note explaining the grounds for the cancellation. As we examined the cancellation notes, we began to construct a list of categories of grounds for cancellation. As far as we know, the Copyright Office did not develop standard phrases to express reasons for cancellation, at least not standard phrases that remained stable over time, although particular examiners may have developed such phrases. Thus, our coding involves some interpretation of the entries in the “Cancellation Note” field. For example, we have grouped as “non-payment” entries such as “Uncollectable check,” “Short fee,” “Registration cancelled—uncollectible funds,” “Registration cancelled—insufficient funds,” “Cancelled—uncollectible,” and so on.

Eventually, we ended up coding for twenty-one different categories of grounds for cancellation, including a category of “other” for grounds that appeared a very small number of times, and a category of “blank or unknown” for those records in which the grounds for cancellation were not explained. Those categories, their corresponding code numbers, and the number of instances of each category in the dataset are presented below in Table 1:²¹⁰

Code Number	Instances in Dataset	Percentage of Total	Grounds for Cancellation
1	18523	35.62%	Non-Payment
2	3391	6.52%	Registered in Wrong Class
3	13375	25.72%	Registered as Published When Unpublished
4	11797	22.68%	Registered as Unpublished When Published
5	539	1.04%	Uncopyrightable; No Registrable Material
6	260	0.50%	Information essential to registration is missing or questionable
7	251	0.48%	Missing or defective deposit
8	170	0.33%	Applicant Requested Withdrawal
9	180	0.35%	Author/Claimant Deceased
10	46	0.09%	Court Order
11	339	0.65%	Duplicate Registration
12	8	0.02%	Not eligible national origin - 104
13	38	0.07%	Wrong registration type (e.g. not eligible for single registration)
14	422	0.81%	Wrong claimant
15	52	0.10%	Wrong author
16	124	0.24%	No transfer statement
17	127	0.24%	Renewal or original registration too late / renewal too early for 1909 Act work
18	72	0.14%	No notice on deposit copy of pre-Berne work
19	414	0.80%	Litigation settlement
20	196	0.38%	Blank or unknown
21	1683	3.24%	Other
TOTAL	52008	100%	

210. The code numbers themselves are essentially random, and reflect, if anything, the order in which we came across the first instance of a cancellation falling into that particular category.

A few things become apparent from the numbers recorded in this table. First, in practice, 90% of cancellations executed by the Copyright Office between 1978 and 2021 concerned wrong publication status (48.40%), nonpayment (35.62%), or wrong category (class) or work (6.52%). Virtually all of the registrations cancelled for wrong publication status or wrong class of work resulted in re-registrations with the publication status or class of work corrected. It is therefore in some sense a consequence of the Copyright Office registration numbering system, which uses different numbers for works in different classes (e.g., VA for Visual Arts, TX for Text), and for published and unpublished works (e.g., VA for a published Visual Arts work, VAu for an unpublished Visual Arts work), that mistakes about publication status and class of work result in cancellations, rather than annotations on registration records, or supplemental registrations, which correct mistakes.

As for the errors that we are most concerned about—errors about copyrightable subject matter, and about the identity of owners and authors—those are the subject of far fewer cancellations, although it is sometimes interesting that there are any at all. There are 539 cancellations, or 1.04% of the total, that issued because the Copyright Office determined, after issuing the registration, that the material at issue lacked copyrightable subject matter. That is a comparatively small number, but it indicates that the Copyright Office does, from time to time, have occasion to reconsider its initial determination that the deposit copy contained copyrightable subject matter. (Determinations by a court that the subject of a copyright registration was not, in fact, copyrightable would be noted as “Court Order” or possibly as “Applicant Requested Withdrawal,” which we will detail below.)

Similarly, there are 422 cancellations in the dataset because the “wrong claimant” (i.e., wrong copyright owner) was named in the registration, and fifty-two cancellations because the wrong author was named. This is unlikely to be because some third party has challenged the registrant’s claim of ownership or authorship, and the Copyright Office has decided to take the challenge seriously and ask the registrant to provide evidence rebutting the challenger. As noted above, the Copyright Office does not conduct adversarial proceedings.²¹¹ Rather, the Office is likely to question ownership or authorship only on the bases of documentary evidence that was or should have been submitted with the registration application, such the deposit copy or a transfer statement.²¹² However, because it is very difficult to access Copyright Office correspondence with applicants and registrants, these cancellations just give tantalizing hints of what the Copyright Office might occasionally be doing.

One more note about the records of cancellations in the Copyright Office Catalog: When the Copyright Office cancels a registration, it removes much of the information about the registration from the online Catalog, including the names of the claimed owner and author, and the original effective date of the registration. That removal of information may be based on the reasoning that a cancelled registration should be

211. See COMPENDIUM (THIRD), *supra* note 68, at § 607.

212. See *id.* at § 1807(D) (providing examples of when the Copyright Office may cancel a registration for substantive defects).

treated as if it never existed, and therefore the ownership and authorship claims, and the effective date are not of any relevance. That, however, makes it more difficult to find a cancelled registration—it can only be found by registration number or the exact title of the work—and it makes it impossible to see if some claimants have a history of obtaining registrations that are later cancelled. The disadvantages of removing such information likely outweigh any advantages.

D. REGISTRATION OF ADVERSE CLAIMS

Another device for making the public aware of a potential problem with a registration is to file an application for a second registration regarding the same work, making a claim adverse to an existing registration. In fact, for someone who believes they own a work of authorship instead of the owner who appears on the registration, this is their *only* direct course of action because they cannot bring suit in federal court until they have, or have been denied, a registration.²¹³ Of course, if the problem is that the work contains no copyrightable subject matter, this technique will not work; you can't file a competing registration application asserting that a work is not copyrightable. By contrast, if the problem is that ownership or authorship of a work is contested, then registering an adverse claim may help. However, under current Office practices, the adverse claim may be more or less visible in the registry, and some of the legal effects of filing an adverse claim are not completely settled.²¹⁴

The Compendium of Copyright Office Practices guidance about filing adverse claims leaves much to the discretion of the Copyright Office and does not ensure that the adverse claim will be easy to find or recognizable as such. "If an applicant intends to assert an adverse claim," the Compendium recommends that "the applicant should provide a brief statement in the Note to Copyright Office field or in a cover letter indicating that the exact same work has been registered by another party."²¹⁵ However, the resulting action by the Copyright Office is far from ideal. The Compendium states that "[t]he registration specialist *may* add a note to the certificate of registration and the public record indicating the presence of correspondence in the file or *may* add a note clarifying that the applicant has asserted an adverse claim."²¹⁶

213. See *Techniques, Inc. v. Rohn*, 592 F. Supp. 1195, 1197–98 (S.D.N.Y. 1984) ("There appears to be no provision . . . for a plaintiff not owning a Registration for the work at issue in an infringement action to challenge the validity of a Registration owned by a defendant. Indeed, it appears that the only remedy for the non-registrant is to apply for registration and if the application is denied, the applicant may seek a writ of mandamus against the Register of Copyrights.").

214. See Raymond J. Dowd, *Registering Competing Claims*, in *COPYRIGHT LITIGATION HANDBOOK* § 4:17 (2d ed. 2025) (noting that when the Copyright Office becomes aware of two claims to register the same work it "will examine each application to determine if the statutory and regulatory requirements have been met. The sequence that each application is received in the Copyright Office is irrelevant to this determination, and the Copyright Office will not conduct opposition or interference proceedings to determine whether one application should be given priority over the other.").

215. *COMPENDIUM (THIRD)*, *supra* note 68, at § 1808.

216. *Id.*

The discretion left by “may” does not inspire confidence. Even if the registration specialist always did make one of those two notes, they would provide an incomplete solution. A note merely stating that there is correspondence in the file is quite unhelpful, since the correspondence could be about a wide variety of matters, and it is expensive to retrieve the correspondence. A note that the applicant has asserted an adverse claim is a little more helpful, but that note is placed only on the registration for the adverse claim, and it does not provide a cross-reference to the *first* registration. The Office specifically states that it will not provide any cross-reference between the first registration or the public record created for that registration and the adverse registration or its public record.²¹⁷ Because two different works can share the same title, without any cross-reference between registration numbers, there is no way of confirming an adverse relationship between registrations without examining deposit copies, which can be difficult and expensive.

It is also unhelpful that the legal effects of filing an adverse claim are not settled. First, there is the issue of whether filing an adverse claim erases the presumption that the facts stated in the first claim are true, as to those facts that are disputed in the adverse claim. Courts tend to dance around this issue: “Where, as here, copyright registrations are used offensively and defensively by both parties for the same subject matter, ‘it might be argued that the plaintiff’s and defendant’s certificates cancel each other out with respect to either party’s right to claim a *prima facie* presumption as to originality.’ . . . In such cases, the viability of this presumption must come under close scrutiny.”²¹⁸ That leaves parties uncertain about what a court would do in any particular case.

Second, courts have held that actual knowledge of a claim of ownership stated in an issued registration starts a three-year statute of limitation clock running, after which an adverse claim of ownership is barred.²¹⁹ It is not clear whether the filing of an adverse registration application would stop the running of the clock, or whether a claimant would have to file a lawsuit within that period. Since filing a lawsuit is considerably more expensive than filing a registration application, and since the lawsuit would eventually result in clearing title in the work while the issuance of an adverse registration clouds title, the uncertainty here is important.

217. See *id.* Those who file adverse registrations sometimes provide their own cross-reference by including the number of the registration against which they are making an adverse claim into another field in the registration application, such as “Basis for Claim.” See, e.g., *World of Taledaria*, Registration No. TXU002254794 (U.S. Copyright Office Oct. 23, 2020), https://publicrecords.copyright.gov/detailed-record/voyager_32563853 (“Basis of Claim” field states in part: “I’m filling out this standard copyright form in accordance to my lawyer in response to a false/theft form, registration # TXu002204671 published on June 21, 2020 by an ex partner of mine who copyrighted my IP to himself without my permission or knowledge.”). That is a creative misuse of the field that applicants should not have to make, and that most applicants would not know to make.

218. *M & D Int’l Corp. v. Chan*, 901 F. Supp. 1502, 1510 (D. Haw. 1995) (quoting NIMMER ON COPYRIGHT § 12.11[B] n.49).

219. See, e.g., *Wilson v. Dynatone Publ’g Co.*, 908 F.3d 843, 844 (2d Cir. 2018); Rachel Weiss, *I’m Bringing Notice Back: Registration Alone Is Not Enough to Prompt Accrual of a Copyright Claim*, 61 B.C. L. REV. E. SUPP. II. 50 (2020). The First Circuit has held that no actual knowledge of the copyright registration is needed to start the limitations period running, an even more extreme interpretation of the effect of registration. See *Saenger Org., Inc. v. Nationwide Ins. Licensing Assocs.*, 119 F.3d 55, 66 (1st Cir. 1997).

E. SECTION 508 NOTIFICATIONS

The courts' lack of power to order the Copyright Office to cancel registrations, and the apparent disconnect between court orders to claimants to request cancellations and any actual cancellations of registration, would have less impact if § 508 of the Copyright Act were effectively implemented. That section requires courts to provide copyright litigation information to the Copyright Office and requires the Copyright Office to make that information available to the public.²²⁰ Under effective implementation of § 508, judicial declarations of the invalidity, ownership, or authorship of a copyright would become part of the registration record, and collateral estoppel could be used to prevent parties who were the subject of adverse judgments from relitigating those issues.²²¹ While a copyright registration might remain in the Copyright Office Catalog, its accompaniment with a notice that the copyright had been ruled invalid would leave the registration hollow. Unfortunately, the Copyright Office stopped performing its § 508 duties decades ago.

The Patent and Trademark Office regularly receives patent and trademark litigation notices; it includes them in the online records for the patents and trademarks to which they pertain. The Copyright Office, however, does *not* make information about copyright litigation related to registered works publicly available in its online Catalog.²²² Section 508 requires courts to notify the Copyright Office of any copyright litigation filed and judgment rendered, and it requires the Copyright Office to make those notifications public records. It was inspired by § 290 of the Patent Act, a provision added by the Patent Act of 1952 that requires courts to notify the U.S. Patent and Trademark Office (“USPTO”) of patent litigation, and requires the USPTO to make those notifications public.²²³ Section 508 was intended “establish a method for

220. 17 U.S.C. § 508.

221. *See, e.g., Whimsicality, Inc. v. Battat*, 27 F. Supp. 2d 456, 463 (S.D.N.Y. 1998) (holding that collateral estoppel prevents plaintiff from asserting copyright in costumes that had been determined not to be copyrightable in another case it had litigated); *Pannonia Farms, Inc. v. Re/Max Int'l, Inc.*, 407 F. Supp. 2d 41, 44–45 (D.D.C. 2005) (holding that collateral estoppel prevented plaintiff from enforcing copyrights that it previously had been determined not to have standing to enforce).

222. With the exception of some notices received between 1978 and 1980, as described below. *See infra* notes 229–33 and accompanying text.

223. *See* COPYRIGHT LAW REVISION, PART 6: SUPPLEMENTARY REPORT OF THE REGISTER OF COPYRIGHTS ON THE GENERAL REVISION OF THE U.S. COPYRIGHT LAW: 1965 REVISION BILL 140 (Comm. Print 1965) (“Section 508 of the bill. . . is to some extent patterned after a similar provision in the patent law 35 U.S.C. § 290”). For the enactment of § 290, see Patent Act of 1952, Pub. L. No. 82-593, § 290, 66 Stat. 792, 814 (1952). The USPTO publishes the notifications in the *Official Patent Gazette* on a weekly basis, and it endeavors to add the notifications to the online record for each patent—what used to be informally called the “online file wrapper,” and is now called the “Patent Center.” The USPTO record on inclusion of notifications of actions and judgments in the Patent Center and its predecessor is far from perfect. A 2013 study found that only 65% of online file wrappers that were supposed to have notifications of actions or judgments actually had them, and it also noted that many patents did not have online file wrappers at all. *See* Robin Feldman, Tom Ewing & Sara Jeruss, *The AIA 500 Expanded: The Effects of Patent Monetization Entities*, 17 U.C.L.A. J.L. & TECH. 1, 64–66 (2013). However, the USPTO’s record of entering about two-thirds of litigation notifications into online file wrappers is far better than the Copyright Office’s record entering § 508 notifications into the Copyright Office Catalog, as we will see below.

notifying the Copyright Office and the public of the filing and disposition of copyright cases.²²⁴

If § 508 were implemented in a way that informed the public—and, most importantly, anyone threatened with enforcement—of litigation related to registered copyright works, searchable by name and/or registration number, it would help minimize the potential harm of invalid copyrights remaining on the registry. In theory, the Copyright Office would keep records of copyright litigation claims similar to the way that court actions affecting land titles are recorded at registries of deeds. Unfortunately, § 508, as currently implemented, does not provide this valuable information to the public.²²⁵

Section 508(a) requires courts to notify the Copyright Office of any lawsuit filed under the Copyright Act, and to include information about the title and registration number of any work at issue in the lawsuit.²²⁶ Section 508(b) requires courts to provide the Copyright Office with a copy of any final judgment and accompanying opinion rendered in any such lawsuit.²²⁷ Most importantly for present purposes, § 508(c) requires the Copyright Office to make the notifications it receives under §§ 508(a) and (b) “a part of the public records of the Copyright Office.”²²⁸ If § 508 were well implemented, anyone who did an online search of the Copyright Office records by the title or registration number of a work would learn whether the work had been the subject of litigation. They would also find any judgment holding that the registered claimant of the work was not the real owner, or that copyright in the work was invalid. Such a judgment, once it became final and no longer subject to appeal, would provide the legal equivalent of a cancellation of the registration.

Section 508, however, has not been well implemented. It was enacted as part of the Copyright Act of 1976, which became effective on January 1, 1978.²²⁹ For almost three years after that date, the Copyright Office did implement § 508(c), by recording each notification under §§ 508(a) and (b) as a “document pertaining to a copyright,” just as parties to a copyright assignment can record the assignment document.²³⁰ Each recorded notification was entered into the Copyright Office Catalog, and those records are now searchable online. Hard copies of the § 508 notifications were apparently kept at the Copyright Office until 2007. According to information provided by the Copyright Office in compliance with the Privacy Act of 1974,²³¹ and published in 1980, “copies of notifications of the filing of actions under sections 411 and 508 . . . and copies of final orders, judgments, and written opinions are microfilmed, but the original copies are permanently retained in the historical litigation file of the Copyright Office

224. H.R. Rep. No. 94-1476, at 164 (1976).

225. *Id.* at 124–26.

226. *See* 17 U.S.C. § 508(a).

227. *See* 17 U.S.C. § 508(b).

228. 17 U.S.C. § 508(c).

229. *See* Copyright Act of 1976, Pub. L. No. 94-553, § 508, 90 Stat. 2541, 2586–87 (Oct. 19, 1976).

230. 17 U.S.C. § 205 (“Any transfer of copyright ownership or other document pertaining to copyright may be recorded in the Copyright Office . . .”).

231. 5 USC § 552a (as amended).

Library.”²³² The original copies are no longer permanently retained, however, because the Copyright Office received the consent of the National Archives and Records Administration in 2007 to destroy all § 508 notifications three years after receipt.²³³

In total, a little over three thousand § 508 notification entries can be found in the online Catalog.²³⁴ For example, on February 20, 1980, the Copyright Office received a § 508 notification from the U.S. District Court for the Southern District of New York, stating that it had reached a final judgment in the case of *Russ Berrie & Co. v. Jerry Elsner & Co.*,²³⁵ and attaching a copy of the judgment. In that case, the court held that Russ Berrie & Co.’s copyright registration for a stuffed toy gorilla was invalid, because Russ Berrie & Co. had not disclosed to the Copyright Office that the toy gorilla was based on a public domain toy gorilla and possibly contained no copyrightable variations.²³⁶ If one searches the online Catalog, Copyright Registration VA 25-275 is still included; the registration data describes a visual work titled “Beware, Gonga loves you: no. 595,” noted to be a “whimsical smiling gorilla.”²³⁷ The only indication in the registration data that may lead to the previous litigation is a further note stating, “C.O. correspondence.”²³⁸ If one searches the § 508 notifications, however, the Copyright Office recorded the § 508 notification of *Russ Berrie & Co.* as document V1775P487, and attached the judgment. The Copyright Office Catalog entry for that recorded document notes that the judgment concerns Copyright Registration VA 25-275,

232. OFFICE OF THE FED. REG., PRIVACY ACT ISSUANCES: 1980 COMPILATION, vol. IV, Systems of Records, Agency Rules (1980).

233. See Brauneis, *supra* note 190 at 125–26.

234. From examining a number of the Copyright Office Catalog entries for § 508 notifications, it appears that the Copyright Office practice was to include in each such entry a note that it was a recordation of a “508” document. We performed an “Advanced Search” of the Public Records System, for which we chose “Recordation” as the record type; “Notes” as the Field Heading; “As a Phrase” as the Search Type; “508” as the text to search; and “Court action” as the Recordation Document Type under Recordation Filters. (To perform such a search, see *Advanced Search*, U.S. COPYRIGHT OFF. PUBLIC RECORDS SYSTEM, <https://publicrecords.copyright.gov/advanced-search>.) That search returns 3,017 documents.

The Copyright Office’s Annual Report for fiscal 1979 noted that it had processed for recordation 1,871 § 508 notifications. U.S. COPYRIGHT OFF., 82ND ANNUAL REPORT OF THE REGISTER OF COPYRIGHTS (Libr. of Congress 1980), <https://www.copyright.gov/reports/annual/archive/ar-1979.pdf> [<https://web.archive.org/web/20250911030530/https://www.copyright.gov/reports/annual/archive/ar-1979.pdf>]. There is no mention of § 508 notifications in the Copyright Office’s fiscal 1978 or fiscal 1980 reports. See LIBRARY OF CONGRESS, ANNUAL REPORT OF THE LIBRARIAN OF CONGRESS FOR FY 1978 (Libr. of Congress 1979), <https://www.copyright.gov/reports/annual/archive/ar-1978.pdf> [<https://web.archive.org/web/20260124180208/https://www.copyright.gov/reports/annual/archive/ar-1978.pdf>]; U.S. COPYRIGHT OFF., 83RD ANNUAL REPORT OF THE REGISTER OF COPYRIGHTS (Libr. of Congress 1981), <https://www.copyright.gov/reports/annual/archive/ar-1980.pdf> [<https://web.archive.org/web/20260124175655/https://www.copyright.gov/reports/annual/archive/ar-1980.pdf>].

235. *Russ Berrie & Co. v. Jerry Elsner Co.*, 482 F. Supp. 980 (S.D.N.Y. 1980).

236. See *id.* at 987–88 (“The knowing failure to advise the Copyright Office of facts which might have occasioned a rejection of the application constitute reason for holding the registration invalid and thus incapable of supporting an infringement action.”).

237. *Beware, Gonga loves you: no. 595*, Registration No. VA0000025275 (U.S. Copyright Office Feb. 5, 1979), https://publicrecords.copyright.gov/detailed-record/voyager_18599605.

238. *Id.*

“Stuffed Gorilla,” and a search for recorded documents mentioning that registration will return document V1775P487, among others. Anyone who wanted to learn the status of Russ Berrie & Co.’s copyright registration for the stuffed gorilla could find important information through that recorded § 508 notification, though the searcher would need to take care to look beyond the registration record alone.

However, for reasons that are unknown to us, but which probably have to do with limited resources, the Copyright Office stopped recording § 508 notifications in May 1980.²³⁹ The final report of the co-chairs of the Advisory Committee on Copyright Registration and Deposit (“ACCORD”), issued in 1993, contains only a brief mention of § 508.²⁴⁰ In their transmittal letter, the co-chairs state that § 508 “has been a failure,” and they recommend that the burden of recording litigation documents “be placed on the parties themselves.”²⁴¹ It seems likely that § 508 had been a failure because the Copyright Office stopped implementing § 508(c), and perhaps also because not all courts provided the required notifications under §§ 508(a) and (b).²⁴²

While information on federal district court proceedings in copyright cases may be found in other online legal databases beyond the Copyright Office, they have limited utility when searching for litigation records related to specific copyright works. A 2014 Report prepared for the Copyright Office by one of the authors of this article explained that existing digitized online resources, such as PACER, Lexis, and Westlaw and Bloomberg were ineffective substitutes for the public notice required by § 508 because they did not allow for the user to obtain reliable search results using the title or registration number of a copyright work and/or they did not provide the full record of pleadings.²⁴³ An examination of the records of registrations that have been cancelled due to court orders reinforces that point. Performing Westlaw and Lexis searches for the titles and registration numbers of works that are the subjects of cancelled registrations often results in finding no opinions at all and often results in finding opinions that mention the works, but concern matters other than the validity of the registration. For the forty-six records of cancelled registrations which stated that they were cancelled due to court order, we were able to find only two opinions, concerning in total ten of those registrations, that actually addressed the copyrightability of the works.²⁴⁴ Neither of those opinions contained an order regarding cancellation. Thus,

239. The last three § 508 notifications were recorded on May 6, 1980. See Recorded Documents V1786P058 (available at https://publicrecords.copyright.gov/detailed-record/voyager_180206), V1786P060 (https://publicrecords.copyright.gov/detailed-record/voyager_180213), and V1786P062 (https://publicrecords.copyright.gov/detailed-record/voyager_180214).

240. See LIBRARY OF CONGRESS ADVISORY COMM. ON COPYRIGHT REGISTRATION & DEPOSIT, ACCORD (Report of Co-Chairs Robert Wedgeworth & Barbara Ringer, Comm. Print 1993), <https://www.copyright.gov/1201/accord/accord.pdf> [<https://web.archive.org/web/20250903145653/https://www.copyright.gov/1201/accord/accord.pdf>].

241. *Id.*

242. See NIMMER ON COPYRIGHT § 32.09 (2025) (stating that the requirement to file the Copyright Office’s § 508 form “is often honored in the breach.”).

243. Brauneis, *supra* note 190.

244. See *M&D Int’l Corp. v. Chan*, 901 F. Supp. 1502, 1510 (D. Haw. 1995); *R. Ready Prods., Inc. v. Cantrell*, 85 F. Supp. 2d 672, 685, 691 (S.D. Tex. 2000).

the final judgments that the courts send the Copyright Office under § 508 are typically not the opinions that make it into electronic legal databases, and recording the § 508 documents would provide important additional information about registered works.

Despite the evidence that other legal databases fail to serve the aims of § 508(c), their existence has regularly been cited as a reason for eliminating the Copyright Office's responsibilities under § 508. For example, in 2015, the Register's Report to the House Judiciary Committee proposed technical amendments to § 508 as follows:

This section should be eliminated because the paper-based Section 508 filing system has become obsolete in an era of electronic court information resources such as PACER, Lexis, and Westlaw. There is no efficient way to search the voluminous paper Section 508 filings and, perhaps not surprisingly, in recent years there has been virtually no demand to access them. In sum, the administrative costs to the courts of preparing and sending these notices, and the costs to the Office of receiving and maintaining these records, far outweigh any usefulness to the public.²⁴⁵

This statement is somewhat disingenuous because the § 508 notifications need not have been entirely paper-based; the 1978–1980 records have been digitized and are now searchable online by members of the public. If the Copyright Office had continued to record § 508 notifications after 1980, those records would likely also have been digitized and made available in the current online Catalog.

Congress never amended § 508 to implement the 1993 ACCORD committee's recommendations, nor did it adopt the Register's 2015 proposal to eliminate the section, and that section remains law exactly as it was originally enacted. Unfortunately, PACER, Lexis, and Westlaw still do not provide adequate public access to the information about copyright litigation that § 508 require courts and the Copyright Office to make available to the public. Moreover, as subscription services, the information in these databases is limited to individuals and organizations willing to pay for access.

F. CONCLUSION

This Part has reviewed the mechanisms that are available for preventing false claims of, and inaccurate statements about, copyright works from ever reaching the copyright registry, and for correcting those false claims and inaccurate statements when they do mistakenly become part of registration records. It has demonstrated the severe limitations of the current mechanisms. Examination only covers one of the two elements of originality and does not extend to the substance of ownership and authorship claims. Deterrent sanctions are weak and have only become weaker over

245. *The Register's Perspective on Copyright Review: Hearing on Copyright Review Before the H. Comm. on the Judiciary*, 114th Cong. (2015) (Statement of Maria A. Pallante, U.S. Register of Copyrights & Director of the U.S. Copyright Office), <https://www.copyright.gov/laws/testimonies/042915-testimony-pallante.pdf> [<https://web.archive.org/web/20260124183200/https://www.copyright.gov/laws/testimonies/042915-testimony-pallante.pdf>].

time. The Copyright Office has no administrative procedure for third parties to challenge registrations, and no formal procedure for third parties even to provide information that might throw the validity of a registration into doubt. Courts do not have the power to order the Copyright Office to cancel registrations, and their power to order registrants to request cancellations is rarely used and even more rarely actually results in cancellations. Registration of adverse claims is possible, but there are no cross-references between two registrations that are adverse to each other, and the legal effect of an adverse registration is uncertain. The Copyright Office had for decades ignored its statutory mandate to provide the public with notice of lawsuits and final judgments concerning registered works. The result of all these limitations is a registry is much more likely to contain false claims and inaccurate statements than it should.

IV. FIXING THE CANCELLATION PROBLEM

It falls under the duties of the Register of Copyrights to “ensure that records of deposits, registrations, recordings, and other actions taken under this title are maintained, and that indexes of such records are prepared” and that those records and indexes are available for public inspection.²⁴⁶ The term “maintained” implies that part of the role of the Copyright Office involves ensuring the completeness and accuracy of the records the Office keeps. This Article has demonstrated how and why the current system of registration is allowing inaccurate information and invalid copyright registrations to remain on the registry—in part, due to the lack of any meaningful cancellation process to allow for the record to be corrected.

In this section, we propose changes that the Copyright Office could make, some of which would not require rulemaking. We then consider changes that fall within existing statutory rulemaking powers of the Office, in the context of the Copyright Office’s constitutional status as part of an executive agency. Finally, we propose changes that would require new legislation, such as amending the Copyright Act to allow for cancellation proceedings to be brought by third parties in federal courts and directly granting courts the power to invalidate copyright registrations.

A. SECTION 508 IMPLEMENTATION AND PROCEDURAL SOLUTIONS

1. Section 508 Implementation

We have already shown how the courts’ lack of power to order the Copyright Office to cancel registrations, and the infrequent use of the cancellation process by the Office itself, would have less impact if the Office were more diligent in implement § 508 of the Copyright Act in a way that would fulfill its aims of providing public access to copyright litigation information in conjunction with the registration information it keeps.

246. 17 USC § 705.

We recommend that the Copyright Office makes better use of the information it receives from § 508 notifications by: 1) making the information publicly available, and 2) reviewing the information from the notifications and taking action by means of the Office's existing cancellation procedures where appropriate.

In 2020, the Copyright Office started requiring courts to file § 508 notifications electronically, rather than in paper form, as it had been requiring since 1978.²⁴⁷ The notifications are now to be provided by filling in a fillable PDF document form, and filed by sending the completed PDF document as an email attachment.²⁴⁸ That is certainly not the most efficient technology possible. If it had the resources, the Copyright Office could build a system that would allow courts to enter information about litigation through an online form directly into a database that could—perhaps after review—add records into the Copyright Office Catalog. However, even under the PDF email attachment system, the Office could also create an automated process to extract information from the submitted PDFs and transfer that information into the Copyright Office Catalog after review.

In its 2020 announcement of the electronic § 508 notification submission system, the Copyright Office notes that “[r]eceiving the section 508 notices electronically will also make it easier for the Office to make those forms available for public inspection electronically.”²⁴⁹ That is true. So far, however, the Office has not actually made those forms available to the public, and neither has it created entries for those forms in the Copyright Office Catalog, so that anyone who had the title or registration number of a work could see whether it had been the subject of litigation. Since the Copyright Office “receives thousands of section 508 notices each year,”²⁵⁰ adding them to the Copyright Office Catalog as recorded documents would substantially increase the information available to the public about many registered works. We recommend it to do so. The record would be incomplete, due to the destruction of older notifications, but it would improve upon the current system.

While simply implementing § 508 by making the notices provided by the courts available in the online Catalog would meet the Copyright Office's statutory obligations, and make far more effective use of the information in § 508 notices, there remains some concern that not all courts are as diligent in their reporting to the Copyright Office as might be hoped.²⁵¹ If so, the records still might not be sufficiently comprehensive and reliable to minimize the harm created by invalid copyrights remaining on the registry. The ACCORD recommendation to place the burden of reporting on the parties themselves might be a viable alternative if § 508 were amended to a) remove the explicit burden on court clerks and shift it to the parties and b) create legal consequences for the parties if they do not report court determinations to the Copyright Office. Moreover, if the lawsuit's parties were responsible for recording notifications, they

247. See U.S. Copyright Office, Library of Congress, Email Rule for Statutory Litigation Notices, 85 Fed. Reg. 10603 (Feb. 25, 2020).

248. See *id.*

249. *Id.* at 10604.

250. *Id.*

251. Brauneis, *supra* note 190, at 126.

presumably would have to pay normal recording fees, which would provide funds to the Copyright Office to accomplish the recordation.

We also recommend that the Copyright Office adopt a policy of substantive review of incoming § 508 notices to see if they contain information that would suggest an existing registration is materially inaccurate or should not have been issued. If a § 508 notice contains facts and/or holdings that suggests the current registration information may need correction, the Office can investigate and, if necessary, use its existing procedure to pursue cancellation of the registration.²⁵²

2. Other Internal Copyright Office Solutions

The Copyright Office could take additional steps to ensure the accuracy and integrity of its registration information, including 1) implementing auditing procedures, and 2) creating an open and transparent mechanism for receiving information about inaccuracies in registrations from third parties. These proposals would require the Office to dedicate financial and human resources, but over time, they could reduce the number of inaccuracies on the registry in a way that would likely justify the costs.

Based on our findings, we would recommend an auditing initiative similar to the USPTO's attempts to declutter and ensure the accuracy of the Trademark Register.²⁵³ Like the USPTO, the Copyright Office could first engage in an initial pilot program to assess the extent of inaccuracies in the registry and more actively pursue cancellation of invalid registrations and correction of records.²⁵⁴ If a closer, more comprehensive examination of the Office's non-public records suggests that the problem of inaccurate registration information is not as widespread as we fear, then perhaps some of the other more costly and legally complex solutions we recommend would not be necessary.

We also recommend that the Office develop and implement regulations providing for an open and transparent mechanism for receiving information about inaccuracies in registrations from the public. This would allow for third parties to provide information voluntarily, and at their own cost, to the Copyright Office pertaining to inaccuracies in the registry. The Office could then decide whether to take action based on the information provided, without any obligation to report back to the third party. It could also follow its normal procedure of contacting the registrant, explaining why it is considering correcting or cancelling a registration, and giving the registrant an opportunity to respond before taking any action.²⁵⁵

252. 37 C.F.R. § 201.7(c)(4).

253. See Changes in Requirements for Specimens and for Affidavits or Declarations of Continued Use or Excusable Nonuse in Trademark Cases, 77 Fed. Reg. 30197 (May 22, 2012) (to be codified at 37 C.F.R. pts. 2, 7).

254. See Barton Beebe & Jeanne Fromer, *Are We Running Out of Trademarks?* 131 HARV. L. REV. 945, 1034–35 (2018) (praising the results of the pilot plan and showing support for continued auditing by the USPTO to get rid of “deadwood” on the Trademark Register).

255. See *supra* note 175.

One possibility is to model this nonadversarial, information-gathering procedure on the “Letter of Protest” procedure at the USPTO, which allows third parties to bring evidence regarding a particular trademark or patent to the USPTO’s attention.²⁵⁶ Such an open and transparent process would avoid the due process concerns raised by the “backdoor” approach that would only allow some individuals with direct agency contacts and connections to bring information about inaccuracies in registrations to the attention of the Register of Copyrights.

B. CANCELLATION AND THE COURTS

In our view, a court that holds that a particular putative work contains no copyrightable subject matter, or that a claim of ownership or authorship in a registration is inaccurate, should be able to order the Copyright Office to cancel the registration, with a note referring to the court order for an explanation of why the cancellation was ordered. As we noted above, although courts do recognize the power to order registrants to request cancellation of their own registration, those orders seem to be avoided on a regular basis, and it is easy to understand why. The registrant has no motivation to comply with the order, and in many cases, the prevailing party in litigation has little motivation to monitor whether the registrant has made such a request and whether the Copyright Office has granted it. The registrant will no longer be bothering the prevailing party because the relationship between the two parties has been determined by the court. It is only the public that will be disadvantaged by having a seemingly valid registration remain in Copyright Office records after a court has found it to be invalid or inaccurate. A court should be able to act in the public interest by ordering the Copyright Office to cancel the registration. That will probably require legislation. Although some courts have suggested that they already have to power to order the Copyright Office to cancel registrations,²⁵⁷ the prevailing view, as we have noted above, is that courts currently do not have that power because there is no explicit grant of such power in the Copyright Act or elsewhere in the United States Code.

The Copyright Office should have no interest in retaining the discretion to preserve an invalid or inaccurate registration. If the Copyright Office believes that the court has made a mistake—if, for example, the registration covers more than one work, and the

256. See 37 C.F.R. § 2.149 (2024) (providing rules for the submission and consideration of letters of protest regarding pending trademark registration applications); 37 C.F.R. § 1.291 (2024) (providing rules for the submission and consideration of protests against pending patent applications). These procedures concern pending applications. Because copyright registration applications are not made public, a member of the public has no way of learning of false claims or inaccuracies in a pending application. The copyright procedure would therefore have to apply to issued registrations, rather than pending applications.

257. See, e.g., *Brooks v. Bates*, 781 F. Supp. 202, 207 (S.D.N.Y. 1991) (holding that the defendant was “entitled to a direction to the Registrar of Copyrights that the copyright registrations in KEI’s name be cancelled”), *accord*, *Brooks v. Knowledge Eng’g Inc.*, No. 89 Civ. 4478 (SS), 1994 WL 121851, at *8–*9 (S.D.N.Y. Apr. 7, 1994) (then district court judge Sotomayor, J., commenting that “invalidation of the copyrights in question is an appropriate remedy for a misrepresentation to the Copyright office,” and adding that it was “undisputed that Bates secured [the relief of cancellation of the copyrights] with the issuance of Judge Haight’s November Order”).

court only found one of the works it covers to lack copyrightable subject matter—then the Office could certainly correspond with the court and explain why it believes the order to be mistaken.

The Patent and Trademark Office is, by explicit statutory provision, subject to court orders to cancel trademark registrations.²⁵⁸ It has received and complied with many of those orders, with no apparent damage to the agency or to the trademark registry. The Copyright Office itself is subject to court orders with respect to registration of vessel hull designs. Section 1324 of Title 17 provides:

In any action involving the protection of a design under this chapter, the court, when appropriate, may order registration of a design under this chapter or the cancellation of such a registration. Any such order shall be certified by the court to the Administrator, who shall make an appropriate entry upon the record.²⁵⁹

At least one court has in fact ordered the Copyright Office to cancel vessel hull registrations after finding them to be invalid.²⁶⁰ That order was affirmed on appeal, and the Copyright Office complied with the orders without incident.

It is true that the relationship of registration to vessel hull protection is different than the relationship of copyright registration to copyright protection. Copyright protection does not rely on registration, while vessel hull protection does. Yet there is no reason to let a copyright registration remain in Copyright Office records once a court has found that the underlying copyright is invalid, or that its ownership or authorship is misrepresented in the registration. Like copyright protection, trademark protection also does not rely on registration, yet courts are granted authority to order cancellation of trademark registrations.

While the Third Circuit in *Brownstein* cited the lack of statutory authority to order the Copyright Office to cancel a registration, others have argued that there are constitutional limitations on a court's power to issue an order to the Copyright Office. *Nimmer on Copyright* concludes that courts lack power to cancel copyright registrations because "the judicial branch has no authority to order an instrumentality of the legislative branch (not a party to the litigation) to undertake the affirmative action of canceling a copyright certificate."²⁶¹ This is surely a mistaken view. Some of the functions of the Copyright Office do arguably qualify as legislative agency

258. 15 U.S.C. § 1119 ("In any action involving a registered mark the court may determine the right to registration, order the cancellation of registrations, in whole or in part, restore cancelled registrations, and otherwise rectify the register with respect to the registrations of any party to the action.")

259. 17 U.S.C. § 1324; see 17 U.S.C. § 1331 ("In this chapter, the 'Administrator' is the Register of Copyrights . . .").

260. See *Maverick Boat Co. v. Am. Marine Holdings, Inc.*, Nos. 02-14102-CIV, 02-14283-CIV., 2004 WL 1093035, at *16 (S.D. Fla. Feb. 10, 2004) (ordering the cancellation of registrations DVH 0049 and DVH 0056), *aff'd*, *Maverick Boat Co. v. Am. Marine Holdings*, 418 F.3d 1186 (11th Cir. 2005).

261. NIMMER ON COPYRIGHT § 7.20 (2025). Some legal academics, and even a former Register, have also asserted that the Copyright Office is a legislative agency. See, e.g., Peters, *supra* note 68, at 737 ("The Copyright Office . . . is one of the major departments of the Library of Congress; as such, it is in the legislative rather than the executive branch of the federal government."); Edward Lee, *Warming up to User-Generated Content*, U. ILL. L. REV. 1459, 1475 (2008).

functions, such as “[a]dvis[ing] Congress on national and international issues relating to copyright.”²⁶² However, when the Copyright Office is administering the registration system, and deciding whether or not to issue a registration certificate that provides significant legal benefits to the applicant, it is undoubtedly carrying out executive branch functions.²⁶³ In this respect, it is like the Copyright Royalty Board, which sets rates under various statutory licenses created by the Copyright Act. The D.C. Circuit has held that Copyright Royalty Judges exercise “significant authority” in determining those rates and are therefore “Officers of the United States.”²⁶⁴ In exercising her authority to grant or deny registrations, and to condition grant on disclaimers, the Register of Copyrights is exercising no less significant authority. Thus, there should be no constitutional bar to enacting legislation that empowers courts to order the Register of Copyrights to cancel registrations. Indeed, as we have noted above, the Register is already subject to court orders to cancel vessel hull design registrations and has complied with those orders. There should be no constitutional difference between cancelling a vessel hull design registration and a copyright registration.

C. ADMINISTRATIVE CANCELLATION THROUGH THE COPYRIGHT CLAIMS BOARD

It might also be possible to use the Copyright Claims Board (CCB) more effectively to help correct inaccuracies on the registry. Currently, the CCB has jurisdiction to hear claims of non-infringement; for example, parties who have received cease and desist letters from copyright owners can file a claim asking the CCB to rule on whether their actions constitute infringement or not. The Copyright Office website specifically notes that this function “could be useful if a party is worried about continuing a project under the threat of litigation and wants clarity about the validity of the copyright owner’s rights or the application of an exception.”²⁶⁵ It is unclear what action the CCB would actually take if it determined that a party’s rights were invalid when it held a registration, however. While CCB determinations are *inter partes*, and the CCB could not itself effect cancellations, the Office could decide to formalize a procedure whereby the CCB would be required to report inaccurate or invalid registrations to the Register for potential cancellation proceedings.

This approach would not require further legislation, but it has some serious limitations. CCB proceedings are voluntary, and a copyright owner—particularly one with a questionable claim—may be unwilling to participate in proceedings that could

262. 17 U.S.C. § 701(b)(1).

263. See *Eltra Corp. v. Ringer*, 579 F.2d 294, 301 (4th Cir. 1978) (“It is irrelevant that the Office of the Librarian of Congress is codified under the legislative branch or that it receives its appropriation as a part of the legislative appropriation. The Librarian performs certain functions which may be regarded as legislative (*i.e.*, Congressional Research Service) and other functions (such as the Copyright Office) which are executive or administrative.”).

264. *Intercollegiate Broad. Sys., Inc. v. Copyright Royalty Bd.*, 684 F.3d 1332, 1337–39 (D.C. Cir. 2012).

265. *Claimant Information, COPYRIGHT CLAIMS BD.*, <https://ccb.gov/claimant/index.html#noninfringe> [https://web.archive.org/web/20260121052653/https://ccb.gov/claimant/index.html#noninfringe] (last visited Jan. 24, 2026).

result in invalidation of its copyright registration. Furthermore, the data on the first few years of CCB activity suggests that no claims for declarations of non-infringement have been brought.²⁶⁶ However, creating a clear internal policy and raising public awareness of the availability of declaration of non-infringement claims through the CCB might improve the effectiveness of this strategy.

D. IMPLEMENTATION COSTS, AND THE ALTERNATIVE OF REDUCING THE LEGAL EFFECTS OF REGISTRATION

There are two reactions to the suggestions we have made that are common and important enough to consider here. First, when one of the authors of this article mentioned § 508 notifications to a Copyright Office staff member, they replied, “another unfunded mandate.” We acknowledge that many of our suggestions would take substantial resources to implement. It takes time to monitor § 508 notifications and then proactively pursue cancellation proceedings when appropriate, in light of judicial findings. It takes time to conduct an audit of registrations. It takes time to screen and take action on letters of protest. It would take substantial resources to run an inter partes cancellation procedure. Increased appropriations from Congress are hard to come by.

As one of us has written, the most likely solution is to follow the Patent and Trademark Office and obtain additional revenues from fees, so that the Copyright Office, like the Patent and Trademark Office, can become user-fee funded.²⁶⁷ The key to obtaining those additional revenues is to institute maintenance fees, so that registrants who want to continue to enjoy the benefits that are conditioned for both domestic and foreign works on registration—statutory damages, attorneys fees, the presumptions of validity and of the truth of the facts stated in the registration—must from time to time renew their registrations and pay additional fees. It is only fair that those whose works of authorship have been financially successful bear a somewhat larger portion of the cost of running the copyright system that protects them. At a time when the government is considering instituting even higher maintenance fees for patents,²⁶⁸ instituting even modest maintenance fees for copyrights could provide the chronically underfunded Copyright Office with the resources it needs to improve copyright registration.

Second, another reaction to hearing of inaccuracies in copyright registrations is to ask: Why not just eliminate the legal benefits that now come with registering a claim

266. *Key Statistics*, COPYRIGHT CLAIMS BD. (Oct. 2024), <https://ccb.gov/CCB-Statistics-and-FAQs-Oct-2024.pdf> [<https://web.archive.org/web/20251030041744/https://www.ccb.gov/CCB-Statistics-and-FAQs-Oct-2024.pdf>].

267. See Robert Brauneis, *Properly Funding the Copyright Office: The Case for Significantly Differentiated Fees*, 64 J. COPYRIGHT SOC'Y U.S.A. 451, 453–54 (2017).

268. See Amrith Ramkumar, *Trump Administration Weighs Patent System Overhaul to Increase Revenue*, WALL ST. J., (July 28, 2025), <https://www.wsj.com/politics/policy/patent-system-overhaul-18e0f06f> [<https://web.archive.org/web/20260121053010/https://www.wsj.com/politics/policy/patent-system-overhaul-18e0f06f>].

of copyright in a work? After all, if registrations come with no presumption of validity and of truth of the facts stated in the registration, and with no statutory damages or attorneys' fees, then the person who has managed to obtain a registration for uncopyrightable subject matter, or for a work that they do not own or did not create, has fewer opportunities to commit mischief with the registration. Without the legal benefits of registration, a registration can do less damage.

That fails to recognize that the benefits of registration can accrue, not just to the registrant, but to the entire market for works of authorship, and to their uses. As we noted above, in a well-functioning registration system, in which mechanisms to ensure accuracy are working well, the presumptions and the enhanced remedies also work to make the market function better for *all* participants. The presumptions work to fill in inevitable gaps in knowledge, and to give additional solidity to copyrights that have been vetted both by examiners and by exposure to the public. Abolishing them is the first step to doing away with registration altogether. This is not the best solution to the problem we have identified—at least not before we have tried to make the current system work better.

V. CONCLUSION

This Article has identified the lack of meaningful cancellation procedures as a small but serious crack in the U.S. copyright registration system—one which can impact the fair and efficient operation of the overall copyright regime. By exposing this flaw and proposing ways to address it head on or, at least, to reduce its harmful effects, we hope that the copyright registration system can be improved. These improvements would help it better serve the goals of facilitating markets for, and uses of, works of authorship by providing better information about ownership, while also clearing title and strengthening that ownership.

As a former Register wrote, “[i]n the registration of claims, a fundamental objective of the Copyright Office is to establish a ‘clear, accurate, easily understandable public record’ and to exclude from that record any unjustified or otherwise insufficient claims.”²⁶⁹ The Office needs to do a better job of excluding unjustified, insufficient, and inaccurate claims from the public record—not just at the initial registration stage, but throughout the very long term that works are protected by copyright. The additional protections and presumptions that flow from registration have an important function in the Copyright system; owners who choose to register their claims of copyright, and to record further transactions, are contributors to the public record of copyright ownership. We can only accept the existence of these additional protections and presumptions, however, if we have confidence in the accuracy of the information in the Office's registry.

History has shown that there are good reasons for having intellectual property registration systems. Outside of the United States, some legal scholars are promoting

269. Peters, *supra* note 68, at 739 (quoting Registration Decision, 53 Fed. Reg. 21817, 21819 (June 10, 1988)).

the benefits of copyright registration and recommending the reinstatement of registration systems.²⁷⁰ Maintaining any registration system is costly, but a complete, accurate, and functional provides an invaluable repository of data, and offers public benefits far beyond its immediate positive impacts on the marketplace.

We don't want to cancel copyright registration—we just want to cancel invalid copyright registrations.

270. See, e.g., Dev Gangjee, *Copyright Formalities: A Return to Registration*, in *WHAT IF WE COULD REIMAGINE COPYRIGHT?* 213, 213–35 (Martin Kretschmer et al. eds., 2017).