Copyright and the Creator

SPEA Honors Thesis

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Abstract

Copyright is a form of intellectual property that allows for the protection of “original works of authorship”, including works of literary, dramatic, musical, and artistic nature. Though the term “copyright” literally means “the right to copy”, copyright has come to describe a general body of exclusive rights given to authors, including the right to reproduce the work, create “derivative works” (works inspired or based upon a previous work), distribute the work, and display/perform the work. One of the least understood principles of copyright is the method by which it is acquired. Copyright exists automatically, as soon as an original work is created in fixed (tangible) form. There is no formal process required in order to ensure copyright protection.

Despite the fact that registration is not mandatory, copyright law offers numerous incentives to creators to register their work with the United States Copyright Office (USCO). The mission of the USCO is “to promote creativity by administering and sustaining an effective national copyright system”, and the primary method by which it achieves this mission is through serving as the only agency in the United States that is legally permitted to register copyrights of creative works. Copyright registration is one of the most important purposes the USCO serves, not only because the registration of copyrights is the principal source of fee receipts for the Office, but also because the majority of the Office’s interaction with the public is directly related to inquiries about copyright registration. Because of this, the USCO’s copyright registration service has the widest impact on the way the public perceives the Office.

In 2007, the USCO underwent an internal re-engineering process that shifted the copyright registration system from paper-based to online. The purpose of this change was to help expedite the copyright registration process for both applicants and the USCO by optimizing speed, cost and convenience. Despite this extensive modification, however, the number of applications for copyright registration that the Office receives has declined over the past two decades, remaining roughly the same as before the transformation.

This decline has occurred despite a shift in the creative market that has increased the value of creativity and number of creators in the United States. Richard Florida identifies the Creative Class, which consists of 38 million Americans (1/3 of the American workforce) and is made up of “those who engage in work whose functions is to create meaningful new forms” (Cities 34). According to Florida’s calculations measuring the Creative Class over time, it has grown more than tenfold in the last century, increasing from approximately three million workers in 1900 to 38 million Americans today, and will continue its rapid growth into the future. Additionally, technological advances have contributed to the increase in creativity. Harvard Law School Professor Lawrence Lessig has identified the formation of the Remix Culture, or a culture which encourages the creation of derivative works. The premise of the Remix Culture is that through basic technology such as Microsoft Word, Wikipedia, YouTube, and Garage Band, amateur creators have the ability to “create and distribute creative content” based on works they encounter online or in their daily lives. These two conflicting pieces of evidence—the declining number of copyright registrations received by the USCO and increase in creative activities in the United States—indicate a disconnect between the USCO and the creative market, demonstrating that new creators are not registering their works for copyright.

Given the evidence that creativity in America is rapidly increasing, the question arises why the number of copyright registrations has not simultaneously seen a parallel increase. Works that are registered for copyright are (by definition) of a creative nature, and the fact that creators are not registering their works for copyright is indicative of a disconnect between the USCO and creators. Using a survey and interviews conducted for this thesis, I have identified six possible
explanations for this phenomenon: the recent economic recession, a lack of understanding and awareness about copyright, the fact that copyright registration is optional, the difficulties in the current copyright registration process, the shift to a “free culture” mentality, and the idea that many creators are driven by intrinsic rewards. Each of these reasons is thoroughly explored in my thesis.

Copyright is extremely valuable to the preservation of American culture. It ensures that people can profit from their creativity, and as research has shown, creativity is becoming increasingly valued in American society. As the federal agency tasked with carrying out the provisions of the Constitutional copyright clause, the USCO is the authority on the scope of copyright issues. Although the USCO has experienced a decline in copyright registrations over the past decade, the reasons for these are diagnosable and can be fixed. It is the role of the Office to remain relevant with creators, and through doing so, to fulfill their Constitutional duties.
Introduction

The mission of the United States Copyright Office (USCO) is “to promote creativity by administering and sustaining an effective national copyright system” (Copyright). The primary method by which it achieves this mission is through serving as the only agency in the United States that is legally permitted to register copyright protection on creative works. Copyright registration is one of the most important purposes the USCO serves, not only because the registration of copyrights is the principal source of fee receipts for the Office, but also because the majority of the Office’s interaction with the public is related to inquiries about copyright registration. Because of this, the USCO’s copyright registration service is critical to achieving its mission. In 2007, the USCO shifted the copyright registration system from paper-based to an online “electronic copyright” service, referred to as “eco”. The purpose of this change was to help expedite the copyright registration process for both applicants and the USCO by optimizing speed, cost and convenience. Despite this extensive modification, however, the number of applications for copyright registration that the Office receives has decreased over the past two decades. This has occurred despite a shift in the creative market that has increased both the value and amount of creativity, enabling the formation of a new demographic of “casual creators”, who engage in creative activities solely for the purpose of recreation. These two conflicting pieces of evidence—the declining number of copyright registrations and increase in creative activities in the United States—demonstrate that new creators are not registering their works for copyright, indicating a disconnect between the USCO and the creative market. This thesis seeks to explore the reasons behind the disconnect and by doing so, provide helpful information to the USCO so that they may more effectively serve the public.
Methodology

In addition to the secondary research conducted for this thesis, I engaged in two forms of primary research: survey and interview.

Survey

I collaborated with Zachary Nelson, fellow School of Public and Environmental Affairs (SPEA) student and senior to conduct a survey about creativity and copyright in the Bloomington, IN community. The survey consisted of ten questions: nine multiple choice questions and one comment box, which asked respondents to provide their thoughts about copyright. The survey was circulated to various creative outlets in the Bloomington community, including the SPEA undergraduate Arts Management major listserv, various undergraduate Arts Administration courses, the Bloomington Entertainment and Arts District, Jazz From Bloomington, Bloomington Area Music, WIUX, the Business Careers in Entertainment Club Music Committee, and personal friends and contacts of myself and Nelson. The survey received 120 responses, primarily from college-aged students (18-22).

Interview

Additionally, I was able to travel to the USCO in Washington, D.C. and conduct interviews for this thesis. The six interviews I conducted were the following:

1 See Appendix Item IV for the list of survey questions
2 See Appendix Item III for the list of interview questions
Section 1: Background of Copyright

The Origin of Copyright: Constitutional Grounds

To begin, it is important to first understand the foundations and development of copyright. The earliest and most fundamental acknowledgement of copyright appears in the United States Constitution. Article I, Section 8 of the Constitution is known as the “copyright clause” and gives Congress the right “to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries”. In 1790, just three years after the ratification of the Constitution, the first federal copyright law was enacted, and after three major revisions of the copyright law, in 1947 it was codified into public law as title 17 of the United States Code. The most recent revision of title 17 was in 1976, and it is this version of copyright law that currently stands (Circular 1a, 5).

What is Copyright?

Copyright is a form of intellectual property, defined in the Merriam-Webster dictionary as “property (as an idea, invention, or process) that derives from the work of the mind or intellect” (Merriam-Webster). Forms of intellectual property include copyright, patents, trademarks and trade secrets. All of these exist to protect varying forms of innovation, from inventions and useful articles (protected by patents), slogans and branding items (protected by trademarks) and formulas or other algorithms (protected as trade secrets). Copyright differs from these other forms of intellectual property by the definition of what it protects. According to the USCO’s own informational circular Copyright Basics, “copyright is a form of protection provided by the laws of the United States to the authors of ‘original works of authorship,’ including literary, dramatic, musical, artistic, and certain other intellectual works” (Copyright Basics 1). Though the term “copyright” literally means “the right to copy”, copyright has come
to describe a general body of exclusive rights given to authors, which can broadly be classified
according to the following four groups:

<table>
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<tr>
<th>Limitations on Copyright</th>
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<tr>
<td>1.) Reproduce</td>
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<tr>
<td>• Make copies of the work</td>
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<tr>
<td>2.) Create &quot;derivative works&quot;</td>
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<td>• Derivative work--one that is inspired or based upon an original work (Nelson and Rubeiz PowerPoint)</td>
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<tr>
<td>3.) Distribute to the Public</td>
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<tr>
<td>• Through sales, for free, or &quot;other transfer of ownership&quot; (1)</td>
</tr>
<tr>
<td>4.) Display or Perform Publically</td>
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<td>• Public exhibiting of the work</td>
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Limitations on Copyright

Despite the wide scope of these protections, however, copyright is not unlimited. This is because establishing infinite protection of creative works would undoubtedly hinder the development of future creativity that arises from utilizing and studying other, already existing creative works. This phenomenon can best be described by the example of students who study art. In addition to creating their own art, art students are required to study history in order to ensure they have a thorough knowledge of their fields. However, though their studies are of an academic nature, the knowledge they learn will, in most cases, impact their own work, as they are introduced to new artistic concepts they otherwise may not have discovered. Thus, their future creativity, based on already existing art, is permissible. In order to accommodate this, Title 17 outlines a number of restrictions on copyright protection.

Duration

The most basic limitation on copyright that exists is duration. For works created after January 1, 1978, copyright protection exists on a work from the moment of its creation, through
the author’s life and an additional 70 years after the author’s death (Circular 1, 5). Ultimately, this means that copyright protection “expires” after 70 years after the author’s death, and the work enters the public domain. This means that it may be used, sold, distributed and performed by anyone who wishes to do so.

**Fair Use**

Another more complicated limitation on copyright is the doctrine of “fair use”, which according to Title 17, Section 107, allows for the use of copyrighted works “for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research” without considering them infringement (1). Fair use exists to ensure that processes that involve the objective study or reporting of creative works, which often requires utilizing such works, is not considered infringement.

**How is Copyright Acquired?**

Perhaps one of the least understood principles of copyright is the method by which it is acquired. According to *Copyright Basics*, “copyright is secured automatically when the work is created” (emphasis added) (3). “Creation” is defined as the moment a work is “fixed in a copy or phonorecord for the first time”; essentially, the moment the work is placed in a *tangible* form (not improvised or unnotated) by which it can be “read or visually perceived” (such as a manuscript or book) or enjoyed “directly or with the aid of a machine or device” (such as a cassette tape or CD) (3). The most significant point about copyright protection is that “the copyright... *immediately* becomes the property of the author who created the work...” and it is important to note that no formal process (registration or otherwise) is required in order to secure copyright protection for one’s work (3). Protection exists the moment an original work is created
and fixed, whether that is during a “jam session” between musicians, the brainstorm session of an author, or any other formal or informal session of creation.

**Incentives to Register**

Despite the fact that registration is not mandatory, copyright law offers numerous incentives to creators to register their work with the USCO. It is important to note that under Title 17, Section 408, the USCO is the only entity recognized under the law that can officially process copyright registrations. A legal claim to copyright can only be secured “by delivering to the Copyright Office” the required documents for registration (Title 17, 139). If one registers their work with the USCO, the legal protection offered to them is unmatched. Registration with the USCO is required for infringement suits in court, establishes a “public record” of the ownership of the copyright, acts as “prima facie evidence in court of the validity of the copyright”, and provides for statutory damages and attorney’s fees to be paid to the copyright owner in the event of an infringement suit, among others (Copyright Basics 7). It is obvious that copyright registration, though not required to acquire the copyright protection, is beneficial to creators, especially in cases of legal dispute of infringement.

**The United States Copyright Office (USCO)**

As stated above, copyright protection is enumerated in the United States Constitution, and the federal agency that administers copyright is the United States Copyright Office (USCO). The USCO often considers its Constitutional origins when establishing its identity and scope in copyright issues. The mission of the USCO is “to promote creativity by administering and sustaining an effective national copyright system” (copyright.gov). The Office is directed by the Register of Copyrights; the current Register is Maria A. Pallante, who was appointed to this role.

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3 See Appendix, Chart I for USCO Organizational Chart
position by the Librarian of Congress in June 2011 after a sixteen year term by her highly revered predecessor, Marybeth Peters. There are four Offices which assist in the general function of the USCO: the Administrative Services Office, Copyright Technology Office, Office of the General Counsel, and the final office, Policy and International Affairs. From there, the remaining divisions are tasked with carrying out specific functions of the USCO: the Receipt Analysis and Control Division (tracks and maintains all works that the Office receives), the Information and Records Division (distributes information both inside and outside of the organization, as well as maintains records of information), Copyright Acquisitions Division (secures registration for works published within the United States), Licensing Division (“administers the compulsory and statutory licenses in the Copyright Act”), and the Registration and Recordation Program, which is further divided into the Literary Division, Performing Arts Division and Visual Arts Division, which handle registrations for each of those specific creative mediums (copyright.gov).

**Section 2: The Decline of Copyright Registrations**

Despite the obvious benefits reaped from copyright registration and the relative ease by which creators may register their works for copyright, copyright registration has stagnated and declined over the past two decades.\(^4\)

Data regarding rates of copyright registration can be examined using the USCO’s Annual Reports. Using the 2005 Annual Report (the last report contain a chart showing the number of copyright registrations dating back to the first year of copyright law, 1790), I examined the growth of copyright registrations from a historical context, beginning with the year 1904—the first year the Office registered 100,000 “claims” (the term used to describe registrations, as they

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\(^4\) See Appendix Item II for chart depicting the decline in copyright registrations over the 20\(^{th}\) century
are “claims” of ownership). 104,431 claims to copyright were registered in 1904. Over the next 15 years, copyright registrations stabilized at roughly 120,000 claims, which can be explained not only by the onset of World War I, but also because copyright registration was not yet integrated into the creative culture that existed during this time period. But, from 1920-1928, registrations begin to climb steadily by roughly 10,000 per year, beginning a trend that persisted for most of the twentieth century. Although registrations dropped from 1929-1933, this can be explained by another historical factor: the Great Depression. Following the Great Depression, in 1933 registrations climbed once again, culminating with the noteworthy point of surpassing 200,000 claims in 1946. Although it took 42 years for the Office to increase the number of claims by 100,000, following 1946, the number of years it took for copyright registrations to again increase by 100,000 claims rapidly accelerates. It only took 22 years, from 1946 to 1958—almost half the time it took for the first 100,000 increase—for copyright registrations to increase from 200,000 to 300,000 claims. The increase from 300,000 claims to 400,000 claims was even more expedited, occurring between 1968 and 1975—approximately one-quarter of the time it took for the previous block (only six years). The rapid rate of registration reaches a halt with a nine-year time block before reaching 500,000 registrations (1975-1984), but normalizes again and it only takes five years to increase from 500,000 to 600,000 registrations from 1984-1989. However, in the 23 years since 1989, the USCO has not broken into the next 100,000 block of 700,000 registrations. It is interesting to note that once the number of registrations reaches a new 100,000 block, it has never decreased to below that number until the most recent block of 600,000. Although 600,000 claims were registered in 1989, just five years later (the amount of time it took to get from 500,000 to 600,000) in 1994, registrations dropped below 600,000 to 530,332 and have alternated between the 500,000 and 600,000 levels since then. The steady
increase witnessed by studying copyright claims throughout the 20th century has effectively come to a halt.

Section 3: The Changing Nature of Creativity in America

Richard Florida and the Creative Class

The reason that the declining rate of copyright registration is confusing is the recent perceived increase of creativity in the United States. Richard Florida, Professor of Business and Creativity at the University of Toronto’s Rotman School of Management, is one of the primary researchers that has studied American creativity in great depth. Florida defines creativity as “the ability to synthesize”, along with the presence of self-confidence and risk-taking, and uniquely believes that creativity is a skill possessed by all (not just a select few) (Rise 31). Although varying degrees and manifestation of creativity exist, such as “technological creativity (invention), economic creativity (entrepreneurship) and artistic and cultural creativity, among others”, Florida rejects the idea that creativity is a talent reserved for a small elite (33). Not only is creativity widespread, but Florida emphasizes that creativity is work. Not merely hobby or side projects, creative projects (like all professions) require an investment of time, money, and sacrifice (34).

Florida takes the concept of creativity as work one step further with and argues that creativity is the driving force behind American economic development (Cities 1). In his iconic book The Rise of the Creative Class, he asserted that “both at work and in other spheres of our lives, we value creativity more highly than ever, and cultivate it more intensely. The creative impulse—the attribute that distinguishes us, as humans, from other species—is now being let loose on an unprecedented scale” (4). According to Florida, creativity is not simply limited to the
artistic processes, but includes such processes as the constant revision and enhancement of products, processes and activities, and putting them all together in new, innovative ways. This leads Florida to identify the Creative Class, those who “engage in work whose function is to create meaningful new forms” (Cities 34). There are two groups within the Creative Class; the first is the Super-Creative Core which “includes scientists and engineers, university professors, poets and novelists, artists, entertainers, actors, designers and architects, as well as the thought leadership of modern society: nonfiction writers, editors, cultural figures, think-tank researchers, analysts and other opinion-makers” (Rise 69). Members of the super creative core earn wages based purely on engaging in primary occupations that center on generating new ideas (which can be manifested as products), technology (inventions) or content (everything ranging from compositions to formulas). Outside of the Super-Creative Core lies the second group of people, whom Florida identifies as creative professionals, which includes those who work in specific “knowledge-intensive industries such as high-tech sectors, financial services, the legal and health care professions, and business management” (69). The reason that creative professionals are included in the Creative Class is because the skills required in order to hold jobs in such industries center on utilizing creativity in nontraditional ways, primarily through what Florida identifies as “creative problem solving, drawing on complex bodies of knowledge to solve specific problems” (69). Florida asserts that these professionals who engage in such problem solving often, unintentionally and separate from the primarily roles in their occupations as doctors, lawyers and managers, develop new creative ideas, technology or content—the definition of what those in the Super-Creative Core create (69). Thus, their role as secondary innovators warrants their inclusion in the Creative Class. According to Florida, the uniting factor
between these two groups is that they both “share a common creative ethos that values creativity, individuality, difference, and merit” (8).

Not only has Florida identified the Creative Class, but he goes on to argue that the Creative Class is *expanding*. Florida says that 38 million Americans—approximately 30% of the workforce—are part of the Creative Class, (9). According to Florida’s calculations measuring the Creative Class over time (calculated with help from colleagues and graduate students from his time at Carnegie Mellon University), the Creative Class has grown more than tenfold in the last century, increasing from approximately three million workers in 1900 to 38 million Americans today. This growth can be traced through the early 1900s, when the Creative Class only comprised ten percent of the American workforce for half a century until slowly rising to and remaining around twenty percent in the 1970s and 1980s. From there, much like copyright registrations throughout the twentieth century, the creative class “virtually exploded”, climbing to the level where it remains today (1/3 of the American workforce) (74). The Super-Creative Core (the group most relevant to this paper because it is members of super-creative core that create works eligible to be registered for copyright) itself comprises twelve percent of the American workforce (approximately 15 million workers). Its growth parallels that of the more broad Creative Class, beginning with 1 million workers (2.5%) in 1900 to 2 million in 1950 before quintupling to 10 million (almost 12%) in 1991 (74).

Florida attributes this increase in the Creative Class on an increase in the value placed on creativity in the workforce. Since the boundaries of the Creative Class are quite flexible (they include everyone from physicians to sculptors), Florida says that creativity gradually seeps into other industries too, leading jobs in the Service and Worker sectors to adapt to allow their employees to engage in creative processes (for example, asking employees in manufacturing
plants how to best improve their working facilities instead of relying on an external group to do this). This leads to a transition for some individuals from the Working or Service class into the Creative Class. Workers become “more valued for their ingenuity in applying [the more complex relevant body of knowledge]”, aka creativity, thus leading to an increase in the net total of creativity in America (70).

**The Remix Culture**

Additionally, technological advances have contributed to the increase in creativity. Using research from Harvard Law School Professor Lawrence Lessig, Zachary Nelson identifies in his spring 2012 SPEA honors thesis the formation of the Remix Culture, or a culture which encourages the creation of derivative works (Nelson and Rubeiz PowerPoint). The premise of the Remix Culture is that through basic technology such as Microsoft Word, Wikipedia, YouTube, and Garage Band, amateur creators (whom Nelson describes as “casual creators”) have the ability to “create and distribute creative content” based on works they encounter online or in their daily lives (Nelson and Rubeiz PowerPoint). This leads to a shift from a “read” culture, which is purely focused on the consumption of creative works by audiences, to a “read/write” culture, which recognizes that consumers of creativity also engaging in generating creative output (Nelson and Rubeiz PowerPoint). Thus, the amount of creativity in America is increased by this shift in culture.

**Section 4: Explanations for the Decline in Copyright Registrations**

Given the evidence that creativity in America is rapidly increasing, the question arises why the number of copyright registrations has not simultaneously seen a parallel increase. Works that are registered for copyright are (by definition) of a creative nature, and the fact that creators are
not registering their works for copyright is indicative of a disconnect between the USCO and creators. In fact, in the survey conducted for this thesis, 86% of measured respondents said that they had not registered their work with the USCO (meaning that only a mere 14% have done so) (Nelson and Ruheiz Survey). Using the survey and interviews conducted for this thesis, I have identified six possible explanations for this phenomenon, all of which are described below.

**Recent Economic Recession**

The first reason, cited by numerous staff at the USCO in interviews, is simple—the recent economic downturn explains why copyright registrations are down. Due to the financial stress brought on by the recession, people have limited income to spare, and registration of copyrighted works may not be a financial priority for all creators. (Perhaps these creators will register after the recession, but simply cannot afford to now.) This reason seems legitimate on its face; however, it does not sufficiently explain the decline in copyright registrations. First of all, as demonstrated in Section 2, copyright registrations have stagnated over the past two decades—the recent economic downturn only provides a justification for the past four years or so. Additionally, the cost of copyright registration is not at all prohibitively expensive—it only costs a mere $35 to register a work or even collection of works (albums, series of photographs, serials, etc). It is hard to comprehend that a single $35 fee is preventing even those serious about copyright protection from registering their works.

I propose five other, more satisfactory reasons, which are each explained below.
Lack of Understanding about Copyright

“I would love to have my work copyrighted, but have no idea that a path exists to have that done.”—Comment from Survey

I believe that the most plausible explanation for the decline of copyright registrations is simple—that creators simply are unaware of the basics of copyright and copyright registration. Ted Hirakawa, Chief of the Literary Division of the USCO, reflected this sentiment when he characterized the reason for the lack of registrations as “an education problem”, stating that education (or lack thereof) is the main reason people are not registering their works for copyright (Ted Hirakawa, interview, March 23, 2012). According to the survey, of the 86% of respondents who have not registered their work with the USCO, 37% of them indicated that they were “Unaware that registration with the USCO is an option” and 38% indicated that they “Don’t know how to register” (Nelson and Rubeiz Survey). Furthermore, the “Comments” section for the question that asked respondents to state why they had not registered their work for copyright provided additional insight into people’s general knowledge and familiarity with copyright. On the most basic level, an error that was overwhelmingly present was the amount of respondents that used the term “copyright” as a verb—e.g. “I don’t know why I should copyright my work,” or “I don’t see my writings and music at a stage where Copyrighting is necessary” (Nelson and Rubeiz Survey). This demonstrates a lack of understanding of even the most fundamental of copyright basics—that copyright protection (a noun) is a method of protecting certain types of intellectual property, is automatically secured upon creation (whether or not a work is “ready “ or “worthy” of registration), and is separate from its registration (the “verb” of obtaining protection). Denise Garrett, Acting Section Head of the USCO’s Public Information Office
(which handles most correspondence with the public) said that people often are “confused by copyright versus registration… they’re clueless about both” (Denise Garrett, interview, March 23, 2012). The fact that many individuals cannot distinguish between the two is evidence of the larger issue of a general lack of knowledge about copyright. Another misconception about copyrighted represented in the comments were the number of respondents indicated that they had not produced work advanced enough to be “worthy” of copyright registration, or that they did not understand why registration was important to them, demonstrating misunderstandings about the registration process itself and the benefits of doing so. Based on this information, it is undeniable that a public that lacks the most basic information about copyright surely will not register their works for copyright.

Another important distinction to note is the registration of published versus unpublished works. Published works are more likely to be professional, and many registrations of published works are done by record labels, publishing houses, or others with familiarity about the process of copyright registration. In fact, one creator said in our survey said, “my publisher did it for me”, referring to the registration of his/her works. This means that there are some creators whose works are registered for copyright, but since they did not do it themselves, they may still be unfamiliar with the basics of copyright, thus perpetuating the education problem (Nelson and Rubeiz Survey). This perpetuates the myth that copyright registration is reserved for an elite few who have been educated in the process. However, according to the USCO’s Annual Reports, a significant number of the works the Office receives are unpublished (more likely to be from a casual creator); those authors are more likely to be unaware about registration and the process by which to do so.
Another explanation for the decline in copyright registrations is the inconvenience associated with the online registration system, electronic copyright (eco). Even for those who know to register their work with the USCO, registration is prohibitively difficult. In 2007, the USCO shifted the copyright registration system from paper-based to online; the purpose of this change was to help expedite the copyright registration process for both applicants and the USCO by optimizing speed, cost and convenience. However, instead of improving the copyright registration process, it seems to have introduced a multitude of other problem. As an intern at the USCO in fall 2011, I was responsible for creating and monitoring responses to an online survey about the USCO’s website, copyright.gov. In the comments section, one of the topics that received the most discussion was the difficulties regarding eco. The USCO developed a tutorial to help viewers, but the launch of that has been slow and the fact that the system requires a tutorial is a testament to its low level of user-friendliness. According to Denise Garrett, Acting Section Head of the Public Information Office at the USCO, most of the correspondence the Office engages in is related to copyright registrations, whether through conducting “walk-throughs” whereby registrants call and receive live help through each step of the registration process, or using follow-up correspondence to communicate with those who have filed for registration. The fact that the eco system requires walk-throughs is indicative to how confusing it is to navigate. In the Performing Arts division, one of the frustrations experienced is the fact that many people simply complete the wrong form. Essentially, the registration process, despite being cheap and online, is not at all intuitive nor easy to navigate for registrants. It does not keep up with the changing technological needs of creators today, and instead deters people, or at the very least, makes it extremely inconvenient for users to register for copyright. A creator who did register their work with the USCO said, “It definitely should be an easier process and I never got
a final confirmation in the mail after they were supposed to review it” (comment has been edited for grammar) (Nelson and Rubeiz Survey). Since more than 80% of copyright registrations received by the office are online, this system must be improved (Pallante). For an online system that is supposed to enhance and improve the registration process, this is simply unacceptable.

Creative Commons, an open-source licensing model that has experienced exponential growth over recent years, was also questioned in our survey. Of the users who had registered their work with Creative Commons, 53% stated that it was primarily though the “Ease of use” of using the Creative Commons system. Perhaps if the USCO updated its registration process to be more user-friendly, it would notice recognizable growth in the number of applications for copyright registration received per year.

*Copyright Registration is Optional*

As mentioned previously, copyright registration is not necessary in order to receive copyright protection. Most of the benefits of copyright registration are centered on creating a foundation for legal standing against suits of infringement. As a result, even those who are aware of copyright registration may not feel compelled to register, either because they don’t believe the benefits are worth the cost, or because they are not concerned with infringement or litigation surrounding their work. When asked why they had not registered their work for copyright, one respondent stated “Not worried about infringement. My work is registered with ASCAP [American Society of Composers, Authors and Publishers] and I usually feel like if a serious situation arose, I'd have enough evidence to support my case” (Nelson and Rubeiz Survey). Another said, “I don't really imagine anyone stealing my work, and in the small case that they did, I feel like it'd be easy to prove the work belonged to me” (Nelson and Rubeiz Survey). This furthers the belief that many creators simply are not worried about infringement, and even if they
are, do not feel the need to seek out advance protection through registration of their work with the USCO.

Shift to a “Free Culture” Mentality

The above reason, the optional nature of copyright registration, is directly tied to the shift to a “Free Culture” mentality. A “free culture” is one where individuals are free to create works based on other works that have been shared, whether through discovery on the internet or through direct sharing. “Free Culture” is a term deemed by Lawrence Lessig, a professor at Harvard Law School, which describes the emerging concept that “we come from a tradition of ‘free culture’—‘free’ as in ‘free speech’, ‘free markets’, ‘free trade’, ‘free enterprise’, ‘free will’, and ‘free elections’. A free culture supports and protects creators and innovators. It does this directly by granting intellectual property rights. But it does so indirectly by limiting the reach of those rights, to guarantee that follow-on creators and innovators remain as free as possible from the control of the past” (Lessig xiv). Alice Parrish, Chief of the Performing Arts division at the USCO, said that she attributes the decline in copyright registrations to a general shift in attitudes towards creativity and copyright: people believe that works should be free to use and that many creators accept or even encourage others to use their works either to create their own works or to create derivative works (either involves free marketing for the original work) (Alice Parrish, interview, March 23, 2012).

Comments from the survey support Parrish’s statements. Many creators opined about the importance of balancing copyright protection with sharing, with statements like, “it's important that your work is protected, but sharing artistic styles and ideas is important” and, “I think Copyright is a good idea in Visual arts, however, in the Music

“Copyright is irrelevant in our culture. Everything is shared, borrowed, or stolen, which creates a whole new medium of art.” –Comment from Survey
Industry, I think copyrights needs to be relaxed so that it is easy to for new artists to share their music…” (Nelson and Rubeiz Survey).

*Creators are Driven by “Intrinsic Rewards”*

The final explanation for the decline in copyright registrations is that many creators, especially casual creators, are primarily driven to create from internal motivations. Some create for entertainment (“art for art’s sake”), to have fun with their friends, or to express themselves and their emotions, or simply because through the remix culture, technology allows them to become amateur creators. For many of these creators, there is not a need or desire to profit from their work, register their work, or for some even distribute their work; the act of creating an original work is satisfying enough for personal reason (Rise 34). Since fear of infringement or concern with protection is not a priority for these creators, they are unlikely to register their works with the USCO.

**Conclusion**

As the federal agency tasked with carrying out the provisions of the Constitutional copyright clause, the USCO is the authority on the scope of copyright issues. However, it has experienced a recent decline over time in the rate of copyright registrations, which not only serves as the primary source of fee receipts for the Office, but also is their primary form of engagement with the public. As a result, it is important for the USCO to remain in touch with creators in order to ensure they will keep registering their work for copyright.

In the fall of 2011, newly appointed Register of Copyrights Maria A. Pallante announced her “Priorities and Special Projects of the USCO” for her term as Register. Many of these center on mitigating some of the issues discussed in this paper; for example, improvements and
technical upgrades to eco in order to better serve those registering their works online (Pallante 13). Perhaps the most significant Special Project is the “Public Outreach and Education” effort, centered on “building a business plan for copyright education” and assisting “new kinds of… creators… [who] need assistance in understanding and navigating the law” (15). An effective education and public outreach campaign is a progressive step toward combating the “education problem” that current surrounds copyright law. According to David Christopher, Chief of the Information and Records division of the USCO and one of the heads of the project, the effort has currently been sub-divided into seven groups: Content Development, Special Events, Branding and Identity, Social Media, Re-establishing a Copyright Exhibit, Relationship Building with Other Copyright-Related Entities, and Developing Strategies for Using Technology (David Christopher, interview, March 23, 2012). Many of these groups seek to tackle the issues that have contributed to the decline in copyright registrations, and I am excited to see the USCO’s efforts culminate over the 2012-2013 year.

Copyright is extremely valuable to the preservation of society. It ensures that people can make a living off of being creative, and as research has shown, creativity is becoming increasingly valued in American society. Although the USCO has experienced a decline in copyright registrations over the past decade, the reasons for these are diagnosable and can be fixed. It is the role of the Office to remain relevant with creators, and through doing so, to fulfill their Constitutional duties.
References


I. Organization Chart, United States Copyright Office
II. Graph Showing Decline in Copyright Registrations over the 20th Century
III. Interview Questions for USCO

**Interview Questions for USCO:**

1. (First name, last name, official title.)
2. According to the USCO’s own Annual Reports, the number of copyright registrations received by the USCO per year has plateaued over the last decade. What do you believe has caused this?
3. If you had to identify ONE reason for the plateau/decline in the rate of copyright registrations, what would you say it is?
4. How does the USCO use the data regarding copyright registrations in planning projects and initiatives, if at all?
5. What impact do you believe that alternative forms of copyright (example: Creative Commons) have had on the number of copyright registrations?
6. With regards to level of professionalism, has the USCO/your division noticed a change in the nature of applications for copyright?
   a. To the best of your knowledge, are the works primarily submitted by professional creators or casual creators (those who seem to be creating for their own personal reasons, not professional or trying to make a huge profit)?*
7. Richard Florida argues that the level of creativity in America has exploded over the past decade, particularly regarding what he calls the “creative class”, who have an appreciation for creative work and engage in non-explicit forms of creativity (example: creative problem solving).
   a. Has the USCO observed such a change in the nature of applications for copyright registration?
   b. Do you believe that the level and nature of creativity has changed/increased? If so, how do you think it has impacted the number of copyright registrations?
8. What efforts, if any, is the USCO making in order to increase the number of copyright registrations?
9. What steps would you recommend the USCO take in order to increase copyright registrations?
10. In your opinion, how has the public’s understanding of copyright changed over the past two decades (time that the plateau has occurred)?
IV. SurveyMonkey Questions:

1. Which category below includes your age?
   - Which category below includes your age? 17 or younger
   - 18-22
   - 23-29
   - 30-39
   - 40-49
   - 50-59
   - 60 or older

2. Which of the following most accurately describes you? (Check all that apply.)
   - Author/Writer
   - Musician
   - Composer
   - Visual Artist (painter, sculptor, photographer, etc.)
   - Other (please specify)

3. Have you registered your work for copyright with the United States Copyright Office?
   - Yes
   - No

4. If "yes", what reason(s) most accurately describe your reasons for registering your work with the United States Copyright Office? (Check all that apply.)
   - To protect the artistic value of my work
   - To profit from my work
To protect my work from possible copyright infringement

It sounded official

Somebody told me to (agent, fellow artist, outside party)

Other (please specify)

5. If "no", what reason(s) most accurately describe your reasons for NOT registering your work with the United States Copyright Office? (Check all that apply.)

☐ Unaware that registration with the United States Copyright Office is an option

☐ Have no desire to register my work

☐ Don't know how to register

☐ Too expensive

☐ Fundamentally opposed to copyright

☐ Tried to, but it was too difficult/confusing

Other (please specify)

6. Are you aware that alternative forms of copyright (example: Creative Commons) exist?

☐ Are you aware that alternative forms of copyright (example: Creative Commons) exist? Yes

☐ No

7. Have you registered your work for copyright through an alternative copyright source (example: Creative Commons)?

☐ Yes

☐ No

8. If "yes", what reason(s) most accurately describe your reasons to register your work through an alternative form of copyright? (Check all that apply.)

☐ Chance of being more profitable
Ease of use

 Increases output in creative community

 Better suited for work in a digital format

 Other (please specify)

 9. If "no", what reasons most accurately describe your reasons for NOT registering your work through an alternative form of copyright? (Check all that apply.)

 - Unaware there were alternative forms of copyright

 - Prefer traditional copyright registration through United States Copyright Office

 - Not suited for my medium of work

 - Harder to receive profits from my work

 Other (please specify)

 10. What are your thoughts on copyright?