

Notice and Supplemental Registration: Why the Copyright Office Must Update its Policies Surrounding Author Notice

Erin E. Kaprelian

Follow this and additional works at: <http://scholarship.law.marquette.edu/iplr>



Part of the [Intellectual Property Commons](#)

Repository Citation

Erin E. Kaprelian, *Notice and Supplemental Registration: Why the Copyright Office Must Update its Policies Surrounding Author Notice*, 19 Marq. Intellectual Property L. Rev. 121 (2015).

Available at: <http://scholarship.law.marquette.edu/iplr/vol19/iss1/7>

This Comment is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Intellectual Property Law Review by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact megan.obrien@marquette.edu.

**Notice and Supplemental Registration: Why the
Copyright Office Must Update its Policies Surrounding
Author Notice**

INTRODUCTION	125
I. THE BACKGROUND OF MR. STRONG'S CLAIM	125
II. EXISTING PRECEDENT FOR ADDRESSING MR. STRONG'S CLAIMS ...	126
A. Fraudulent concealment as a basis for challenging authorship	127
1. Constructive Trust as a Basis for Rights in Copyright ...	129
2. Applying the Statute of Limitations	130
III. CURRENT POLICY SURROUNDING AUTHORSHIP AND CHANGES THAT NEED TO BE MADE	132
A. The existing policy of the Copyright Office does not adequately protect coauthors from having their status changed.	133
B. By implementing two changes to its policy, the Copyright Office will be able to protect coauthors and prevent a situation like Mr. Strong's from arising in the future.	135
CONCLUSION.....	140



Erin Kaprelian is a third-year student at Marquette University Law School, with a particular interest in intellectual property law. Erin currently serves as an Admissions Ambassador for prospective students, as a first year student mentor, and as the Vice President of the Intellectual Property Law Society.

Prior to beginning law school, Erin attended Marquette University, where she received her B.S. in physics and psychology. During that time, she was involved in research and worked as a teaching assistant, a job that she has continued throughout law school.

Outside of school and work, Erin plays in the Marquette University Symphony Orchestra and enjoys spending time with her family and friends.

INTRODUCTION

When one wishes to conduct a search for a specific copyright today, he or she is able to do so entirely online (provided that the copyright in question is dated 1978 or later) thanks to the digitization of copyright records by the United States Copyright Office.¹ Prior to this digitization of records, the only way to search for a copyright was to search the copyright card catalog, housed in the Library of Congress.² Unless the interested party had reason to make the trip to Washington, D.C., to search the copyright card catalog, there was no way to determine the status of any copyright.

This aspect of the copyright system presents particular difficulties when a copyright has been altered. The Copyright Office allows for the submission of supplemental registrations to either correct or amplify an already accepted basic registration.³ Corrections and amplifications can take many forms, one of which is to amend who is registered as an author on a copyright.⁴ However, since the Copyright Office does not notify authors of such changes, without a reason to think that a supplementary registration had been submitted, an author would likely not realize that his or her rights had been affected. Such are the circumstances of Barrett Strong, a songwriter who worked for Motown Records.

This comment will first discuss Mr. Strong's case. Next, existing case law surrounding establishment of copyright rights after the original copyright has been filed will be discussed. Finally, the existing policies and procedures of the Copyright Office regarding the alteration of copyrights will be discussed and changes to the Copyright Office's correction and amplification policies will be proposed as a way to help reduce issues such as the one currently faced by Mr. Strong.

I. THE BACKGROUND OF MR. STRONG'S CLAIM

Founded in 1959, Motown Records became famous for turning out such hits as "Dancing in the Street" and "Stop! In the Name of Love,"⁵ and for

1. See UNITED STATES COPYRIGHT OFFICE, *Public Catalog*, <http://cocatalog.loc.gov/cgi-bin/Pwebrecon.cgi?DB=local&PAGE=First> (last visited Mar. 23, 2014).

2. See generally UNITED STATES COPYRIGHT OFFICE, *Circular No. 23, The Copyright Card Catalog and the Online Files of the Copyright Office* (May 2012) <http://www.copyright.gov/circs/circ23.pdf>. For copyrights granted prior to 1978, the card catalog method of searching must still be utilized. See generally Search Copyright Records, UNITED STATES COPYRIGHT OFFICE, <http://www.copyright.gov/records/>.

3. 37 C.F.R. § 201.5(b)(2) (2013); see also 17 U.S.C. § 408(d) (2006).

4. See generally UNITED STATES COPYRIGHT OFFICE, *Circular No. 8, Supplementary Copyright Registration* (April 2013) <http://www.copyright.gov/circs/circ08.pdf>.

5. Gilbert Cruz, *A Brief History of Motown*, TIME MAGAZINE, (Jan. 12 2009),

representing such artists as Stevie Wonder, Marvin Gaye, and the Supremes.⁶ However, its first national hit came in 1959 with the song “Money (That’s What I Want)” (hereinafter “Money”).⁷ “Money” is currently at the center of a dispute surrounding who has the copyright in the song that is pitting a songwriter against Motown Records founder Berry Gordy.⁸

Barrett Strong began his music career as a session musician.⁹ In 1959, Barrett Strong recorded “Money” for Motown Records.¹⁰ The song was first registered with the Copyright Office in November 1959, and credited both Barrett Strong and Berry Gordy for words and music, as well as Janie Bradford for words.¹¹ The copyright was issued early in 1960 under Strong’s name.¹² In 1962, however, Jobete Music, Motown’s song-publishing company,¹³ filed an amended copyright with the instruction to remove Strong’s name from the copyright. Under the policy of the United States Copyright Office, Strong had three years to contest the amendment.¹⁴

In 1987, the copyright on “Money” was renewed, and Barrett Strong’s name was re-added as an author, restoring his rights to the song.¹⁵ The next year, however, Strong’s name was once again removed—literally crossed out—from the copyright.¹⁶

II. EXISTING PRECEDENT FOR ADDRESSING MR. STRONG’S CLAIMS

Barrett Strong’s authorship and copyright dispute is not the first such action to arise. A number of cases have addressed whether an author can have his or her authorship rights restored. From these cases, three bases for Mr. Strong to challenge the copyright alteration and have his name reinstated as an author

<http://content.time.com/time/arts/article/0,8599,1870975,00.html>.

6. See *id.*; see also *The Story of Motown Records*, CLASSIC MOTOWN, <http://classic.motown.com/history/> (last visited Mar. 23, 2014), *Motown: The Sound That Changed America*, MOTOWN MUSEUM, <http://www.motownmuseum.org/story/motown/> (last visited Mar. 23, 2014).

7. See, e.g., MOTOWN MUSEUM, *supra* note 6; CLASSIC MOTOWN, *supra* note 6; Larry Rohter, *For a Classic Motown Song About Money, Credit Is What He Wants*, N.Y. TIMES, (Aug. 31, 2013), http://www.nytimes.com/2013/09/01/arts/music/for-a-classic-motown-song-about-money-credit-is-what-he-wants.html?_r=0.

8. See Rohter, *supra* note 7. At the time of writing, no case has been filed.

9. Rohter, *supra* note 7.

10. *Id.*; Rob Wile, *The Guy Who Wrote One Of The Most Famous Songs Of All Time Says US Copyright Law Cheated Him Of Millions*, BUSINESS TIMES (Sept. 1, 2013), <http://www.businessinsider.com/money-motown-songwriter-copyright-dispute-2013-9>.

11. See Wile, *supra* note 10.

12. Rohter, *supra* note 7.

13. Jobete Music was wholly owned by Berry Gordy. *Id.*

14. *Id.*; 17 U.S.C. § 507(b) (2006).

15. *Id.*; Wile, *supra* note 10.

16. *Id.*

emerge. This section will discuss the existing case law and the corresponding bases for a challenge. First, fraudulent concealment of the change in authorship as a basis for a reinstatement of authorship will be discussed. Next, renewal of a jointly authored work by one author being viewed as a constructive trust will be examined. Finally, the application of the statute of limitations imposed by the Copyright Office to works that continue to garner income.

A. *Fraudulent Concealment as a Basis for Challenging Authorship*

In a traditional authorship dispute, a person has a limited amount of time in which to bring an action, beginning from the moment that the person knew or should have known that a basis for an action existed.¹⁷ Typically, this is a straightforward requirement. However, one difficulty that may arise is whether an action can be brought if the person was unaware of an authorship issue because someone else (e.g. a coauthor) purposefully concealed the issue. In a case such as this, even though the original time period for filing a cause of action has passed, can the fraudulent concealment of the basis for such a cause of action excuse the delay and allow the action to be pursued?

In *Goodman v. Lee*, the Fifth Circuit addressed this precise question. Shirley Goodman, one half of the singing duo “Shirley and Lee,” claimed that she had co-written the song in question with her duet partner, Leonard Lee.¹⁸ Lee obtained a copyright in the song but unbeknownst to Goodman, he obtained the copyright in his name alone.¹⁹ As a result, Lee began receiving royalties from the song; after his death, his widow and daughter (the defendants in the case) began receiving the royalties.²⁰ The defendants then applied for, and received, a renewal of the copyright, still only in Lee’s name and without the knowledge of Goodman.²¹

Shortly after, Goodman filed suit seeking recognition as a co-author and an accounting of half the royalties and any other profits stemming from the song.²² The defendants claimed that Goodman knew that she had been removed as an author “years before” she brought her action.²³ Goodman claimed that she did

17. 17 U.S.C. §507.

18. *Goodman v. Lee*, 78 F.3d 1007, 1009 (5th Cir. 1996) (hereinafter “*Goodman II*”).

19. *Id.*

20. *Id.* at 1010.

21. *Id.*

22. *Id.* The court granted the defendants’ motion for summary judgment; the Court of Appeals then reversed and remanded the case, citing the existence of federal question jurisdiction. *Goodman v. Lee*, 988 F.2d 619, 621 (5th Cir. 1993) (hereinafter “*Goodman I*”).

23. *Goodman I*, 988 F.2d at 622. The defendants challenged the judgment from the District Court that Ms. Goodman was a co-author and therefore entitled to damages. *Id.* The Court of Appeals dismissed the appeal, finding that the District Court had to settle the questions regarding amount of damages before the judgment would be final. *Id.* at 627.

not know that her name had been removed as an author until the copyright was eligible for renewal.²⁴ A jury found that Goodman was in fact a co-author but did not know, nor should she have known that Lee had not included her as a co-author on the copyright application until 1984, well after the original copyright was filed.²⁵ Furthermore, the jury found that Lee had concealed from Goodman the fact that he had claimed sole credit for the song and that the defendants had concealed the fact that the song was earning money.²⁶ On their final appeal, the defendants challenged the judgment of the District Court that Goodman was a co-author and joint owner, and thus entitled to royalties.²⁷ The Fifth Circuit affirmed the judgment, saying that the Copyright Act supported the jury's determination of Goodman's ownership,²⁸ and that Goodman's action was not barred because it was filed within the statute of limitations as calculated from when she knew or should have known that she was not listed as an author on the copyright.²⁹

According to *Goodman v. Lee*, fraudulently concealing an author's status on a copyright registration from the author has the effect of tolling the three-year statute of limitations otherwise imposed by the Copyright Act.³⁰ As a result, even though the original copyright was filed in 1956, Ms. Goodman was still able to pursue a cause of action in 1985 because the exclusion of her name as a co-author was not a fact that she knew of or should have known of until the prior year.³¹ The statute of limitations only began to toll when Ms. Goodman was on notice or should have been on notice that she had been excluded from the original copyright and the renewal.³²

Using *Goodman*, Mr. Strong can argue that, despite the original copyright being filed in the 1950s and subsequently renewed, Berry Gordy and Motown Records fraudulently concealed Mr. Strong's removal from the copyright for "Money." This argument is likely to be Mr. Strong's strongest chance for success for two reasons. First, the concept of tolling a statute of limitations is already an accepted practice in other areas of the law (e.g. torts), lending credibility to the practice of tolling a statute of limitations in copyright law.

24. *Goodman v. Lee*, 815 F.2d 1030, 1031 (5th Cir. 1987) (reversing the District Court's order to dismiss Ms. Goodman's cause of action and remanded the case back to the District Court) (hereinafter "*Goodman III*")

25. *Goodman II*, 78 F.3d at 1010. The original copyright was filed in 1956. *See Goodman III*, 815 F.2d at 1031.

26. *Goodman I*, 988 F.2d at 622.

27. *Goodman II*, 78 F.3d at 1009.

28. *Id.* at 1012.

29. *Id.* at 1014.

30. *Goodman I*, 988 F.2d at 622–23.

31. *Id.*

32. *See id.*

Second, Mr. Strong will have to show that he did not know that his name had been removed until well after the alteration had occurred and, since the original copyright was filed prior to 1978, he should be able to point to the fact that he would have had no reason to venture to the Copyright Office to check the authorship in the first place to help establish a later date of knowledge. If a court were to accept these two arguments, the three-year statute of limitations would not have begun to toll until such time as Mr. Strong was or should have been on notice that he had a potential cause of action.³³ As long as Mr. Strong filed suit within that three-year period, his cause of action would not be dismissed for falling outside the statutory period.

1. Constructive Trust as a Basis for Rights in Copyright

Demonstrating fraudulent concealment of critical facts, including who is listed as an author, on a copyright, is not the only basis on which an author can recover benefits associated with that status. A co-author who applies for and receives a copyright in his name has been found under the 1909 Copyright Act to hold a constructive trust for the other authors.³⁴

In *Edward B. Marks Music Corp. v. Jerry Vogel Music Corp.* (hereinafter “Marks Music Corp.”), the Second Circuit reversed the dismissal of an infringement complaint in which the infringement was conceded but the defendant had argued that it was an equitable joint author.³⁵ In *Marks Music Corp.*, Edward Marks had written song lyrics with the intention of having somebody else compose the melody.³⁶ Marks took the song lyrics to a publisher, who bought the lyrics; the publisher subsequently took the lyrics to a composer to get a melody.³⁷ Marks was unaware that the publisher had secured the services of a composer.³⁸

The song was published and the publisher applied for and obtained a copyright for the song.³⁹ Marks later applied to renew the copyright, vesting his rights in Edward B. Marks Music Corp.⁴⁰ The composer, meanwhile, assigned his rights to the defendant, Jerry Vogel Music Corp.⁴¹

33. The time at which this occurred is a question of fact and would likely be left for the factfinder to determine.

34. *Edward B. Marks Music Corp. v. Jerry Vogel Music Co.*, 140 F.2d 266, 267 (2d Cir. 1944) (citing *Maurel v. Smith*, 271 F. 211 (2d Cir. 1921)).

35. *See id.*

36. *Id.* at 266.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.* at 266–67.

41. *Id.* at 267.

In a prior case, *Maurel v. Smith*, the Second Circuit held that an author who was one of several authors and who registered the joint work in his name alone held a valid copyright but that the copyright was held upon a constructive trust for the other authors.⁴² The court then further noted that the idea of a constructive trust had been extended in *Silverman v. Sunrise Pictures Corp.* to be applicable to the renewal of copyrights, in addition to initial registration.⁴³ Therefore, the Second Circuit said, as long as the song in question was a joint work of both Marks and the composer, Marks would have a valid copyright which could be assigned to Edward B. Marks Music Corp.⁴⁴ As Marks's assignee, Edward B. Marks Music Corp. would then hold the copyright in a constructive trust for the composer.⁴⁵

The court ultimately found that the song in question was, in fact a joint work.⁴⁶ Marks had written the words and although he never worked directly with the composer, he did intend for his words to be part of a song.⁴⁷ Therefore, the fact that Marks was not aware that the publisher had ever contracted with a composer was immaterial.⁴⁸ In addition, the court noted that the very nature of the song required it to be considered a joint work.⁴⁹ The lyrics and the melody, although composed separately, were intended to be performed together as one, singular work; the elements were inextricably bound.⁵⁰ Therefore, since the song was a joint work, Edward B. Marks Music Corp. did have a valid copyright but they held a constructive trust in that copyright for Jerry Vogel Music Corp.⁵¹

2. Applying the Statute of Limitations

Even if an author fails to file an authorship suit within the original statute of limitations and is therefore unable to be reinstated as an author on the copyright itself, issues surrounding continued exploitation of the copyright may still exist. For example, is the author prohibited from recovering any proceeds from the work because the original suit was not timely filed? Or should the

42. *Id.* (citing to *Maurel*).

43. *Id.* (citing *Silverman v. Sunrise Pictures Corp.*, 273 F. 909 (2d Cir. 1921), *disapproved of* by *Silverman v. Sunrise Pictures Corp.*, 290 F. 804, 804–805 (2d Cir. 1923) (holding that, in the absence of heirs or an active executor, no one is able to apply for renewal of the copyright in question, thus rendering the copyright “dead”).

44. *Edward Marks Music Corp.*, 140 F.2d at 267.

45. *Id.*

46. *Id.* at 267–8.

47. *Id.* at 267.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

author be able to recover proceeds beginning from the date of his suit, whenever filed, but not any proceeds from before that date?

The case of *Stone v. Williams* provides a thorough discussion regarding how, and when precisely, the three-year statute of limitations is to be applied.⁵² The conflict in *Stone* centered on copyrights originally held by Hank Williams, Sr. that had passed to his son.⁵³ Stone, who was born after Williams Sr. had died, was told that Williams Sr. may have been her father.⁵⁴ Stone eventually filed suit seeking, among other things, a proportional share of the renewal rights to the songs that had originally been copyrighted by Williams Sr. and were now held by his son.⁵⁵

The Second Circuit noted that “[a] cause of action accrues when a plaintiff knows or has reason to know of the injury upon which the claim is premised.”⁵⁶ In this case, the Second Circuit found that the statute of limitations did not begin to run until Stone knew or should have known that she was the daughter of Hank Williams, Sr., and thus had a statutory entitlement to royalties.⁵⁷ Furthermore, the court noted that fraudulent concealment of a potential cause of action would have the effect of tolling the statute of limitations.⁵⁸ The fraudulent concealment does not lessen a plaintiff’s duty of diligence, the court cautioned, but it “measures what a reasonably diligent plaintiff would or could have known regarding the claim.”⁵⁹

As applied to *Stone*, the court found that, even if the facts had been fraudulently concealed, Stone knew or should have known that she could be the daughter of Williams Sr., and thus had a cause of action for recovery of renewal rights in Williams’ copyrights.⁶⁰ However, the fact that Stone *could* have brought her suit during the six years prior to when she actually commenced the suit did not have the effect of preventing her current suit.⁶¹ Instead, this fact only prevented Stone from receiving some of her sought-after relief.⁶² As the Second Circuit noted, statutes of limitations have the effect of barring remedies;

52. See *Stone v. Williams*, 873 F.2d 620 (2d Cir. 1989), *vacated on other grounds by Stone v. Williams*, 891 F.2d 401 (2d Cir. 1989) (ultimately vacated but referred to for facts by subsequent litigation).

53. *Id.* at 622.

54. *Id.* at 623.

55. *Id.*

56. *Stone v. Williams*, 970 F.2d 1043, 1048 (2d Cir. 1989).

57. *Id.*

58. *Id.*

59. *Id.* at 1048–49.

60. *Id.* at 1049–51.

61. *Id.* at 1051.

62. *Id.*

however, they do not bar the assertion of rights.⁶³ Therefore, the court noted, “Stone’s suit is timely insofar as relief is sought for defendants’ failure to remit to her a proportionate share of royalties received within three years of suit.”⁶⁴

As discussed above, in *Goodman*, the Fifth Circuit also tolled the statute of limitations, finding that it only began to apply at the point in time at which Ms. Goodman knew, or should have known, that she was excluded as an author on the copyright.⁶⁵ In that case, Ms. Goodman’s lack of awareness stemmed from a conspiracy to prevent her from finding out that she had been excluded.⁶⁶ However, the principles of application for the statute of limitations in *Goodman* are the same as in *Stone*: the statute was not applied until such time as the plaintiff knew or should have known that a basis for a cause of action existed.⁶⁷

Both *Goodman* and *Stone* suggest that Mr. Strong could have a valid cause of action against Mr. Gordy and Jobete. Although Mr. Strong knew that he was originally listed as an author on the copyright registration for “Money,” he may not have had reason to know that the authorship had been altered until 2010. Under *Goodman*, if Mr. Stone had no reason to know that his status as coauthor had been removed until 2010, or if Mr. Gordy and Jobete fraudulently concealed the changes to the authorship of the copyright, he should be able to commence a cause of action, even though the original three year statute of limitations prescribed by the Copyright Act⁶⁸ had expired. Furthermore, under *Stone*, even if a court finds that Mr. Strong would have been able to bring suit earlier than 2010, any current suit would not necessarily be barred. *Stone* only barred remedies that had arisen prior to the current suit.⁶⁹ Therefore, Mr. Strong might still be able to recover some of the royalties from “Money,” even if he can only get remedies starting from 2010.

III. CURRENT POLICY SURROUNDING AUTHORSHIP AND CHANGES THAT NEED TO BE MADE

One of the main reasons for Mr. Strong’s predicament can be traced back to the policies of the United States Copyright Office. The policies that were, and continue to be, in place at the Copyright Office made it very difficult for Mr. Strong to find out that his authorship status had been altered. As a result, even though case law suggests that Mr. Strong may have a legal basis for

63. *Id.*

64. *Id.*

65. *Goodman II*, 78 F.3d at 1009.

66. *Id.*

67. *See Id.*; *see also Stone*, 873 F.2d at 620.

68. 17 U.S.C. § 507(b) (2006).

69. *Stone*, 970 F.2d at 1051.

recovery, similar cases will likely arise in the future unless the underlying policies of the Copyright Office are addressed. This section will first outline the existing policies of the Copyright Office regarding the rights of coauthors, changes to authorship, and notice. Changes to these existing policies that would assist in preventing future disputes will then be proposed and discussed.

A. The existing policy of the Copyright Office does not adequately protect coauthors from having their status changed.

Under 17 U.S.C. § 201(a), ownership in a copyright authored by multiple persons vests in all authors; that is, all coauthors co-own the copyright.⁷⁰ Since each coauthor is considered an owner, each co-author enjoys the rights granted to a copyright owner.⁷¹ These include the right to license the copyrighted work⁷² and exploit the copyrighted work through, for example, preparation of derivative works.⁷³ In addition to the statutory rights outlined in 17 U.S.C. § 106, a select group of people, including an author, may also file for supplementary registration.⁷⁴

Supplemental registration allows an author or owner of a copyright to file an additional registration for a previously registered work.⁷⁵ Using supplemental registration, an author may either correct or amplify the basic registration.⁷⁶ A correction is applicable when the information provided during the basic registration was incorrect.⁷⁷ An amplification, on the other hand, is appropriate in three general cases: to provide further information that could have been provided but was not during basic registration; to inform the Copyright Office that a factual change (such as a change to the title of the work) has occurred since the basic registration; and to clarify information in the basic registration.⁷⁸ When a copyright has multiple owners, such as when the work has multiple authors, any one of the owners has the right to correct or amplify the basic copyright.⁷⁹ Therefore, in the case of the “Money” copyright, Jobete

70. 17 U.S.C. § 201(a) (2006).

71. See 17 U.S.C. § 106 (2006); 1 MELVILLE B. NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHT § 6.10[A][1][a] (hereinafter NIMMER) (stating that “a joint owner may exploit the work himself, without obtaining the consent of the other joint owners”)

72. 17 U.S.C. § 106(3). A single co-author will only be able to grant a non-exclusive license. In order for an exclusive license to be granted, all co-authors must grant their rights in the work to the grantee. See NIMMER, *supra* note 71, at [A][2][d].

73. 17 U.S.C. § 106(2) (2006).

74. UNITED STATES COPYRIGHT OFFICE, *Circular No. 8*, *supra* note 4, at 2.

75. 17 U.S.C. § 408(d) (2006).

76. *Id.*

77. UNITED STATES COPYRIGHT OFFICE, *Circular No. 8*, *supra* note 4, at 1.

78. *Id.* at 2.

79. *Id.*

Music likely entered a correction in order to remove Mr. Strong's name as an author.

At present, the Copyright Office does not have a practice of notifying authors of changes to their copyrights via supplemental registration, including changes to their status as authors. In many cases, this does not prove to be problematic; a single author is going to know whether or not she has submitted a supplemental registration and, if she has, what exactly was contained in that supplemental registration. However, when a copyright has multiple authors and therefore multiple owners, any one of the owners can make a drastic change to the copyright on her own, without the consent of the other authors and without the other authors and owners being notified that such a change has taken place. Therefore, in a case like Mr. Strong's, an author may have no reason to even suspect that her authorship, and therefore her rights in the work, has been altered.

While the digitization of copyright records makes it easier for authors to check their copyrights, an author's ability to digitally access a copyright is only applicable for copyrights granted after 1978.⁸⁰ For any copyrights granted prior to that date, an author has two options. She may either go to the Library of Congress in Washington, D.C. and search the copyright card catalog in order to see her copyright, or she may pay the Copyright Office a fee to do the search for her.⁸¹ Regardless of which option an author chooses, checking on the status of a pre-1978 copyright requires an author to commit a significant amount of money to the process. Since a co-author will need to check on the copyright regularly in order to avoid discovering a change after the applicable statute of limitations has run, the amount of money spent will quickly add up; in fact, the amount of money spent by a copyright author to ensure that her rights to the work have not been altered could end up being greater than the original monetary value of the copyrighted work.

According to Mr. Strong, had he known that Jobete Music filed a supplemental registration to remove him as an author, he would have contested it.⁸² However, since he was not notified of the supplemental registration, Mr. Strong would have needed to utilize one of the options for accessing a pre-1978

80. Even for copyrights that are digitally accessible, an author is still required to undertake periodic monitoring of any registrations.

81. UNITED STATES COPYRIGHT OFFICE, *Circular No. 22, Supplementary Copyright Registration, How to Investigate the Copyright Status of a Work* 1–2 (Jan. 2012), <http://www.copyright.gov/circs/circ22.pdf>. As of December 1, 2014, the fee to have the Copyright Office conduct a search is \$200 per hour, or fraction thereof, with a two-hour minimum. UNITED STATES COPYRIGHT OFFICE, *Search Request Estimate*, available at http://www.copyright.gov/forms/search_estimate.html (last accessed Dec. 1, 2014). These same options apply to any outside party who wants or needs to look at a copyright granted prior to 1978.

82. Rohter, *supra* note 7.

copyright outlined above. Since Copyright Office policy does not notify authors that a supplemental registration has been filed, Mr. Strong likely had no reason to either go to the Library of Congress or submit a request to have the Copyright Office perform a search. Essentially, Mr. Strong found himself in a “Catch-22” directly resulting from the Copyright Office not having a policy requiring author notification when supplemental registrations are filed. Mr. Strong asserts that he never had the opportunity to contest the supplemental registration filed by Jobete Music because he never knew about it.⁸³

B. By implementing two changes to its policy, the Copyright Office will be able to protect coauthors and prevent a situation like Mr. Strong’s from arising in the future.

Digitization is becoming the norm for copyright. Not only does the Copyright Office have digital records available online for copyrights filed after 1978, but an author may now file a copyright application using the Electronic Copyright Office (eCO) system.⁸⁴ In fact, the Copyright Office incentivizes using the eCO system to file a registration by having a lower filing fee doing so,⁸⁵ maintaining a processing time that is faster than the time required for paper registration,⁸⁶ allowing the applicant to track the status of their registration online,⁸⁷ and allowing certain types of works to be deposited via upload.⁸⁸ Once a copyright is granted, that copyright can be searched and accessed directly from the Copyright Office website.⁸⁹

Even in light of increasing digitization, however, an author must proactively search for and review her copyright should she desire to do so. Of course, conducting a search for a recently granted copyright is far less difficult and costly than conducting a search for a pre-1978 copyright; the author (or

83. *Id.*; see also Wile, *supra* note 10 (quoting Mr. Strong, “[f]or 50 years, I had no idea about any of this”).

84. UNITED STATES COPYRIGHT OFFICE, www.copyright.gov (last accessed Mar 23, 2014) (follow “Register a Copyright” hyperlink to access the electronic copyright registration form).

85. See UNITED STATES COPYRIGHT OFFICE, *Fees*, <http://www.copyright.gov/docs/fees.html> (last accessed Dec. 1, 2014). As of May 1, 2014, the filing fee for an eCO registration is \$35 (for a single application) or \$55 (for all other applications), while the filing fee for a paper registration is \$85. *Id.*

86. See UNITED STATES COPYRIGHT OFFICE, *I’ve Submitted My Application, Fee, and Copy of My Work to the Copyright Office. Now What?*, <http://www.copyright.gov/help/faq/faq-what.html#certificate> (last accessed Mar. 23, 2014) (outlining that the current processing time for an eCO registration ranges from three to five months, whereas the current processing time for a paper application ranges from seven to ten months).

87. UNITED STATES COPYRIGHT OFFICE, *supra* note 81.

88. *Id.*

89. UNITED STATES COPYRIGHT OFFICE, *Search Copyright Records*, <http://www.copyright.gov/records/> (last visited November 23, 2014).

other interested party) need only go to the Copyright Office website and make a few clicks to receive results. Nevertheless, continuing to require all authors to check their copyrights on a regular basis to ensure that nothing on their copyrights has been changed or altered without their knowledge does not seem reasonable.

Fortunately, the Copyright Office is in a position to implement policy changes that would nearly negate the chances of a case like Mr. Strong's arising in the future. Two changes to the policies surrounding notification and supplemental registration are all that is necessary.

The first change the Copyright Office should make is to implement a policy of notifying authors and other interested parties when a supplemental registration for a copyright is filed. Although this may seem to be a policy change that would require a considerable amount of time and money to implement, the actual cost would likely be minimal thanks to the Copyright Office's push for authors to use the eCO system.

As part of registration, a registrant (who may or may not be an author) is required to provide certain identifying information, such as her name and phone number.⁹⁰ In addition to this information, the registrant is required to provide her email address.⁹¹ This email address then becomes linked with the copyright for any work registered by the registrant.

The first thing the Copyright Office will need to do for a fully effective system is add a section to the registration form for a list of all authors, along with contact information. If the authors are not registering the copyright, there is no reason to require the same amount of information as a registrant. An email address for each author should be sufficient. This will allow the copyright registration to become linked with not only the registrant but also with the authors of the work.

After adding a section for author information, the Copyright Office will only need to add one additional piece to the eCO system to enable notification. The easiest and most cost-effective way for the Copyright Office to do this is to write and insert software into the existing eCO system. Ideally, this software will be written so that it will ping when any sort of supplemental registration is filed, pull the author's previously provided email address, and generate and send an email to the author letting her know that a supplemental registration has been filed.

Putting such a notification system entirely online by linking it to email addresses already provided by authors has the effect of minimizing the cost to

90. UNITED STATES COPYRIGHT OFFICE, *eCo Notice*, <http://www.copyright.gov/eco/notice.html> (last accessed Mar. 23, 2014).

91. *Id.*

the Copyright Office. The only costs associated with setting up such a system would be the cost to have the software written and inserted into the eCO system. After being written and inserted, the software would do the work of notifying authors; no personnel would be required to oversee the notification system. Furthermore, by writing the software to send email notifications, all costs associated with traditional postage, including paper and stamps, are eliminated. Additional computing power and bandwidth may prove necessary to keep the system running efficiently, but this cost will likely still be less than the cost associated with setting up a paper-based system, if indeed it arises at all.

When compared with the benefits of setting up a notification system such as the one outlined above, the benefits to authors outweigh the costs to the Copyright Office. By using such a system to notify authors that a supplemental registration was filed, the Copyright Office would put the authors on notice. In many cases, the person(s) who filed the supplemental registration will be the author(s) to whom the notice of the filing is sent. In those cases, the author(s) may simply disregard the email notification as no need for a suit would exist. However, in other cases, the author(s) will not have filed supplemental registration. Instead, for example, one coauthor may have filed a supplemental registration without alerting any other coauthors. Under the Copyright Office's current policy, the other coauthors would not receive any sort of notification; however, under the above-described system, all coauthors would be notified that a supplemental registration had been filed. The coauthors who had not filed the registration would then know of the existence of a possible cause of action, thus allowing them to file a complaint within the applicable statute of limitations.

Had this practice been in place when the copyright for "Money" was changed, Mr. Strong would have been put on notice that his name was removed as a coauthor of "Money." Of course, Mr. Strong would not have been able to receive an email notification in 1962; however, had the Copyright Office had a policy of notifying authors after the filing of a supplemental registration, Mr. Strong would most likely have received a paper letter containing the same information as the emails proposed above. In any event, the effect would be the same: by being put on notice, Mr. Strong would have immediately been able to file a suit to in an effort to preserve his rights as a coauthor, making it less likely that his current situation would arise.

While implementing a notification system will go a long way towards preventing situations like Mr. Strong's from arising in the future, a second policy change on the part of the Copyright Office will all but preclude a similar situation from coming up again. This second change would specifically address the unique problems presented by co-authorship where supplemental registration is concerned. In cases where a copyright has multiple authors, the

Copyright Office should require that all authors sign an agreement when removal of one or more of the coauthors is being sought.

Under current copyright law, all coauthors are required to give consent when an exclusive license to the copyright is granted.⁹² This makes sense; an exclusive license deprives the owner of the copyright of the right to grant additional licenses, and in the case of a coauthored copyright work, all author-owners are deprived of that right. Since each coauthor enjoys the full breadth of rights granted to a copyright owner, the total deprivation of one of those rights correctly requires each author to assent to having that right divested.

The removal of a coauthor implicates divestment of even more rights than the granting of an exclusive license. When an author grants an exclusive license, she only loses the right to grant other licenses. By contrast, when an author is removed from a copyright, she loses all the rights a copyright author enjoys.⁹³ If a coauthor is required to consent to the granting of an exclusive license, she should certainly be required to consent to being removed as an author, since so many more rights are lost through removal.

The implementation of this policy would be more costly than implementing a general notice system as discussed above. Unlike the notification system, requiring consent of coauthors to removal of an author from a copyright would be most effectively done on paper. The Copyright Office would be wise to require notarization of the signed form, which can only be accomplished through using a paper form. In addition, using a paper form would lessen the chance that one coauthor fraudulently provides consent for another coauthor. The associated costs, therefore, would include the costs to print the forms, as well as the cost of having personnel receive and file the forms.

However, the cost to implement and maintain this system, like the cost of implementing a notification system, is outweighed by the benefits afforded to coauthors. Like the notification policy, requiring all coauthors to sign a consent form when one author is being removed would put authors on notice. This policy would serve an additional purpose, though. Under current Copyright Office policy, a single coauthor can alter the copyright so drastically that one or more of the coauthors are stripped of all rights to the work that they had enjoyed. Requiring all coauthors to consent to such a major alteration protects the rights of a coauthor who believes that she should not be removed and have her rights stripped. By signing the form, the coauthor who is going to be removed is consenting to the loss of rights, much like a coauthor who agrees to the granting of an exclusive license. This would prevent one coauthor from having the power to manipulate a copyright and remove the rights of one or

92. See NIMMER, *supra* note 71, at [A][2][d].

93. See 17 U.S.C. § 106 (2006).

more coauthors.

Of course, for a variety of reasons, an author may not be able to be reached for a signature. In a situation where one author out of a group cannot be contacted and is therefore unable to provide a signature, principles of fairness would go against foreclosing the rest of the authors from being able to alter the copyright if they are all in agreement. For this reason, there has to be a way to accommodate situations where an author cannot be found.

The best way to handle a missing author is through the use of notarized declarations. If an author cannot be found, the remaining authors should be allowed to submit a notarized declaration (or set of declarations) stating that they made a reasonable effort to locate the missing author but were unable to do so. To further bolster the declarations, the Copyright Office could require a brief description of how the authors tried to locate their missing colleague; however, the declaration would be the most important piece of this exception to requiring all signatures. The primary benefit of having a description on file with the Copyright Office would be evidentiary, in the event that the missing author learned of the alteration and attempted to take legal action; the description would provide additional proof that the other authors did, in fact, make reasonable efforts to contact the missing offers.

In the case of Mr. Strong, he was removed from the copyright at the direction of another person, allegedly with no knowledge and no opportunity to participate and assert his rights.⁹⁴ If he had been required to sign off, Mr. Strong would have been able to assert his rights as an author, including his right to assign or remove his interest in the song. Had he chosen to consent to the removal of his name, Mr. Strong would likely not find himself in his current predicament because he would have been a willing participant in the removal process. If this policy is adopted by the Copyright Office, future coauthors will also be less likely to find themselves in a situation like Mr. Strong's.

Similarly, if Mr. Strong had not been able to be located and a declaration was filed stating that reasonable efforts to locate Mr. Strong for a signature had failed, any legal action Mr. Strong decided to take would likely be dismissed early in the proceedings, saving all parties both time and money. With the reach of the internet, authors will be easier to locate, but in the event that an author cannot be found, coauthors will be able to exploit and alter their copyrights without fearing a lengthy dispute several years in the future—or more—as is the current dispute.

94. Rohter, *supra* note 7; Wile, *supra* note 10.

CONCLUSION

Mr. Strong's current predicament illustrates an insufficiency in current copyright law. Coauthors are granted equal ownership rights in a copyrighted work and, in most circumstances, this a coauthor will only use this fact to exploit the work independently of the other coauthors. However, as demonstrated by Mr. Strong's case, a coauthor currently has the ability to remove one or more other coauthors from the copyright by filing a supplemental registration. Case law suggests that a removed coauthor may be reinstated, but existing cases involve additional circumstances, such as the intentionally fraudulent concealment of the change, that may not be present in all cases. If such circumstances are not present, a removed coauthor may well be left without any means of contesting the removal. However, the Copyright Office can address this insufficiency by implementing an author notification policy for all filed supplemental registrations and requiring all coauthors to consent when the removal of one or more coauthors is being sought. These policies would be consistent with current Copyright Office policy of requiring all coauthors to agree to the grant of an exclusive license for a work, but would also provide coauthors with the necessary notice and process involvement to either allow filing of a case within the statute of limitations or, ideally, preclude cases like Mr. Strong's from arising in the first place.

ERIN E. KAPRELIAN*

* J.D., Marquette University Law School, 2015; B.S., Cum Laude, Physics, Psychology, Marquette University, 2012. Erin would like to thank her family for their unending support and patience throughout her law school experience. Erin would also like to thank Professors Bruce Boyden and Kali Murray for their feedback and assistance in writing this comment.