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Reexamining the Case for Copyright Registration

Copyright has survived for 300 years without a registration system (as opposed to legal deposit systems, such as the one that exists in Thailand) for the works it protects and, therefore, arguably does not need one. But, in terms of enforcement, the lack of registration systems across the different categories of copyright works has severely impeded the adaptation of copyright to the digital environment.

Information technology struggles with uncertainty and imprecision. Conversely, give it precise, reliable data, and it can work wonders. If there were a trusted and globally integrated system for recording and making available the essential data about copyright works, it would be possible to envisage the emergence of much more efficient IT-based rights management systems.

There are many reasons why the use of declarative (as opposed to formal) registration systems should be considered:

- › To establish a public record of the existence, nature, and identity of a work or other subject matter protected by copyright—its birth certificate;
- › To obtain a unique and globally recognized identification code for the work or other subject matter—its passport number;

- › To assert ownership to the rights in the work or other subject matter—property registration;
- › To be better able to defend the work or other subject matter legally (which is already part of the U.S. copyright system);
- › To transfer rights in the work or other subject matter more efficiently—recordation;
- › To help solve the problem of so-called orphan works; and
- › To establish when, through the expiration of copyright, a work or other subject matter has fallen into the public domain.

There is a common misconception that the Berne Convention prohibits any form of registration and, in particular, any system of formal registration. This is incorrect. Two leading copyright experts, Sam Ricketson and Jane C. Ginsburg, explain the situation in *International Copyright and Neighbouring Rights*, stating that it merely “prohibits making enjoyment and exercise of copyright in non-domestic works,” but “does not prohibit member states from maintaining public registries or other notice-giving devices; it merely bars making compliance mandatory for non-domestic works.” Further, “authors and rights holders are free ... to facilitate both would be exploiters’ clearance of rights and general knowledge of when work will fall into the public domain.”

Registration’s practical objective is to equip existing works and other subject matter with the identity and connective metadata that they need to be securely and effectively introduced as products into the digital marketplace.

Thailand’s Department of Intellectual Property has an active system for notification of copyright works with 16,000 works being notified in 2013 across all categories. With the infrastructure for notification (registration and recordation) already in place in countries like Thailand, the way can be led in establishing new functions for copyright registries to support the growing amount of online commerce in copyright works throughout the world. 