



Department of Justice

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The Department of Justice announced today that it will not raise antitrust objections to a proposal by the Association of American Publishers to establish a Copyright Clearance Center.

John H. Shenefield, Acting Assistant Attorney General in charge of the Antitrust Division, said the Department's position was expressed in a business review letter issued on September 1, 1977.

The proposed center, which is to begin operation in January, 1978, will receive copyright license fees from libraries and others that reproduce journal articles and other short works, and will transmit those fees (less administrative costs) to the copyright owners.

The center will not be involved in copyright licensing decisions. Individual copyright owners will decide which articles to put into the system and the fees for licenses to copy their works.

Copyright owners will be free to negotiate separate licensing agreements with users, outside the system.

The center's services are to be available to all users and copyright owners.

Under the Department's Business Review Procedure, an organization may submit a proposed action to the

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Antitrust Division and receive a statement as to whether the Division would challenge the action under the federal antitrust laws.

After a 30-day waiting period, a file containing the business review request, the supporting documents, and the Department's response will be made available in the Legal Procedure Unit of the Antitrust Division, Room 3307, Department of Justice, Washington, D. C. 20530.

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ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

United States Department of Justice

WASHINGTON, D.C. 20530

SEP 1 1977

Peter D. Standish, Esquire
Weil, Gotshal & Manges
767 5th Avenue
New York, New York 10022

Dear Mr. Standish:


This is in response to your request, on behalf of the Association of American Publishers, for a statement of our present enforcement intentions with respect to the establishment and operation of the proposed Copyright Clearance Center.

As we understand it, the Center's function will be to receive copyright license fees from libraries and other users which reproduce journal articles and other short works, and to transmit those fees (less administrative costs) to the copyright proprietors. You have represented that the Center, which will operate on a not-for-profit basis, will not be involved in the licensing decisions, but that the individual copyright owners will decide which articles to put into the system and the rate for licenses to copy such works. Copyright owners will also be free to negotiate separate licensing arrangements with users, outside the system. The Center's services will be available to all users and copyright owners, and the use of those services will not be conditioned upon users' or copyright owners' adherence to any guidelines specifying the uses for which license fees need or need not be paid.

Based on the facts and representations contained in your submissions of June 14, July 1, July 27 and August 4, 1977, the Division has no present intention of challenging the organization or operation of the Center under the

antitrust laws. You are advised of this decision pursuant to the Antitrust Division's Business Review Procedure, 28 C.F.R. § 50.6, a copy of which is enclosed. Pursuant to its terms, your business review request and supporting data will be made publicly available within 30 days of the date of this letter unless you request that any part of the matter be withheld in accordance with paragraph 10(c) of the Business Review Procedure.

Sincerely yours,

A handwritten signature in cursive script that reads "John H. Shenefield". The signature is written in dark ink and is positioned above the typed name.

John H. Shenefield
Acting Assistant Attorney General
Antitrust Division

Enclosure

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June 14, 1977

John H. Shenefield, Esq.
Acting Assistant Attorney General
Antitrust Division
United States Department of Justice
Washington, D.C. 20530

Re: Association of American Publishers, Inc.
Request for Business Review

Dear Mr. Shenefield:

Pursuant to the Antitrust Division's Business Review Procedure (28 C.F.R. 50.6), we respectfully request a statement of the Division's enforcement intentions respecting the establishment of a "copy payment center" (CPC) for the administration of fees paid for the reproduction of literary nondramatic works copyrighted in the United States. Our client the Association of American Publishers (AAP), in making this request, notes that other organizations and their members have expressed interest in participating in the CPC, either as users or as copyright owners or licensees. Thus, we request that your response reflect the participation of all interested parties in utilizing the services of the CPC, to the extent described below.

The AAP is a trade association consisting of over 300 members, including book publishers and publishers of scholarly, technical, scientific, medical and professional journals. AAP members publish in the aggregate the great majority of all general and educational books and a lesser, although substantial, portion of all technical and scientific journals published in the United States. The members of the AAP, book and journal publisher alike, have a vital stake in the dual goals of protection of copyright combined with adequate access to copyrighted works for all users.

John H. Shenefield, Esq.

-2-

June 14, 1977

The Need for the CPC

The purpose of the CPC is to permit copyright owners (whether publishers or authors) of scholarly, scientific, technical, medical, professional and trade periodical and journal articles, and other short literary works including book chapters, stories and poetry, to establish "workable clearance and licensing conditions," in compliance with the urging of Congress to foster and facilitate proper photocopying of such works so that all concerned could "reach an accommodation under which the needs of scholarship and the rights of authors would both be respected." Copyright Law Revision, Report No. 83, to accompany H.R. 2512, H. Comm. on the Judiciary, 90th Cong., 1st Sess., Mar. 8, 1967, at 36. Moreover, voluntary participation by libraries and copyright owners in a system to facilitate lawful copying was deemed desirable by Congress which stated its belief "that workable voluntary arrangements are distinctly preferable" to governmental regulation over "fair use" and educational reproduction." Id. at 33.

The CPC will provide copyrighted material users with a workable procedure to obtain legitimate access to copyrighted works for reproduction. Congress, in a committee report on the bill to revise the Copyright Act, expressed its intention that publishers take steps to fulfill the long-recognized need for a simplified system for license clearances and permissions for the systematic reproduction of copyrighted materials; the Senate Committee on the Judiciary stating:

Concerning library photocopying practices not authorized by this legislation, the committee recommends that workable clearance and licensing procedures be developed. Copyright Law Revision, Report No. 94-473, to accompany S.22 S. Comm. on the Judiciary, 94th Cong., 1st Sess., Nov. 20, 1975, at 71.

The new Copyright Act provides that copyright owners retain their exclusive rights to reproduce and distribute copyrighted works (§106). Reprography of copyrighted materials would constitute infringement in the absence of the copyright owner's grant of a license or permission unless it comes within

John H. Shenefield, Esq.

-3-

June 14, 1977

one of the exemptions established by the Act.* However, Congress, authors, publishers and users of technical, scientific and medical journals and other periodicals, have recognized the need for a system to overcome the unmanageability of direct dealings between thousands of copyright owners and users, which would provide a fair, administratively-workable way of paying for non-exempt copying.

It is widely believed that unauthorized and unlawful systematic photocopying has accounted for a decline in subscriptions to limited-circulation specialized journals which may threaten the continued existence of such journals. If no serious attempt is made to provide a reasonable and convenient method for compensating such journals for photocopying, they may fail to generate sufficient revenues to support continued publication. Thus, the market may be deprived of vital outlets for writers to disseminate the product of their scholarship or research. This is a major reason why efforts are being made to establish a Copy Payment Center designed to administer a payment mechanism through which photocopy users may conveniently compensate copyright holders for the copying of such specialized works.

The CPC program was presented on March 31, 1977 to the National Commission on New Technological Uses of Copyrighted Works (CONTU).** Indications of support for the program have been received from the Author's League of America, The Information Industry Association, the Council of Engineering and Scientific Society Executives (representing nearly 200 U.S. societies which publish several hundred technical, scientific and medical journals), and the Industrial Research Institute's Task Group on Scientific and Technical Information Communication. In addition, other organizations have expressed interest in the CPC.

* Under the new Copyright Act, provisions have been made for "fair use" copying (§107) and limited non-systematic non-profit use copying by libraries which provide access to the public (§108).

** CONTU, members of which were appointed by the President, was created by Congress to study, inter alia, the application of copyright protection to new technological methods of reproduction and to make recommendations as to how to integrate such methods into the copyright laws.

John H. Shenefield, Esq.

-4-

June 14, 1977

As described in this letter, the CPC would be available to any copyright owner which wished to avail itself of the system.

The Operation of the CPC

The CPC will function as a not-for-profit administrative organization. The organization will render administrative services relating to the collection and distribution of fees paid for the right to reproduce copyrighted material when the copying is of such kind or magnitude that it requires licenses or permissions from the copyright owner. In connection with such copying or reprography of articles or other works which are voluntarily included within the CPC system by copyright owners, the CPC will bill and collect payment of reproduction license fees from users of copyrighted works, maintain records of the accounts of copyright owners and copiers of copyrighted works, periodically transmit aggregate payments of license fees to copyright owners, and periodically bill or adjust the accounts of copyright owners for the costs of CPC operations which are attributable to servicing the collection and distribution of license fees paid for their works.

The copying fees for copying articles and other short works published in January 1978 and thereafter, as established by the individual copyright proprietor, will be designated by code appearing on the first page of the work which will also identify the work itself and the copyright owner or licensee entitled to the copying fee.

Copying fees for articles and other short works, as established by the individual copyright owner or licensee, for works published prior to January 1, 1978 will be circulated from time to time by the CPC.

Copyright owners using the system retain the right to directly license others to copy and sell separate copies of articles. The CPC will not itself provide copies of articles. Such supplying will be left to licensed information organizations and to other users who wish to make their own copies and to pay for such copying through the CPC or by direct arrangement with copyright owners.

The CPC would not be involved in licensing decisions; individual copyright owners will decide which articles to put into the CPC system and the rate for licenses to copy such works.

John H. Shenefield, Esq.

-5-

June 14, 1977

Copyright owners are under no obligation to use the CPC system, nor will participants be required to incorporate all or any part of their copyrighted works into the system. Participants and nonparticipants are free to deal with users directly to make individual arrangements for protection of their copyright, and individually grant licenses or permissions to copy and distribute the copyrighted work. No effort has been made to prevent the establishment of competing private nonprofit or for-profit copyright payment centers or copyright licensing services. No effort will be made to bar any participants in or users of the CPC from participation in or use of such other services. In addition, the CPC will not act to enforce copyrights against infringers but the CPC may, in the course of administering the payment system, furnish information which could enable copyright owners to individually make determinations bearing upon the enforcement of their reproduction rights.

The CPC will be open and available to all users and copyright owners, including foreign publishers. Foreign publishers in some countries (Germany, Scandinavia and Holland) have already established clearance centers whereby they would collect copying license payments on behalf of American publishers. However, these foreign clearance centers have not transferred payments to individual American publishers. The present contemplation is to collect payments in the CPC for foreign publishers who wish to participate and then to work out a system to mutually exchange such funds among various national clearance centers at some time in the future.

Implementation and Mechanics

The procedures to be followed in implementing and operating the CPC are described in detail in the annexed Attachment which describes the program for the system. The following is a summary of these procedures and operations:

The CPC will solicit publisher and author participation, and will publish and distribute to user organizations, for the convenience of users, by December 1977, a list of journals and periodicals which will participate in the CPC system. Articles to be included in the CPC system, which had been published prior to the establishment of the CPC or which were not ini-

John H. Shenefield, Esq.

-6-

June 14, 1977

tially included among those works as to which publishers or copyright owners indicated a desire to have included in the CPC, will be published in a separate list. These lists will be kept current and distributed periodically.

Users will be asked to register their billing addresses with the CPC in order to facilitate payments. The CPC will then issue an organizational code or codes to such users. These users will be advised of various mechanisms which will be established by the CPC for reporting the copying or articles which have been placed in the CPC system.

Mechanisms presently under consideration provide, in general, that CPC users will either: (1) make reporting photocopy of the first page of each of its CPC article photocopies except for those made under "fair use" or §108 exception to the copyright owner's exclusive rights; these latter will be reported only if this proves mutually beneficial to the CPC and its users. (Alternatively, for multiple photocopies of a single article, the user may make one extra photocopy of the first page of the article and write in large letters at the top the number of copies made; e.g., "10 Copies") and shall also indicate its copy user code, or (2) periodically send to the CPC a computerized record of the article codes and copying prices for each copy of a CPC system article.

The goal is to have the CPC in operation by January 1, 1978, the effective date of the new Copyright Act. In order to meet this deadline, discussions with supplier-contractors for data processing and other CPC services have already begun and it is anticipated that bid invitations for such services would be put out in July. In view of the schedule and time needed to contact the numerous diverse parties involved, it is important that we obtain some indication of the Division's enforcement intentions as soon as possible.

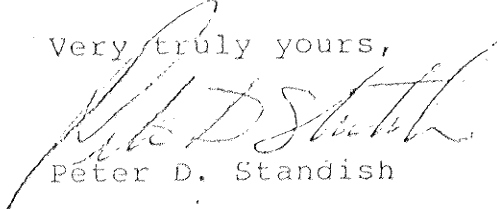
John H. Shenefield, Esq.

-7-

June 14, 1977

Thank you for your attention to this request. In order to expedite your review, we would appreciate it if you notify us by telephone if any questions should arise as to which we might be able to provide additional information.

Very truly yours,



Peter D. Standish

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