U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

AUG 2 1993

R. Bruce Rich, Esquire
Weil, Gotshal & Manges
767 Fifth Avenue
New York, New York 10153

Re: Copyright Clearance Center, Inc.

Dear Mr. Rich:

This letter responds to your request on behalf of the Copyright Clearance Center, Inc. ("CCC") for a statement by the Department of Justice, pursuant to the Business Review Procedure, 28 C.F.R. § 50.6, of its current enforcement intentions regarding a proposed new type of license to be offered by CCC. Under the proposed new licensing arrangement, CCC would negotiate, on a nonexclusive basis, blanket license agreements with users of copyrighted material at fees set by agreement between CCC and the copyright users.

We understand that CCC, a not-for-profit organization, is comprised of authors and publishers, as well as users of various copyrighted materials. CCC's primary function is to facilitate copyright clearance between users of copyrighted materials and copyright holders. Member copyright holders authorize CCC to license the right to copy their protected works.

We understand further that all arrangements between CCC and copyright holders are nonexclusive, and therefore copyright holders are free both to participate in CCC's licensing system for some or all of their copyrighted works and to license users directly. The fee now charged by CCC to authorize the copying of any particular work is set individually by the copyright holder of that work. CCC currently offers two types of nonexclusive copyright licenses: the Transactional Reporting Service ("TRS") and the Annual Authorization Service ("AAS").

The TRS was the subject of a Business Review letter issued by the Antitrust Division on September 1, 1977. A TRS license authorizes, on a title-by-title basis, the copying of copyrighted works registered with CCC. Under TRS, users keep track of and report the titles they copy on a "honor system" and pay the fee set by the copyright holder for each copy of

each work reported. CCC collects the fees, deducts an administrative charge and remits the balance to the copyright holders. CCC will continue offering TRS licenses.

The AAS is a nonexclusive blanket license authorizing users to make unlimited copies of any work in CCC's library, or of specified works in that library, for one annual fee. The fee for each user is calculated from a formula that approximates a summation of the fee for each work involved multiplied by the estimated number of copies made of each work covered by the license. The fees for each of those works are set by the copyright holders individually. CCC's estimates of use are derived from either individual firm surveys and audits or industry-wide econometric models based on an intricate system of sampling, review and projection. Under AAS, users have no recordkeeping burden as they do under TRS, and CCC's administrative costs, although still substantial, are reduced. As with TRS, CCC deducts an administrative charge from the AAS fees received and distributes the balance to the copyright holders.

We understand that your proposal envisions that CCC, after receiving authorization from its member copyright holders, will discontinue AAS and instead negotiate annual fees directly with users for nonexclusive blanket licenses permitting unlimited copying for internal use of copyrighted materials from CCC's library of protected works. You represent that having the nonexclusive authority to negotiate fees directly with users will have procompetitive benefits in that it will provide CCC (i) the means to discipline sometimes inflated prices set by individual copyright holders, thus leading to lower overall annual fees, and (ii) the pricing flexibility required to meet the special needs of potential licensees, thereby increasing the number of users of copyrighted materials. You also represent that using this new blanket license will enable you to conduct fewer user surveys, thus reducing administrative costs. In addition, you point out that CCC will continue to face competition from several recently established user-based copyright clearance organizations, firms providing copyright clearance along with electronic access to documents, and numerous other document delivery services that provide copyright clearance.

After careful consideration of the information you have provided and information from our own independent inquiries, the Department has concluded that it has no present intention of challenging CCC's proposed new blanket license on antitrust grounds. While the Department would be concerned if the purpose or effect of the proposed blanket license arrangement were to enable CCC to charge supracompetitive license fees to

users of copyrighted materials or otherwise tend to restrict the availability of such materials, the Department has concluded that the risk of such anticompetitive effects is small under the circumstances present here. In reaching this conclusion, the Department considered the fact that CCC will continue to offer TRS licenses to all users of copyrighted materials and that the copyright holders that are members of CCC will continue to be able to negotiate separate licensing arrangements with both users and firms competing with CCC in providing copyright clearance. We have also considered the fact that there are several firms that compete successfully with CCC in providing copyright clearance services, and that there has been recent, relatively easy entry by some firms providing specialized copyright clearance services in competition with CCC. Moreover, with recent, rapid changes in technology, a number of firms have begun competing with CCC to varying degrees by providing electronic access to an increasing number of copyrighted works with clearances from copyright holders. All of these circumstances have led us to conclude that it is unlikely that CCC could successfully raise license fees significantly or restrict the availability of such materials.

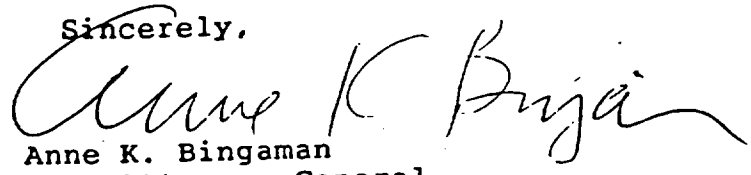
There also appears to be a procompetitive justification for CCC's proposed blanket license arrangement. Permitting CCC to negotiate fees directly with users on a nonexclusive basis may result in price levels that more accurately reflect the market value of the rights licensed and may enable CCC to enter into licenses with a greater number of users than in the past. This would have the benefit of encouraging legitimate use of copyrighted works among a wider range of users. The proposed change may also be efficiency enhancing by helping to reduce CCC's administrative costs.

For the foregoing reasons, the Department has no present intention to challenge the proposed blanket licensing arrangement. However, in accordance with our normal practice, the Department remains free to bring whatever action or proceeding it subsequently comes to believe is required by the public interest if the actual operation of this proposal proves to be anticompetitive in purpose or effect.

This statement of the Department's enforcement intentions is made in accordance with the Department'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 this letter will be made available to the public immediately. Your supporting documents will be publicly available within 30 days of the date of this letter unless you request that any part of

the material be withheld in accordance with Paragraph 10(c) of the Business Review Procedure.

Sincerely,



Anne K. Bingaman
Assistant Attorney General
Antitrust Division

Enclosure