



copyright alliance

Connecting creators · Protecting creative work

**BEFORE THE
U.S. COPYRIGHT OFFICE**

**Information Technology Upgrades for
a Twenty-First Century Copyright
Office**

Docket No. 2016-2

COMMENTS OF THE COPYRIGHT ALLIANCE

Introduction

The Copyright Alliance appreciates the opportunity to respond to the March 1 Notice of Inquiry seeking input on the funding strategy and implementation timeline for the U.S. Copyright Office's recently released IT Plan. We commend the Copyright Office for developing—three months ahead of schedule—an IT Plan that is both forward-thinking and pragmatic and submit this comment to provide input from the copyright community regarding the specific questions asked.

The Copyright Alliance is a non-profit, public interest and educational organization that counts as its members over 15,000 individual creators and organizations across the spectrum of copyright disciplines. The Copyright Alliance represents the interests of authors, photographers, performers, artists, software developers, musicians, journalists, directors, songwriters, game designers and many other independent creators. The Copyright Alliance also represents the interests of book publishers, motion picture studios, software companies, music publishers, sound recording companies, sports leagues, broadcasters, guilds, unions, newspaper and magazine publishers, and many

more organizations. What unites these individuals and organizations is their reliance on the copyright law to protect their freedom to pursue a livelihood and career based on creativity and innovation and to protect their investment in the creation and dissemination of copyrighted works for the public to enjoy. The copyright law is critical not only to their success and prosperity, but also the short and long-term success of the U.S. economy.

Copyright is the foundation for a thriving and ever expanding market of cultural, educational, and scientific works, one that in 2013 contributed over 1.1 trillion dollars to the U.S. economy and directly employed nearly 5.5 million workers.¹ As the Office responsible for administering all matters relating to copyright, few other government offices are more important to the growth of creativity and commercial activity in our nation than the U.S. Copyright Office. Within the copyright ecosystem, the Copyright Office plays a pivotal role in the registration of creators' works and the recordation of documents pertaining to those works. The ability of our nation's independent creators and the businesses that support their work to promptly register and record copyright interests with the Office, and of the public to obtain copyright information that helps them license copyrighted works, creates new industries and spurs the economy, which, in turn, advances our global competitiveness and technological leadership.

In view of the ongoing and rapid changes in the information, entertainment, and technology sectors, the Copyright Office has never been more important than it is today in ensuring that copyright owners have access to critical services that support their endeavors, including the creation and dissemination of works to the public, and the development of innovative new business models by which to distribute such works. Furthermore, given the global and dynamic characteristics of the copyright ecosystem, the Copyright Office must be able to rapidly adapt to ensure it is able to offer the tools and resources that all users of the Office's service demand.

¹ STEPHEN SIWEK, INT'L INTELL. PROP. ALLIANCE, COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY: THE 2014 REPORT 2, 18 (2014), *available at* http://www.wipo.int/export/sites/www/copyright/en/performance/pdf/econ_contribution_cr_us_2015.pdf.

1. Please comment on the proposed five-year timeline for IT modernization based on the phases set forth in detail in the IT Plan, which incorporate best practices of the federal government.

While we appreciate the complexities and understand how long a project like this takes to complete and, and the importance of building a new system correctly the first time, we also would like to see the project’s timeline shortened and begin earlier to the extent it is possible. Many of the technological issues our members face with registration and recordation are acute, so the sooner new or improved systems can be deployed by the Copyright Office, the sooner users of the Office’s services—creators, members of the public, and Congress—can reap the benefits of IT modernization.

2. Should the modernization be funded from fees, appropriated dollars, or a combination of both, and, if both, is there an ideal formula or ratio?

The Copyright Alliance strongly believes that modernization should be funded through a combination of appropriations and fees from customers of Copyright Office services. Any increase in funding to support modernization must be (i) a shared responsibility that is borne by all users of the Copyright Office as well as Congressional appropriators; (ii) undertaken in conjunction with articulable, noticeable improvements in existing services and the addition of new services; and (iii) invested directly into the infrastructure of the national copyright system. Currently, the Copyright Office receives about 40% of its budget from appropriations. Appropriations should not fall below this level.

Appropriations are an important and proper source of funding for modernization since the public is the ultimate beneficiary of copyright information retained and disseminated by the Office and, by extension, of a modernized Copyright Office. Copyright registration benefits the public by providing it with a searchable database of copyright registration and ownership information, which enables database users to determine authorship and other information about works, contact owners for licensing or other usage, and determine whether works are in the public domain and freely useable. Moreover, a modern, robust copyright registration and recordation system will facilitate additional business investment and entrepreneurship along with reducing transaction

costs and other marketplace inefficiencies, leading to long-term economic growth and cultural benefits.

The required amount of additional appropriated dollars should be less than the estimated costs described in the Modernization Plan. First, some money would simply be directed from current Library of Congress IT funding to the Copyright Office directly, since the Library of Congress presently receives money from Congress to support Copyright Office IT systems. Indeed, if this money was not diverted from the Library of Congress to the Copyright Office, it would amount to a windfall for the Library, since it would continue to receive funding to support systems that would no longer be under its authority. Second, modernization should result in long-run cost savings. As Public Knowledge observed in 2010, “[m]odernization will reduce transaction costs and make the Registry less expensive to maintain. The long term cost savings created by an easy-to-use, comprehensive registry should easily outweigh the costs associated with its creation.”²

For the same reasons appropriations should be used, customers of the Copyright Office’s services should be reasonably expected to shoulder some of the burden of IT modernization through new or upwardly adjusted fees, as appropriate. Improved search capabilities and database functionality will lower costs for businesses and others that rely on and use information about copyrighted works and opens doors to new entrepreneurial opportunities. So, to the extent user fees must be altered to enable modernizing of the Office, it would be appropriate to charge increased or new fees to users of any new or existing databases that are created as a result of the improved IT since those users stand to be the primary beneficiaries.³

² MICHAEL WEINBERG ET AL., PUBLIC KNOWLEDGE, A COPYRIGHT OFFICE FOR THE 21ST CENTURY: RECOMMENDATIONS TO THE NEW REGISTER OF COPYRIGHTS (2010), *available at* <https://www.publicknowledge.org/files/docs/ACopyrightOfficeforthe21stCentury.pdf>.

³ We note, however, that to the extent fee increases or new fees are implemented for the purpose of covering capital expenditures associated with a modernized IT system, it would be reasonable to expect that over time, as those costs are amortized, fees for certain services actually might fall or be eliminated entirely, based on a reasonable assessment of the cost of delivering such services.

We caution against funding modernization of the IT system through additional registration and recordation fees. Such fees are already burdensome to many individual creators and small and medium sized enterprises. Since registration is voluntary, additional fees would almost certainly discourage certain copyright owners—especially smaller, independent creators—from registering their works, thereby reducing the comprehensiveness and usefulness of the Copyright Office’s database. On the other hand, if the Office is able to effectively modernize and retain control of its IT systems, as the Copyright Office’s systems become easier to use, it is very likely that more works will be registered and more documents recorded, leading to an increase in the total amount of registration and recordation fees collected by the Office, even without an increase in fees.

3. What authorities or flexibilities, if any, should be included in 17 U.S.C. 708 regarding whether and how the Office may recover its reasonable costs of operation (including in the aggregate as opposed to based upon individual services), differentiate between customers or users, and/or fund future investments, not only as to the five-year plan but on an ongoing basis?

The Office should have the ability to build a reserve account from the fees collected so it has the necessary funds to draw from to make capital and other improvements in different budget cycles, including during periods when incoming fee receipts are down. However, we caution against removing all limitations on the Copyright Office’s fee setting authority; it is simply a matter of good policy for Congress to maintain some oversight over the Office’s operations. It could, for example, allow the Office to set fees based on recovering reasonable costs of operation plus some reasonable additional premium to be set aside for future capital investment.

The Office should have the ability, in principle, to scale fees based on various factors, such as the size of the entity seeking the service, or the type of work. The Office should also have the ability to set fees on a more flexible basis than the current per work basis—such as, for example, allowing certain high-volume registrants to pay an annual fee for registering all their works produced during a particular period, as has been

suggested by visual artist groups.⁴ We urge, however, that fees must inure to the benefit of the Copyright Office and, by extension, the constituents of the national copyright system. Fee revenue must never be diverted to the general Library of Congress budget or elsewhere.

Conclusion

In closing, we would like to thank the Copyright Office for its significant efforts in moving toward a 21st century Copyright Office. Please let us know if we can provide any additional information or answer any questions regarding our views in this submission.

Respectfully submitted,

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⁴ Comments from Am. Soc’y of Media Photographers to the U.S. Copyright Office about Copyright Protection for Certain Visual Works at 15 (July 23, 2015), *available at* http://asmp.org/pdfs/ASMP_NOI_Submission_20150724.pdf.