



**copyright alliance**

Connecting creators · Protecting creative work

**Statement of**

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**before the**

**House Administration Committee**

**on**

**“Improving Customer Service for the Copyright  
Community”**

**December 2, 2015**

The Copyright Alliance, on behalf of our membership, submits this statement for the record concerning your December 2, 2015 hearing on “Improving Customer Service for the Copyright Community”. 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 Alliance also represents the interests of book publishers, motion picture studios, software companies, music publishers, sound recording companies, sports leagues, broadcasters, unions, guilds, and 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.

By submitting this testimony I hope to assist the Committee in better understanding the important role the U.S. Copyright Office—and in particular the Office’s IT system—plays in the creation and distribution of new creative works, the concerns we have relating to the Office’s operations, IT infrastructure, security, and budget, and the immediate need to take steps to modernize the Office.

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.<sup>1</sup> 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 enables them to 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 artistic and economic 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 its stakeholders demand.

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<sup>1</sup> STEPHEN SIWEK, COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY: THE 2014 REPORT 2, 18 (IIPA 2014).

Despite the critical nature of the services provided by the Office, and the substantial economic interests that underlie the need for those services, many of them have not kept pace with technology and the marketplace. While the Office has made valiant efforts to hear from stakeholders and improve its services (or develop new ones, as appropriate), the reality is that of the Office remains substantially behind the curve—deficiencies that are the result of many years of budgetary neglect and structural deficits that would make it difficult for any agency to merely keep pace, let alone modernize the agency.

As a department of the Library, the Office is obligated to use the Library’s Information Technology (IT) systems. The Copyright Office does not have its own IT infrastructure; it uses the network, servers, telecommunications, security and all other IT operations controlled and managed by the Library of Congress.

The Library’s information technology systems are antiquated. They are also incompatible and impractical in regard to the Office’s underlying objectives and mission. The Library IT system is meant to service a library and its associated functions, not an organization like the Copyright Office, which, by definition, has a very different mission from the Library and which is expected to provide services that affect the legal rights and economic interests of creators, owners, users and others who rely on the Copyright Act for their economic and creative well-being.

To make matters worse, the Office is also significantly underfunded and understaffed. Within the past several years especially, it is proving exceedingly difficult for the Copyright Office to provide timely and effective services to its constituents. Consequently, we think the time is ripe for Congress to evaluate the Office’s information technology needs, and other aspects of its operations affecting the delivery of services to its constituencies, to ensure that the Office has the resources and expertise necessary to serve authors, users, and the public for generations to come.

### **IT Concerns**

Regardless of the ultimate administrative structure of the Copyright Office, it is of paramount importance that the Office has an advanced technology platform that supports the needs of its primary users: copyright owners and users of copyrighted works. The copyright community requires user-friendly registration and recordation systems and an easily searchable registration and recordation database.

There are a host of critical concerns we have relating to the LOC’s IT systems, the most significant of which include:

#### ***IT System Problems Result in a Backlog of Copyright Applications***

Unless and until the Office’s IT problems are effectively addressed, the backlog of copyright applications will continue to grow. Applicants may become more disenchanted with the Office and many may begin to question (if they haven’t already done so) the value of copyright registration, in view of the time and resources required to register their works. This may result in the submission of fewer applications, which in turn will translate to fewer deposit

copies for the Copyright Office and thus fewer works for the Library of Congress' collections, and a less robust public record of copyright ownership.

***The Library's Demands for Deposit Copies in Specific Formats Causes Friction with the Copyright Office and Copyright Registration Applicants***

The deposit copy required by the Copyright Office serves numerous purposes. It is used by the Office in the examination process to determine whether the work meets the conditions of copyrightability and to certify the copyright record for interested parties, for example, as in the case of infringement litigation. These deposit copies also form the basis, in part, for the collection of the Library of Congress. Because the deposit copy is used by the Library for one purpose and by the Copyright Office for a completely different – and often competing – purpose, the Library and the Office are often at odds with one another over the type of deposit copy required, and use of that copy.<sup>2</sup> In fact, some copyright owners refuse to register their works with the Copyright Office because they have found the process to be too expensive and cumbersome, and because they are concerned about the security of their deposits.

For example, many newspapers are no longer registering their works with the Copyright Office because the Library requires that newspaper deposits be in microfilm format. As publishers and institutions move away from microfilm, the Library's continued and unreasonable demand for microfilm copies places an undue financial and administrative burden on newspaper copyright owners. The end result is that everyone loses – the Library gets nothing for its collection, the public may be missing valuable historical knowledge, and the resulting financial hardship precludes newspaper publishers from registering their newspapers, thus making it more difficult for them to take action against the online infringers.

***The Functionality of the Copyright Office Registry is Severely Outmoded and Outdated***

The Office's registration system and its companion recordation system constitute the world's largest database of copyrighted works and copyright ownership information. However, the functionality of the registry is drastically out of date relative to search and database technologies available today.

The present recordation process is also shockingly antiquated, cumbersome, and costly: It requires manual examination and manual data entry from paper documents – more or less the same as it was when the recordation system first launched in the 1870's. The recordation process is extremely time consuming, resource-intensive, and costly to the Office because all information, except for information included in the recordation cover sheet (which often is never filed), is entered manually (*i.e.*, keyed in) by Copyright Office staff regardless of whether the

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<sup>2</sup> The Library of Congress regularly reviews the deposits submitted for copyright registration and then selects the deposits that it wants to include in its collection. The Copyright Office has no choice but to turn over its copy to the Library because under the statute the Library controls the Office. However, if the Library makes a selection and takes the Office's only copy, then the Office will be unable to satisfy its obligation to certify the copyright record in the case of copyright litigation. To date, the deposits the Library has selected have been primarily physical formats. Often, the Copyright Office and registrants would prefer to submit a digital deposit copy, but because the Library's collection needs require that the deposit be in a physical format, the Copyright Office requires the registrant to submit a physical copy. This is a major obstacle to the Copyright Office's efforts to make the registration process more efficient and less expensive for copyright owners.

recording materials submitted are in digital or print form. The process takes twelve to eighteen months for the Office to enter the data – largely because of antiquated technology. This is much too long.

As evidence that this is an IT system and not a staffing problem consider that “the Patent and Trademark Office recordation staff of 10 now processes over 480,000 patent and trademark assignments every year, while the Copyright Office’s staff of 12 processes about 11,000 documents per year – less than one-fortieth of the number of documents handled by the slightly smaller staff at the Patent and Trademark Office.”<sup>3</sup> The copyright marketplace moves quickly and licensees, lawyers, and others need this information immediately to facilitate copyright transactions, enforce copyright interests, and generally engage in copyright-related business—not a year and a half later.

### ***The Library’s Inability to Keep the Online Registration System Running Causes Numerous Problems***

The problems the Library has had in keeping the Copyright Office systems running are well documented. During the federal government shutdown in the fall of 2013, the Library took its websites offline, including the Copyright Office’s online database of copyright ownership records, as well as its online registration application filing system, even though registrations must, by law, be date stamped upon receipt, for example, to grant standing to lawsuits or for remedies purposes.<sup>4</sup> Unfortunately, this is not a standalone example. Earlier this fall, a scheduled power outage for routine maintenance of the Library’s power systems resulted in the electronic registration system being shut down for ten days, after the Library’s system administrators were unable to bring the system back online after power was restored.<sup>5</sup>

The failure to keep the online registration system up and running has caused significant disruptions that result in a substantial backlog of registrations and recordations, and further significantly expands the pendency time for issuing registrations. Having an autonomous system would allow the Copyright Office, rather than LOC IT administrators, to make decisions that impact copyright owners and users, and take into account the nature of the Office’s business in ways that the Library does not, and has traditionally been unwilling, to understand.

### ***The Current Funding Structure Further Limits The Office’s Ability to Remedy its IT Issues, or Plan for Future Upgrades***

The Copyright Office’s current funding structure contributes to the problems caused by the IT system, which prevent it from efficiently serving its constituencies. Among the challenges it faces are reductions in appropriated funding (appropriations that must be approved by Library, rather than being dedicated specifically or exclusively to Copyright Office functions, with

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<sup>3</sup> See Transforming Document Recordation at the United States Copyright Office at p. 56 (Dec. 2014) <http://copyright.gov/docs/recordation/recordation-report.pdf>.

<sup>4</sup> 17 U.S.C. §§ 411, 412.

<sup>5</sup> Peggy McGlone, *Copyright Office’s Online Registration Hasn’t Work for Almost a Week*, WASH POST, Sept. 3, 2015, available at [https://www.washingtonpost.com/lifestyle/style/copyright-offices-online-registration-hasnt-worked-for-almost-a-week/2015/09/03/b12781e2-5261-11e5-9812-92d5948a40f8\\_story.html](https://www.washingtonpost.com/lifestyle/style/copyright-offices-online-registration-hasnt-worked-for-almost-a-week/2015/09/03/b12781e2-5261-11e5-9812-92d5948a40f8_story.html); Whitney Blair Wychoff, *Copyright Registration System Back Online*, FEDSCOOP (Sept. 8, 2015, 10:30 AM), <http://fedscoop.com/copyright-registration-system-back-online>.

decisions made by the Copyright Office).<sup>6</sup> This has resulted in budget shortfalls to critical Copyright Office functions. With a current budget of just \$47.5 million (\$27.9 million of which is simply an authorization to spend fees the Office collects,<sup>7</sup> and \$19.6 in appropriated funding), the Copyright Office's resources are stretched thin. Despite growth in the copyright industries, the Office's budget has actually *decreased* by \$1 million (2%) since 2010,<sup>8</sup> and budgetary offsets put in place by Congress that require the Office to tap into its reserve fund often leave the Office without an operating cushion.

The required strict adherence to a cost-recovery model means that the Office may not use the money it collects from user fees for capital improvements or other investments, such as new IT systems. That seems to be a moot point in any event as fee collections in recent years have regularly fallen below the Office's spending authority, highlighting the fact that because registration is not compulsory under the Copyright Act, the Office must work to ensure that the process is relatively easy, to encourage authors—especially smaller companies and independent creators—to register their works. The burden of supporting an IT overhaul, though, should not rest exclusively on those registering works or recording documents, since the Copyright Office serves both copyright owners and users of copyrighted works. Moreover, by increasing costs of registration or recordings, particularly to small and medium enterprises, or to those whose creative enterprises generate a large volume of individually copyrighted works rather than a smaller volume of relatively high value works, the purposes of the registration system may be undermined, and registrations and recordings might decrease, harming the amount, reliability and overall usefulness of data in the databases for registrations and recorded documents.

## RECOMMENDATIONS

Within the context of the subject matter of this hearing, the Copyright Alliance offers the following several recommendations to help strengthen the performance of the Copyright Office's IT infrastructure that we believe will ensure the successful future operation of the Copyright Office.

### ***Provide the Copyright Office its Own Dedicated IT System***

The digital content marketplace is increasingly dynamic and requires a Copyright Office with flexible systems that can rapidly accommodate market changes.<sup>9</sup> The IT systems of the Copyright Office are intertwined with those of the broader LOC, and resolving the various issues presented by their different missions is a significant problem that seems to be getting worse. The two offices each have their own unique IT requirements, which can lead to strains on resources and therefore impediments for the Copyright Office's users.

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<sup>6</sup> See USCO Strategic Plan at 58-9.

<sup>7</sup> LIBRARY OF CONGRESS, LIBRARY OF CONGRESS FISCAL 2016 BUDGET JUSTIFICATION 107 (2015), *available at* <https://www.loc.gov/portals/static/about/reports-and-budgets/pdf/fy2016.pdf>. This reflects the Copyright Basic portion of the total Copyright Office budget and FTE usage/ceiling. Excluded are FTE usage, ceiling, and budget for the Copyright Office's Licensing Division and Copyright Royalty Board.

<sup>8</sup> LIBRARY OF CONGRESS, LIBRARY OF CONGRESS FISCAL 2011 BUDGET JUSTIFICATION 125 (2010) (noting the 2010 basic budget for the Copyright Office was \$48.5 million), *available at* <http://loc.gov/portals/static/about/reports-and-budgets/pdf/fy2011.pdf>.

<sup>9</sup> For example, many copyrightable works are born digital and should be easily registered in that format.

The Office needs a more advanced IT infrastructure – one that is specifically dedicated to the Office and can better support the needs of its users. Its customers need a more user-friendly registration and recordation system that is quickly adaptable to changes in the copyright marketplace and easily searchable across numerous data fields.

***Improve the Security of the Copyright Office Database of Copyrighted Works***

One essential improvement from developing a dedicated IT system for the Copyright Office would be to enhance its security for digital works that are deposited as a part of the registration process. As more and more content is distributed only in digital form, copyright owners send digital deposit copies, increasing concerns about the security of the Office’s database of copyright deposits. A digital copy of a work leaked from the Copyright Office would be virtually indistinguishable from a commercially available copy, potentially displacing the market for the latter, and dramatically reducing the market value of the work.

The Copyright Office has acknowledged the security issues in its just released report on *Technological Upgrades to Registration and Recordation*,<sup>10</sup> which stated that “the Copyright Office cannot provide 100% assurance that a deposit submitted by a copyright owner has not been modified. Nor can it ensure that the deposit has been archived in a manner that is consistent with the requirements of the copyright law.... In a worst-case scenario...the Office would have no knowledge as to whether deposits are being accessed, deleted, removed, or appropriated.” These statements are understandably troubling to copyright owners who register their works with the Office.

***Improve the Efficiency and Functionality of the Registration and Recordation Systems***

The efficiency and functionality of the registration and recordation systems must improve. The Copyright Office provided a number of recommendations in its 2015 report on technical upgrades that are worth examining in this regard.<sup>11</sup> In particular, we recommend that the Copyright Office improve the search function for its records and registrations, including an acceleration of the importing of data during registration and recordations, as well as improvements and expansions in the data to be included in the database. Moreover, the database could be further enhanced by allowing the voluntary linking of external databases to the Copyright Office’s systems, with the caveat that any external data meet quality thresholds established by the Copyright Office.

It is also essential that the Office reengineer the recordation process to make historic records available, and to build a comprehensive, publicly accessible database of copyright ownership transactions that is easily searchable, user-friendly, and provides a modern user experience. It must become easier and less costly for ownership and other documents to be recorded with the Office and the Office must improve the efficiency and speed of the recordation process, as well as making it easier to search and retrieve documents from the Office’s recordation database.

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<sup>10</sup> U.S. COPYRIGHT OFFICE, REPORT AND RECOMMENDATION OF THE TECHNICAL UPGRADES SPECIAL PROJECT TEAM 77 (2015).

<sup>11</sup> *Id.*

It is also crucial that the information that the Office collects as part of its registration and recordation systems be more easily accessible, current and searchable by the public through the Copyright Office website. New digital technologies have dramatically quickened the pace of commercial transactions involving copyrighted works. Parties to these transactions require access to copyright information at a commensurate speed. Anything less, may slow the pace of commercial innovation and the copyright marketplace. It is, therefore, critical that the Copyright Office make the most current registration and recordation information available on its site.

The Office has been making progress toward these goals, but progress has been slow, and it will continue to be slow so long as the Copyright Office continues to be encumbered by the IT, budgetary, and other limitations imposed by the Library of Congress.

### ***Improved Reliability of the IT System***

When undergoing IT improvements, we also recommend the Copyright Office improve the reliability and functionality of its systems. We realize that some of the functions, instability, and user experience challenges with its systems can be attributed to the previously discussed relationship between the Copyright Office's IT platforms and the Library, when there should be an independent Copyright Office IT system, and decisions about the system should be made independently, based on the unique needs of the copyright community.

### ***Increase the Copyright Office's Funding***

Congress should increase the Copyright Office's funding to enable the Office to make immediate critical improvements to operations and IT.<sup>12</sup> To fully modernize, the Copyright Office will require an infusion of new technologies—needs that come with a big price tag. Although the costs of implementing new functionalities and improvements in the Office will be significant expenditure at the outset, these costs will be offset in the long run by the cost savings generated by new efficiencies and streamlined workflows, and by revenue that the Office might generate from use of its new services and increased information availability. When one considers the importance of the copyright industries to the U.S. economy, increasing the Office's appropriations for modernization purposes is certainly justified.

The Office also needs more flexibility in its legal spending authority. 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.

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<sup>12</sup> Although the Copyright Office resides within the Library of Congress, it receives a separate appropriation. The budget for the Copyright Office is exceedingly small, given the amount and complexity of its responsibilities. In fiscal year 2015, the Office had an overall budget of only \$47.5 million. Over one-half of the Copyright Office's budget (approximately \$27.9 million) came from user fees for registration, recordation, and other public services. The rest (about \$19.6 million) came from appropriated dollars.



## CONCLUSION

It is clear that many of the Copyright Office’s struggles to administer the copyright law result from its subservient position within the Library of Congress. Many of the technical IT constraints and inadequacies, as well as the budgetary limitations and restrictions stem from requirements or restraints placed on the Copyright Office by the Library of Congress. It is highly unlikely that these operational problems can be resolved in the near future so long as the Copyright Office continues to operate under the supervision and direction of the Library of Congress.

The best chance to effectuate real timely improvements is to grant the Copyright Office the same type of autonomy that Congress has granted to another department within the Library – the Congressional Research Service (CRS). Unlike the Copyright Office, the Library has no authority to supervise or direct the activities of CRS. To the contrary, the Library is statutorily required to “encourage, assist, and promote” the CRS’s activities “in every possible way.”<sup>13</sup> This type of autonomy is what allows CRS to provide Congress with analysis that is authoritative, confidential, objective and nonpartisan, while also maintaining its independence from the Librarian of Congress. By giving the Copyright Office more autonomy and the Library less control over the Office, many of the operational issues previously identified could be resolved.

There needs to be wholesale changes in the structure and operations of the U.S. Copyright Office and those changes need to take place immediately. The services provided by the Copyright Office are critical to the U.S. economy. The money and time spent today investing in an efficient and user-friendly Copyright Office will result in substantial benefits in the future for the U.S. economy, and of course, the U.S. Copyright Office itself.

We look forward to working with the Committee and other stakeholders as this issue is considered by the Committee.

Thank you,

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<sup>13</sup> 2 U.S.C. § 166(b).