



**Statement For The Record of Sandra Aistars,
Chief Executive Officer, Copyright Alliance**

**Before The House Judiciary Committee
Subcommittee On Courts, Intellectual Property And The Internet**

Copyright Office Oversight

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The Copyright Alliance is a nonprofit, nonpartisan membership organization dedicated to promoting the ability of creative professionals to earn a living from their creativity. We represent the interests of creators and copyright owners across the spectrum of creative disciplines.

Copyright is the foundation for a thriving and ever expanding market of cultural, educational, and scientific works, one that in 2012 contributed over one trillion dollars to the U.S. economy and directly employed 5.4 million workers.¹ Within the copyright ecosystem, the Copyright Office plays a pivotal role not only in the registration of creators' works and the recordation of documents pertaining to those works, but also aiding in the development of copyright policy. Given the ongoing and rapid changes in the information, entertainment, and technology sectors, the Copyright Office is more important than ever in ensuring that creators and copyright holders have access to critical services that support their artistic and economic endeavors, including the creation and dissemination of works to the public, facilitated by the largest database of copyright information in the world. 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

¹ STEPHEN SIWEK, COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY: THE 2013 REPORT 5, 10-11 (IIPA 2013).

resources that its stakeholders—which include users of copyrighted works, that is, the general public—need. Within this context, the Copyright Alliance has several recommendations to help strengthen the performance of the Office in terms of overall governance, information technology (IT), and budget and staffing that we believe will ensure the successful future operation of the Copyright Office.

Status of the Register of Copyrights and Structure of the Copyright Office

Under its current structure, the Copyright Office faces significant challenges that hinder its abilities to best serve its constituencies. Currently, the Copyright Office is housed within the Library of Congress (LOC), and the Register is appointed by the Librarian of Congress, but the Office has its own statutory authority.² As several Members of the House Judiciary Committee pointed out during the September 18, 2014 Copyright Office oversight hearing, however, the Copyright Office and the LOC have very different missions, and there may be other ways to position the Copyright Office so that it can more effectively and efficiently carry out its particular mission. To that end, we recommend that Congress direct the Register of Copyrights to conduct an inquiry to solicit input from stakeholders and the public as to whether and how the structure of the Copyright Office should be changed, and whether it would be beneficial to further separate the Copyright Office functions from those of the LOC. Among the issues for consideration should be the ability of the Copyright Office to effectively use appropriated funds to improve its registration and recordation functions and database; upgrades to the information technology infrastructure of the Office; and the facilitation of a more rapid transition to receiving digital deposit copies under 17 U.S.C. § 408, while simultaneously ensuring that the LOC can continue to receive “best edition” copies for its archival and library needs. We also recommend soliciting public input on the placement, administration and management of the Copyright Office vis-à-vis the LOC, and the relative policy-making functions of the Copyright Office and the U.S. Patent and Trademark Office (USPTO), as well as whether to physically relocate the Copyright Office outside of the LOC. Given the ever-increasing importance of copyright law in our society, including fulfilling its constitutional mandate to promote the creation and

² 17 U.S.C. §§ 701 et.seq.

dissemination of works, the public inquiry should include consideration of elevating the position of the Register of Copyrights to that of a Presidential Appointee, which would make the Copyright Office more empowered to act, as well as more directly accountable for its decisions and actions.

Information Technology

Regardless of the ultimate 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 creative community requires user-friendly registration and recordation systems and an easily searchable registration and recordation database. Furthermore, the digital content marketplace is increasingly dynamic and requires a Copyright Office with flexible systems that can rapidly accommodate market changes (for example, many copyrightable works are born digital and should be easily registered in that format). 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 becoming an increasing problem. 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. An evaluation of the current administration of LOC's IT services, and how well equipped the LOC is to accommodate needs from across the organization, including those of the Copyright Office, would help identify challenges and opportunities for the future and help to position the LOC generally, and the Copyright Office more specifically, to best serve their unique constituencies.

One essential improvement from developing a dedicated IT system for the Copyright Office would be to enhance its security policies for digital works that are deposited as a part of the examination process for a registration. We also recommend 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. In addition, 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 as set by the Copyright Office.

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-unfriendly components of its systems can be attributed to the Copyright Office's IT network being tied to the LOC, when there should be an independent Copyright Office IT system, and decisions about the system should be made independently. For example, during the 2013 federal government shutdown, the LOC took its websites offline, simultaneously taking down the Copyright Office's database and registration systems, even though registrations must, by law, be date stamped upon receipt, for example, to grant standing to lawsuits or for remedies purposes.³ This closure of the online registration system was a significant disruption that caused a substantial backlog of registrations and recordations, and pushed the pendency time for such completions back significantly. Having an autonomous system would allow the Copyright Office, rather than LOC IT administrators, to make decisions that impact copyright owners and users.

Budget & Staffing

The Copyright Office's current funding structure does not allow it to efficiently serve its constituency. Among the challenges it faces are reductions in appropriated funding (appropriations that must be approved by LOCs, rather than being dedicated specifically or exclusively to Copyright Office functions, with decisions made by the Copyright Office). This has resulted in budget shortfalls to critical Copyright Office functions. With a current budget of \$45 million (\$27.9 million authorized from fee collections, and \$17.1 in appropriated funding), the Copyright Office's resources are stretched thin. Its budget has been decreased by \$3.51 million (7.2%) since 2010, and due to budgetary offsets put in place by Congress that tap into its expected reserve fund, the Copyright Office is often left without an operating cushion. Under its current fee authority from Congress, the Copyright Office is not able to collect funds for capital improvements. As a result, the Copyright Office is unable to fund an IT overhaul and thus unable to properly serve its purpose for its user

³ 17 U.S.C. §§ 411, 412.

communities. Sound public policy commands that the general public be able to access the records of copyright ownership maintained by the Copyright Office. The burden of supporting an IT overhaul, however, should not rest exclusively on those registering works or recording documents, since the Copyright Office serves both copyright owners and users of copyrighted works (as well as playing an important role in the federal government on copyright policy). Moreover, by increasing costs of registration or recordations, 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 recordations would decrease, harming the amount, reliability and overall usefulness of data in the databases for registrations and recorded documents.

In addition to budgetary restrictions on capital improvements, we share the Copyright Office's concern regarding staffing shortages. The office is operating with nearly 80 employees fewer than its authorized full-time equivalent (FTE) ceiling of 439. As the digital marketplace grows and evolves, the Copyright Office needs to be able to attract highly capable professionals to carry out its mission. Not only does the lack of staff hinder the Copyright Office's ability to meet the expectations of its users, but it creates internal stresses: the pendency time for processing registrations and recordations continues to be of concern—the current pendency times for paper and electronic registrations are 8.2 months and 3.3 months, respectively, and recordations, which are entirely paper-based transactions take many months more. The Copyright Office is in need of more robust funding for staffing, so it can attract quality employees by offering more positions at senior level pay grades. If Congress does nothing else recommended in this submission, we strongly recommend that it address the Copyright Office's budgetary shortcomings and its resource and manpower needs to ensure the Copyright Office can continue to serve the needs of its stakeholders.

We appreciate the Subcommittee taking the time to consider our submission.

Thank you,

Sandra Aistars

Chief Executive Officer
Copyright Alliance