



The Honorable Bob Goodlatte  
Chairman  
Committee on the Judiciary  
U.S House of Representatives  
2138 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable John Conyers, Jr.  
Ranking Member  
Committee on the Judiciary  
U.S House of Representatives  
2138 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Goodlatte and Ranking Member Conyers,

We welcome the first policy proposal released by Chairman Goodlatte and Ranking Member Conyers on December 8, 2016, addressing reform of the US Copyright Office and appreciate the opportunity to comment on the recommendations it makes.

The Copyright Alliance is the unified voice of the copyright community, representing the copyright interests of over 1.8 million individual creators and over 13,000 organizations in the United States, across the spectrum of copyright disciplines. We represent the interests of authors, photographers, performers, artists, software developers, musicians, journalists, directors, songwriters, game designers and many other individual 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.

The Copyright Alliance is dedicated to advocating policies that promote and preserve the value of copyright, and to protecting the rights of creators and innovators. The individual creators and organizations that we represent rely on copyright law to protect their creativity, efforts, and investments in the creation and distribution of new copyrighted works for the public to enjoy. Last October, demonstrating the importance of copyright, over 35,000 individual creators and supporters of copyright signed a letter to political candidates affirming the complementary relationship between a strong copyright system, free expression, creativity, innovation, and technology.

The Constitution's Copyright Clause—Article I, Section 8, Clause 8—recognizes that the best way to promote the public interest is to respect creators' rights to determine how to disseminate their works.<sup>1</sup> The exclusive rights of creators promotes investment in

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<sup>1</sup> “The utility of this power will scarcely be questioned. The copyright of authors has been solemnly adjudged, in Great Britain, to be a right of common law.... The public good fully coincides ... with the claims of individuals.” The Federalist No. 43 (James Madison).

and wide distribution of knowledge and creativity, contributing to both cultural and economic growth.

A modern and efficient Copyright Office is critical to a 21st century copyright system. We welcome the Committee's attention to ensuring the Copyright Office has the necessary policy and operational autonomy over its policy studies, decisions, budget, staffing, and information technology (IT) in order to meet the challenges of the future, and we submit these comments to help the Committee in this effort.

### **The Register of Copyrights and Copyright Office Structure**

We strongly support providing the Copyright Office with greater autonomy from the Library of Congress (hereinafter "the Library") and taking the necessary steps to ensure not only that the historical deference afforded to the Copyright Office on matters of domestic copyright policy continues, but also that it has autonomy over its IT, budget, and staffing decisions, subject to Congressional oversight.

The Copyright Act charges the Copyright Office with providing expert, impartial advice to Congress, federal agencies, and the courts.<sup>2</sup> Congress, agencies and the courts have long benefitted from the expert advice of the Copyright Office, and should continue to have a direct line to the Office to aid in their work on copyright law and policy. To ensure that this relationship and these benefits continue unabated, and for other reasons, the head of the Copyright Office should be a Presidential appointee confirmed by the Senate, as proposed by the Committee. It would be wise for the Committee to consider a two-step approach in which legislation to address the Register appointment issue is introduced and considered by the Committee first in order to address the issue while the Register position remains vacant and followed up shortly thereafter by legislation that would address the remaining Copyright Office modernization issues that may take longer to consider.

We would also support the creation of a commission to make recommendations to the President for the selection of the head of the Copyright Office. Such a commission could be modeled after the one that recommends individuals to the President for appointment to Comptroller General of the Government Accountability Office (31 USC § 703(a)) and include the Speaker of the House, President pro tempore of the Senate, the majority and minority leaders of the House and Senate, and the Chairmen and Ranking Members of the House and Senate Judiciary Committees. Modeled after the recent legislation passed relating to the term of the Librarian of Congress, the term of the Register of Copyright should likewise be a ten-year term, with possibility of reappointment. We would also recommend the Register only be removable for cause.

Greater autonomy over IT, budget and staffing recognizes the difference between the mission and infrastructure of the Library and the Copyright Office, while retaining the historical connection between the Library and the Office with regard to deposits of

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<sup>2</sup> 17 USC § 701(b).

registered works. Indeed, we support the Library's continued collection of deposits of copyrighted materials, which benefits both creators and the public.

We also support the Committee's recommendation to add new positions in the Copyright Office, including a Chief Economist and Chief Technologist. A Chief Economist could provide advice on the economic implications of policies and programs affecting the US copyright system. It would be able to conduct economic research programs to provide evidence on a range of matters relevant to policymaking and the effect of copyright law on economic outcomes, such as relating copyright to economic growth, performance and employment; understanding the economics of Copyright Office initiatives; and analyzing the role that copyright plays in the markets for technology and knowledge. Similarly, the Office could benefit from a Chief Technologist. Having the technological experience within the Office would assist the Office in addressing the use of technology both in the Copyright Office's own internal processes, as well as analyzing the implications of technology on copyright policy. The Chief Technologist could also assist with the examination of software registration applications.

### **Copyright Office Funding**

We strongly support increased funding of the Office, including improvement to Office services, provided that any increase in the Office budget is: (1) a shared responsibility that is borne by *all users* of the Copyright Office as well as appropriators; (2) in conjunction with improvement in existing service and the addition of new services; (3) invested directly into the copyright system infrastructure. Raising fees should be the last option. In most instances, any fee increase should not be imposed solely or disproportionately on any one type of user of the Office. However, if a new or improved service is intended solely or primarily for one group of users of the Office, it may be appropriate for those beneficiaries to bear the weight of any fee increase.

### **Copyright Office Advisory Committees**

The Copyright Office is a model for collecting public input as part of its policy process, providing ample opportunities for the submission of written comments, holding roundtables throughout the United States, and meeting with stakeholders frequently. Its top-notch reports and rulemakings reflect this level of input. If, however, Congress were to decide to supplement the Office's tradition of collecting public input by creating public advisory committees, the advisory committees should be modeled after the U.S. Patent and Trademark Office's Patent Public Advisory Committee and Trademark Public Advisory Committee, and be limited solely to the consideration of operational issues. The views of any advisory committee should be advisory only, and should not be given any more weight than public comments.

## Information Technology Upgrades

We agree fully with the Committee’s view that the Copyright Office’s IT modernization plan should be rolled out as quickly as possible. As we wrote in an April 15, 2016 letter to Congressional appropriators, “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.” The Copyright Office’s IT plan would create a nimble, flexible, and forward-looking system that would serve as the foundation for the services needed in a 21st century copyright system.

We also agree with the Committee’s recommendation that the Register should not be forced to use the Library’s planned datacenter as part of its IT, and instead “should have the autonomy to determine whether the costs and reliability of using this datacenter for its future IT needs match or exceed what can be obtained from private sector providers and choose accordingly.” Requiring the Copyright Office to use the Library’s not-yet-built datacenter would remove the flexibility and cost-effectiveness inherent in the Copyright Office’s IT plan without resulting in any synergies or savings. It would also, to the extent that funds for the datacenter come from Copyright Office user fees, result in Copyright Office users subsidizing Library IT.

We want to draw attention to one point made in this section that raises concern—that the database of copyright ownership information “should allow copyright owners to include additional metadata, such as standardized identifiers, for a fee.” First, any proposal should distinguish between data the Copyright Office is already required to collect<sup>3</sup> and the collection of additional data that it does not presently collect. We agree that it is critical that collection and dissemination of the former should be made easier and more efficient. But requiring the collection and dissemination of information beyond what is currently required—either affirmatively or by adding new registration or recordation obligations that are tied to the availability of remedies—is not appropriate. It’s important to keep in mind that the Copyright Office’s registration system provides public notice of ownership information, akin to a County Recorder. The administration of a comprehensive database for licensing and business transactions is best left to the private sector. At best, the Copyright Office could study the existing copyright licensing landscape and engage stakeholders to identify areas for potential improvement. That said, many copyright holders have extensive metadata attached to their work that would enhance this historical record, and they should be given the option of including that metadata in their registration in a manner that stays with the deposit, consistent with Copyright Office regulations regarding extraneous PII—so long as the inclusion of metadata remains optional.

Second, we are concerned that placing the burden of funding that additional information on registrants is the wrong approach. Since copyright registration and recordation are voluntary, any additional costs or barriers serve as a disincentive to

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<sup>3</sup> 17 USC § 409.

participation in the system. We recommend instead that the Copyright Office be given the necessary authority to develop more flexible fee schedules that can fund its services while not discouraging registrations. Additionally, the Copyright Office should be asked to look at finding ways to collect fees from database users, by, for example, providing high speed, high volume access to its data for a cost. In any event, the Copyright Office should not have absolute discretion to change its fees. Congress must maintain some level of oversight of this fee structure.

We support granting the Office the ability to build a reserve account from the user fees it collects to help the Office deal with Government shutdowns, other emergencies and fluctuations in incoming fee receipts. We also support the Office having access to its funds over multiple years through a multiyear budget cycle (i.e., a revolving fund).

### **Small Claims**

The Copyright Alliance strongly supports the creation of voluntary small claims process that (1) provides copyright claimants with a much-needed, viable alternative to the existing federal court system; (2) appropriately limits the scope and nature of claims; (3) encourages the creation of new copyrighted works and authorized derivative works; (4) provides effective remedies to plaintiffs, and does not deter participation by defendants (but does not include injunctive authority, as recommended by the Copyright Office in its 2013 report<sup>4</sup>); (5) deters copyright infringement, and encourage licensing of copyrighted works; (6) is cost-effective and efficient for all parties; (7) and discourages frivolous or “nuisance” claims. We appreciate the work of Representatives Jeffries and Marino and Representatives Chu and Smith on legislation that would create a small copyright claims process within the U.S. Copyright Office and agree that the Register of Copyrights should be given the authority to promulgate regulations to ensure that the system works efficiently.

We thank the Committee again for its attention to the critical issue of Copyright Office modernization. We look forward to providing any additional information or answering any questions that the Committee may want as it continues its work on this issue.

Sincerely,



Keith Kupferschmid  
CEO, Copyright Alliance

Cc: House Judiciary Committee members

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<sup>4</sup> U.S. Copyright Office, *Copyright Small Claims* (2013).