



Statement of

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**before the
SENATE COMMITTEE ON RULES AND ADMINISTRATION**

September 26, 2018

The Copyright Alliance, on behalf of our membership, submits this statement for the record concerning the hearing on the *Register of Copyrights Selection and Accountability Act* (H.R. 1695 and S.1010) by the Senate Committee on Rules and Administration. We urge this Committee to report H.R. 1695 and S.1010 favorably.

The Copyright Alliance is a non-profit, non-partisan public interest and educational organization dedicated to advocating policies that promote and preserve the value of copyright, and to protecting the rights of creators and innovators. The Copyright Alliance represents the copyright interests of over 13,000 organizations in the United States, across the spectrum of copyright disciplines, and over 1.8 million individual creators, including photographers, authors, songwriters, coders, bloggers, artists and many more individual creators and small businesses that 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.

The Copyright Office resides within the Library of Congress for reasons that made sense one hundred years ago but no longer do. The Office's creation within the Library of Congress is the result of efforts by former Librarian Ainsworth Spofford beginning in the 1870s to centralize copyright deposits within the Library—the idea was to use these deposit copies, required under the copyright law at that time to perfect title to copyright, to build the Library's collections for free. He got his wishes, but the plan worked a little too well. Within two years, Spofford was raising concerns about the “large amount of clerical labor” involved in maintaining the copyright department and how quickly the deposits were taking up the available space for the Library.¹ In 1897, motivated by Spofford's repeated complaints, Congress created the Copyright Office and the Register position within the Library to take the job out of the hands of the Librarian.

H.R. 1695 and S.1010 largely do not alter the existing statutory relationship between the Copyright Office and the Library. The statute continues to provide that the Register and all subordinate officers and employees of the Copyright Office “shall act under the Librarian's

¹ Library of Congress, Annual Report of the Librarian of Congress, year ended December 1, 1872, 6-7 (1872).

general direction and supervision.”² Nor do the bills change the Register’s statutory responsibilities, which continue to include the duty to “Advise Congress on national and international issues relating to copyright.”³

The bills also does not alter the deference that the Library of Congress has historically provided to the Copyright Office on copyright policy matters. The Librarian’s deference is a recognition of the Copyright Office’s expertise on copyright policy matters. This deference is also important for avoiding a conflict of interest. The Library of Congress itself is a stakeholder when it comes to copyright policy. No interested party—whether it’s a library, user group, or copyright holder—should have more of a say in the selection of the Register than any other party or the public.

Today, more so than ever before, the Library and the Copyright Office have different missions and priorities. It’s an unfortunate fact that the interests and priorities of the Library frequently do not align with those of the Copyright Office, and this has led to the Office being neglected for many years and in dire need of a more modern IT infrastructure. A strong and well-functioning U.S. Copyright Office is a priority for the Copyright Alliance and our members, and the Copyright Alliance has long called for modernization of the Office.⁴ A key part of modernization is making sure the Copyright Office is structurally able to address the challenges of the 21st century. Congress shares this vision. Following its recent review of the copyright laws, the House Judiciary Committee expressed support for Copyright Office modernization as a critical component for ensuring that our copyright laws continue to work in the twenty-first century.⁵

One benefit of making the Register of Copyrights a Presidential appointee, confirmed by the Senate, is that it will provide the Copyright Office with a greater say in how it operates and enable it to improve its operations. Of course, Copyright Office modernization is an issue that requires much more than increasing the accountability of the Register selection process, but changing the appointment process, and providing the Register with the ability to discharge her

² 17 U.S.C. §701(a).

³ 17 U.S.C. §701(b).

⁴ E.g., Copyright Alliance, US Copyright Office Modernization, <https://copyrightalliance.org/policy/position-papers/copyrightoffice-modernization/> (last visited Aug. 24, 2018); Copyright Alliance, Statement of Keith Kupferschmid before the House Comm. on Appropriations Subcomm. on Legislative Branch (Apr. 17, 2018), <https://copyrightalliance.org/wpcontent/uploads/2018/04/House-Leg-Branch-AppropriationTestimony.pdf>; Copyright Alliance, Statement of Keith Kupferschmid before the House Comm. on Appropriations Subcomm. on Legislative Branch (May 3, 2017), <https://copyrightalliance.org/wp-content/uploads/2017/05/House-Leg-Branch-Approp-hrg-testimony-May-20171.pdf>; Copyright Alliance, Statement of Keith Kupferschmid before the House Admin. Comm. on Improving Customer Service for the Copyright Community (Dec. 2, 2015), https://copyrightalliance.org/wpcontent/uploads/2016/08/copyright_alliance_testimony_on_usco_it_systems_hearing_in_house_admin_com_dec_2_2015_0.pdf; Copyright Alliance, Letter from Keith Kupferschmid on U.S. Copyright Office Modernization Efforts and Appropriations (Apr. 15, 2016), <https://copyrightalliance.org/wp-content/uploads/2016/10/041516-Copyright-Alliance-Letter-USCO-Appropriations.pdf>.

⁵ House Judiciary Committee, *Goodlatte & Conyers Release First Policy Proposal of Copyright Review* (Dec. 8, 2016), available at <https://judiciary.house.gov/press-release/goodlatte-conyers-release-first-policy-proposal-copyright-review/>.

duties effectively, is an important component for modernization of the Copyright Office. It will help ensure that the Register of Copyrights has the voice and resources needed to implement policy, manage the Office's operations, and organize its information technology in a way that brings the Copyright Office into the 21st century. To date, its efforts to do so have been frustrated by the competing needs and direction of the Library.

Copyright is critical to the United States economy, with core copyright industries contributing over \$1.2 trillion to the U.S. GDP and employing more than 5.5 million U.S. workers.⁶ As the government agency responsible for administering the copyright registration and recordation systems, as well as providing expert advice to Congress on copyright policy issues, it should therefore come as no surprise that few government offices are more important to the U.S. economy, jobs, and creativity than the U.S. Copyright Office. And the Register, who heads the Copyright Office and serves as Congress' statutorily designated copyright expert, is a large component of that. Making the Register a Presidential Appointee, confirmed by the Senate, would reflect the growing importance of copyright to our economy and culture and would show our international trading partners how much we value copyright and the importance of protecting the fruits of America's creators.

Making the Register of Copyrights a Presidential appointee would also ensure that the Register is treated like other officials with oversight over similarly significant industries. For example, patent and trademark policy is led by a Presidential appointee—the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (USPTO). Similarly, the Chairs of the National Endowments for the Arts and for the Humanities and the Director of the Institute of Museum and Library Services are all Presidential appointees. A 2012 Congressional Research Service study estimated that there were between 1200-1400 positions that were appointed by the President and confirmed by the Senate.⁷ In short, there is simply no reason for copyright to be treated with less significance given its importance to the U.S. economy and culture.

Congress has historically enjoyed a direct line of communication with the Copyright Office for expert, impartial advice on copyright law and policy, but recent changes to the organizational structure of the Library of Congress have disrupted that direct line. H.R. 1695 and S.1010 would ensure that Congress can continue to receive the expert advice it needs to discharge its responsibility under Article I, Section 8, Clause 8 of the Constitution to promote knowledge and culture through copyright policy.

Making the Register a Presidential appointee ensures a more transparent, balanced, and neutral selection process compared to the existing process, which does not require any direct input from the Administration or Congress. Today, the Register is chosen by the Librarian without any input. These bills would change that by allowing the President to nominate the

⁶ Stephen Siwek, Int'l Intellectual Property Alliance, *Copyright Industries in the U.S. Economy: The 2016 Report* (2016).

⁷ Maeve P. Carey, Congressional Research Service, *Presidential Appointments, the Senate's Confirmation Process, and Changes Made in the 112th Congress* 7 (2012).

Register and the Senate to give its advice and consent. Through this process, if there are concerns about a nominee for the Register position, those concerns could be voiced to Congress prior to confirmation. That opportunity does not exist today.

The bills provide Congress and the public with input into the selection of the Register, by establishing a selection panel, consisting of the Speaker of the House of Representatives, the President pro tempore of the Senate, the majority and minority leaders of the House and the Senate, and the Librarian of Congress, to provide the President a list of at least three individuals recommended for the position. This process is similar to the selection process currently in place for the Comptroller General and Deputy Comptroller General of the Government Accountability Office.⁸ The bills would also limit the term of the Register to ten years (though an individual currently serving as Register may be reappointed). This term mirrors the ten-year term of the Librarian of Congress, a term that was created in 2015 by a bill introduced in this Committee.⁹

While the urgency to address the appointment of the Register is new, the recognition that this change is needed is not. We have long advocated in support of the Register being Presidentially appointed with the advice and consent of the Senate.¹⁰ The Copyright Office is currently being headed by an Acting Register, so it is critical that the issue be addressed now.

The modest approach outlined in H.R. 1695 and S. 1010 enjoys widespread bipartisan, bicameral and stakeholder support. H.R. 1695 was introduced by Chairman Goodlatte and Ranking Member Conyers with close to 30 additional original co-sponsors—and with a joint statement by Goodlatte and Conyers, Senate Judiciary Committee Chairman Grassley, Senate Judiciary Committee Ranking Member Feinstein, and Senate Judiciary Committee Member Leahy.¹¹ H.R. 1695 passed the House Judiciary Committee with a decisive 27-1 vote, and the House 378-48. Senators Grassley, Feinstein, Leahy, and Hatch introduced S. 1010 May 2, 2017. The Copyright Alliance is joined by a significant number of individuals, companies, labor unions, industry groups, and associations, who have voiced their support.

⁸ 31 U.S.C. § 703(a)(2).

⁹ Librarian of Congress Succession Modernization Act of 2015, Pub. L. No. 114-86 (2015).

¹⁰ See Statement for the Record of Sandra Aistars Before the House Judiciary Committee, Subcommittee on Courts, IP and the Internet, Copyright Office Oversight, November 17, 2014.

¹¹ House Judiciary Committee, *Goodlatte, Conyers, Grassley, Feinstein, Leahy Call for Quick Action on Legislation to Provide Selection Process for Register of Copyrights* (March 23, 2017), available at <https://judiciary.house.gov/press-release/goodlatte-conyers-grassley-feinstein-leahy-call-quick-action-legislation-provide-selection-process-register-copyrights/>.

We respectfully ask that the Senate Rules Committee vote in favor of H.R. 1695 and S.1010. The bills reflect the consensus view of policymakers that Presidential appointment and Senate confirmation puts the Copyright Office on a better footing to meet its statutory duties and serve the American people for generations to come. We thank the Committee for its consideration of these points. Please let us know if we can provide additional information or answer any questions regarding our views on this matter.

A handwritten signature in black ink, appearing to read 'KK', with a long horizontal flourish extending to the right.

Keith Kupferschmid
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Copyright Alliance