

Written Testimony of Jule Sigall

**Assistant General Counsel – Copyright
Microsoft Corporation**

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Chairman Coble, Ranking Member Watt, thank you for inviting me to appear today to discuss copyright law and its potential reform. My name is Jule Sigall, and I am Assistant General Counsel for Copyright at Microsoft, and before that I was Associate Register for Policy & International Affairs at the U.S. Copyright Office.

Copyright has been an important part of our economy and culture since the founding of our nation. But, as the Register of Copyrights has noted, the current law is under stress, brought on by technological change that continues to advance rapidly, and by shifting patterns in the way expressive works are created, disseminated, enjoyed and re-used. This stress is reflected in the heated and often strident public debates that copyright policy seems to generate these days.

The Committee is to be commended for beginning a dialogue about how our copyright system can be improved to meet these new challenges, and I am honored to contribute to this discussion. I am hopeful that the dialogue will include a wide range of stakeholders and consider a broad set of topics and approaches to reform, and that participants will engage in a manner that is at all times constructive, clear-eyed and civil.

I believe this can be achieved because I've seen a robust but civil copyright debate take place. In early 2007, just after leaving the Copyright Office, I was invited by Professor Pamela Samuelson of Berkeley Law School to join the Copyright Principles Project. I had not worked with Professor Samuelson before, and her invitation was a surprise, but I was delighted to join the distinguished group she was organizing. In a phone call describing the project, I recall her explaining that the group would have diverse perspectives on copyright but all members would share a common trait: "no sharp elbows", she explained.

I was interested in the Principles Project because I have spent nearly twenty years working on copyright issues, in private practice, at the U.S. Copyright Office, and as in-house counsel for Microsoft. Those twenty years have coincided with a period of tremendous change, not only in the law itself, but, more importantly, in the impact technology has had on the purpose of copyright -- encouraging the production and distribution of creative works. When I began to counsel clients, copyright law was struggling to deal with computer bulletin board systems, which are now -- in technology time -- ancient history. Today, the law is straining to remain relevant in the world of smartphones and tablets connected to the Internet, and in the face of the demands of consumers who expect to access, use and share creative works through any device, at any time, in an instant.

Over the past twenty years, I've also watched the public perception of copyright deteriorate, from a positive (if little-known) means of enriching public knowledge, to the increasingly negative, and

even hostile, manner in which it is sometimes viewed today. In this environment, progress can prove elusive even when there is general support for reform.

For example, during my tenure at the Copyright Office, I was involved in efforts to find ways to address the practical and policy issues raised by orphan works. The Office's work was aimed at relieving the growing pressure on copyright by addressing a specific problem created by the current law: it can discourage the productive and beneficial use of works even though the copyright owner cannot be located and very likely has no interest in enforcing the copyright. And while many copyright stakeholders from all sides of the debate support such reform, the discussion has at times been heated, and the path to legislative action has been marked more by hurdles than by progress.

In my current role at Microsoft, I see first-hand and every day the ways in which copyright law is struggling to keep pace with the dynamic technology environment, from both the copyright owner perspective and the user or consumer perspective. As a copyright owner, Microsoft has long relied on copyright to protect our core software products like Windows and Microsoft Office and to ensure that our customers enjoy legitimate and safe copies of our software. Our world-class antipiracy team has created tools based on copyright to make that protection real.

From the user side, on the other hand, I've seen how ambiguous areas of the law are sometimes strained to question ordinary and reasonable personal use of copyrighted content. I'm not talking about piracy here, but situations in which consumers who have legitimately purchased content are confronted and confused by assertions that actions enabling the enjoyment of that content are somehow infringing. This tactic creates needless uncertainty and risk for businesses that are trying to provide tools that simply help consumers communicate and share information in the networked world. The Supreme Court has cautioned that copyright must "[do] nothing to compromise legitimate commerce or discourage innovation having a lawful promise,"¹ but, unfortunately, it can be exploited to that effect to the detriment of innovators and consumers.

These are the dual perspectives I brought to the Principles Project.

In my remaining time, I'd like to highlight three ideas that were discussed by participants in the Principles Project and that will be important in possible reforms. Obviously, we are at a very early stage in this process, so it is premature to offer or focus on specific proposals. At a high level, though, I believe that truly effective copyright reform will benefit from serious consideration of these issues.

First, the Internet and new technologies are enabling and inspiring a new generation of creators that often operate independent of established publishers, distributors and collective organizations. We've seen this in the software industry, where apps for smartphones and tablets can be created, marketed and sold entirely by one person, worldwide and in substantial volumes. Often when these authors look to copyright and how it might help them develop and market their works, they are mystified by a system built for traditional modes of distribution, and not the new channels. As we look to reform the copyright system, we need to ensure that it understands, accommodates and supports these new creators and evolving business models.

¹ MGM Studios, Inc. v. Grokster, Ltd., 545 U.S. 913, 937 (2005).

Second, as I noted earlier, the lack of clarity around reasonable and ordinary personal use has contributed to the declining public reputation of copyright and a lack of respect for the law among some consumers. Too often consumers view copyright as an impediment to their enjoyment of creative content they have paid for and a deterrent to innovation in new products and services. Fifteen years ago, in the Digital Millennium Copyright Act (DMCA), Congress helped launch a new wave of online services by establishing a safe harbor that limits the uncertainty and risk faced by telecommunications companies, search engines and other online businesses. It may be time to consider a safe harbor for consumers, providing certainty that the ordinary and reasonable personal use of legitimately purchased content will be enabled, not stifled, by copyright.

Finally, copyright reform needs to improve the infrastructure of the copyright system. Copyright best achieves its goal of promoting the creation and dissemination of works when information about who owns a particular work and where and how to contact the rights owner is available and flows very easily throughout the system. International treaties crafted decades before the digital era prohibit “formalities,” such as requiring copyright registration or recordation of transfers of ownership as a condition for protection. But given the current, extended copyright term and the availability of tools to readily collect and make such ownership information available online, it is time to consider whether the law has the right incentives for production and dissemination of copyright information at the speed and scale that the Internet requires. The Copyright Office should play a key role in this aspect of reform, and to its credit has begun to think about how it might transform aspects of the registration system.² Reform in this area can help address the orphan works problem, remove uncertainty for users, facilitate new uses and new modes of dissemination of works, and help individual authors obtain real and practical enforcement and respect for their copyright.³

Thank you again for the opportunity to appear today, and I am happy to answer any questions you may have.

² “Technological Upgrades to Registration and Recordation Functions”, 78 Fed. Reg. 17722 (March 21, 2013).

³ See Copyright Principles Project Report at 27-29.