

The American Conservative Union (ACU) would like to thank Chairman Goodlatte, Ranking Member Conyers and the House Judiciary Committee for the opportunity to express our views on the important issue of Copyright Office Modernization. We support the Committee’s proposal—particularly that Congress codify the Copyright Office’s autonomy from the Library of Congress, make the Register of Copyrights a Presidentially nominated, Senate confirmed position, and empower the Office to make its own decisions regarding personnel, budget, and its IT systems, subject to congressional oversight, to best serve the marketplace for copyrighted works.

Founded in 1964, the ACU is the nation’s original conservative organization. For more than fifty years, ACU has served as an umbrella organization harnessing the collective strength of conservative organizations fighting for Americans who are concerned with liberty, personal responsibility, traditional values, and strong national defense. As America’s premier conservative voice, ACU is the leading entity in providing conservative positions on issues to Congress, the Executive Branch, State Legislatures, the media, political candidates, and the public.

THE IMPORTANCE OF COPYRIGHT

A fundamental bulwark of ACU’s core values is property rights—a notion understood by the Founders at the dawn of the Republic. As ACU and sixty-six other bipartisan think tanks, advocacy groups and scholars noted in a [letter to the 114th Congress](#):

The Founding Fathers recognized the importance of IP in Article I, Section 8 of the Constitution: “To promote the Progress of Science and useful Arts, by securing for limited times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”

This clause, articulated by the founders, is rooted in the notion that the best way to encourage creation and dissemination of new inventions and creative works to the benefit of both the public good and individual liberty is to recognize one’s right to his or her intellectual property.

Every Congress since has done just that, from time to time changing IP laws to ensure that incentives and protections for creators and innovators remain strong as circumstances and technologies change. The Committee is right to recognize the need for Congress to make certain adjustments to ensure the Copyright Office is on a sound 21st century footing to administer the copyright system on which our intellectual property driven economy increasingly relies.

THE US COPYRIGHT SYSTEM REQUIRES A GOVERNMENT AGENCY WITH THE AUTONOMY AND FLEXIBILITY TO SERVE THE MARKETPLACE AND CONGRESS

The US Copyright Office is statutorily mandated to fulfill many important functions including maintaining the registration and recordation system for copyrighted works, and providing counsel to Congress, the courts and federal agencies—missions it has faithfully executed for over 100 years as part of the Library of Congress. The importance of those functions has grown significantly as our economy has come to rely increasingly on the creativity and innovation spurred by copyright. However, in recent years, it has become more difficult for the Copyright Office to fulfill its mission, in large part because of its institutional subordination and its treatment as part of the Library.

The Copyright Office found itself placed within the Library of Congress as an accident of history. As Steve Tepp and Former Register Ralph Oman explained in a Hudson Institute paper titled, "[A 21st Century Copyright Office: The Conservative Case for Reform](#)":

Copyright functions were placed in the Library in 1870, as a result of lobbying by then Librarian Ainsworth Spofford, who wanted to add the copies of books sent in for copyright registration to the collections of the Library.

As Tepp and Oman further explain, by 1897 Spofford was back before Congress complaining that the Copyright functions of the Library were taking up an enormous amount of time and resources. Hence, the Copyright Office was born, and subsequent Librarians left the Copyright Office alone to administer the copyright system, while they focused on the other important goals of the Library.

While the copyright registration and deposit functions are critical to creators, the Library, and the nation at large, the Copyright Office also serves other essential functions and has a much larger role in our country's creative, intellectual, and economic prosperity. Today, the [core copyright industries contribute over \\$1.2 trillion to US GDP](#), or almost 7 percent of the US economy. And digital technologies are creating enormous opportunities for creators and innovators to engage in commerce, thereby growing the creative economy and our cultural heritage. Given the size of the creative economy and its growing importance to the economic and cultural strength of our nation, the Copyright Office and the functions it serves are simply too important to be subordinated to the interests and priorities of the national library. Elevating the Copyright Office to endow it with stature and autonomy commensurate with its function and responsibility, and enabling it to stand shoulder to shoulder with other government agencies that oversee similarly important sectors of the economy, is appropriate.

However, despite the Copyright Office releasing [the most detailed modernization plan in its history](#), the Office's ability to play its designated role in enabling the creative marketplace to continue to thrive is at risk because the Library is not prepared to help the Copyright Office keep pace in the digital age. For instance, in September 2015 the [Washington Post reported](#) that routine maintenance resulted in a nearly two week IT system failure at the Library, taking the Copyright Office down with it and "costing the office an estimated \$650,000 in lost fees and causing headaches for approximately 12,000 customers." What's more, the Government Accountability Office [released a scathing report](#) in March 2015, among other things, criticizing the Library's IT systems and making thirty-one recommendations for improvement—some of which date back twenty years, but had never been acted upon.

The Copyright Office has repeatedly tried to modernize its systems to better rights holders and the public, and to better facilitate licensing of copyrighted works. But as currently situated within the Library, the Office does not have the authority, technology, or means to do so. In the digital age, that status quo is unacceptable.

The operational challenges of the Copyright Office in and of themselves are enough to warrant Congressional action, but there are important policy considerations too. While the Library's mission is of critical national importance, it has no real nexus with the mission of the Copyright Office, and maintaining the deposit copy function neither requires nor warrants subsuming the Office within the Library. A cursory examination of their respective mission statements makes this plain. The [Library of Congress' mission](#) is to "[a]cquire, describe, make accessible, secure, and preserve a universal collection of knowledge in physical and electronic formats." Whereas the [Copyright Office's mission](#) is "[t]o

administer the Nation's copyright laws for the advancement of the public good; to offer services and support to authors and users of creative works; and to provide expert impartial assistance to Congress, the courts, and executive branch agencies on questions of copyright law and policy." Put another way, The Library's mission is to collect and preserve our cultural heritage, while the Copyright Office's mission is to help foster an environment where cultural works are created and disseminated in the first place.

To help Congress ensure US copyright laws adequately reflect their constitutional goals, the Copyright Office must have the autonomy to pursue its mission, including providing timely and independent copyright advice to Congress as the expert agency.

For these reasons and more, the ACU welcomes the Committee's proposal and supports the removal of the Copyright Office from the oversight and control of the Library of Congress, making it subject to congressional oversight and the normal appointments process for Principal Officers of the United States. We look forward to continuing to work with the Committee on this important issue.