

Directors Guild of America, Inc.



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January 31, 2017

The Honorable Bob Goodlatte
Chair
House Judiciary Committee
2309 Rayburn HOB
Washington, D.C. 20515

The Honorable John Conyers
Ranking Member
House Judiciary Committee
2426 Rayburn HOB
Washington, D.C. 20515

Dear Chairman Goodlatte and Ranking Member Conyers,

The Directors Guild of America (DGA) respectfully submits these comments in response to the policy proposal released by Chairman Goodlatte and Ranking Member Conyers addressing reform of the U.S. Copyright Office.

DGA represents 16,500 directors and members of the directorial teams who create feature films, television programs, commercials, documentaries, news, and new media. The DGA's mission is to protect the creative and economic rights of the directorial team—working to advance their artistic freedom and ensure fair compensation for their work. It is because of this mandate that the Guild has been an active participant in the debate over Copyright Reform—copyright protection is fundamental to our members' livelihoods and the work they create. Ensuring that there are federal government policies that promote and preserve the value of copyright and that respect creators' rights are primary concerns of this Guild. Therefore we welcome this opportunity to comment on the proposed changes in the statutory framework of the very federal government agency that is tasked with protecting copyright—the U.S. Copyright Office.

THE REGISTER OF COPYRIGHTS AND COPYRIGHT OFFICE STRUCTURE

Article I, Section 8, Clause 8 of the United States Constitution empowers the United States Congress: 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, which is the basis for U.S.

copyright law, makes clear that the Founders recognized the vital importance to American democracy of protecting authors —without whom there would be no creative works to share with the public. Authors—the actual creators of copyrighted works—lie at the conceptual center of copyright law. Under the Berne Convention, to which the U.S. is a signatory, “authors” is a term that includes directors and enshrines their moral rights. Indeed, in her 2004 testimony before the House Judiciary Committee on the *Family Movie Act*¹, the then-Register of Copyrights alluded to “fundamental principles of copyright, which recognize that authors have moral rights.” In other words, creators have a continuing interest in protecting the integrity of their creations from distortion or manipulation in such a way that undermines the creative reputation of the author and, through attribution, in protecting recognition of their creative role.

We believe the Copyright Office must be empowered to undertake a key role with which Congress has tasked it —protecting creative works and those who create them. Some anti-author groups have recently attempted to intimidate the Copyright Office in an effort to diminish its willingness and ability to fulfill this key role.² Without further empowerment of the Office by Congress, these intimidation tactics may achieve their intended effect, regardless of where the office sits. We believe the most direct way to empower the Office is to clarify the Register’s statutory mandate. While the Copyright Act explicitly charges the Copyright Office with providing expert advice to Congress, federal agencies, and the Courts on copyright law and policy, it is not sufficiently clear about the Office's responsibility to protect authors and rightsholders.³ DGA recommends that the Register be given more explicit statutory direction that the Register’s primary responsibility is to protect and advance the rights of American authors and copyright holders.

If Congress clarifies in statute that this is an explicit responsibility of the Register, then we will have the comfort of knowing that authors and rightsholders will be protected regardless of where the office is located, or who appoints the Register. Congress can do this by amending 17 U.S.C. 701 (b) which establishes the functions and duties of the Register, to include a new function that the Register shall “Protect and advance the rights of authors and copyright owners.” With that language in place, the future of copyright is enshrined regardless of its structure.

¹ Statement of Marybeth Peters, Register of Copyrights, before the Subcommittee on Courts, Internet and Intellectual Property of the House Judiciary Committee, June 17, 2004.

² Public Knowledge, *Captured: Systemic Bias at the U.S. Copyright Office, v. 1.0.0*, September 8, 2016, https://www.publicknowledge.org/assets/uploads/blog/Final_Captured_Systemic_Bias_at_the_US_Copyright_Office.pdf.

³ Copyright Law of the United States, Title 17, Chapter 7, Section 701. (b).

We support the Committee’s recommendation to add the new advisory positions in the Copyright Office of Chief Economist, Chief Technologist, and a Deputy Register. That is a forward-thinking recommendation that recognizes the ever-changing world in which copyright policies and copyright law operates.

COPYRIGHT OFFICE ADVISORY COMMITTEES

We agree with the Committee that, in the digital age, the Copyright Office needs to have more timely access to information in order to most effectively develop policies and provide guidance to the government. Whatever forms—ad hoc or permanent—and regardless of the issue areas these Committees cover, we believe it is critical that these Committees include directors, not just the corporations who hold the copyright, the public, or other interests. While under U.S. law directors generally do not hold the copyright to the motion pictures they direct, they retain a number of well-established economic and creative rights established by collective bargaining agreements and specific contractual agreements entered into with the copyright holder. Directors are indeed rightsholders and their presence will bring to the table the distinctive viewpoint of the real creator/author. We believe their inclusion will ensure that the Advisory Committees: reflect the full range of those with a stake in copyright; mirror the realities of today’s marketplace and motion picture business; and ensure that the Copyright Office has a diversity of fully informed viewpoints.

INFORMATION ON TECHNOLOGY UPGRADES

We support the Committee’s interest in a swift rollout of the Copyright Office’s IT Modernization Plan. We believe that the Copyright Office’s IT plan would create a much needed forward-thinking system that would enable them to better serve the users of their system in the 21st Century. This is a prerequisite in order for the Copyright Office to function as it should in the future; it is an already too delayed upgrade. We also agree that the datacenter that the Library of Congress is building is not appropriate for “the needs of a modern copyright economy” and support the Register having “the autonomy to determine whether the costs and reliability of using this data center for its future IT needs match or exceed what can be obtained from private sector providers and choose accordingly.”

We also support the Committee’s point of view that the Copyright Office “should maintain a searchable, digital database of historical and current copyright ownership information and *encourage the inclusion of additional information.*” We want to emphasize that last point because we strongly urge that the database should identify the director of the audiovisual work. Directors are recognized as authors and their presence in the database would ensure that users have access to the fullest range of information. Congress has already recognized the directors’ standing in the copyright “chain” in language contained in the *Digital Millennium Copyright Act of*

1998. That legislation contains a provision (Section 406) adding new protections upon the transfer of copyright ownership in a motion picture, subjective to the transferees to continuing obligations to make residuals payments that were negotiated with producers under the collective bargaining agreements. The law imposes such obligations if the transferee knows or has reason to know at the time of transfer that a collective agreement was or will be applicable to the motion picture, and looks to databases maintained by each Guild as a basis for constructive knowledge of such coverage. Including basic information on a director of a motion picture in a Copyright Office database would be the logical extension of the DMCA language. Moreover, while copyright owners may come and go the director is forever attached to their work and that reality will inevitably be helpful to users and to the Copyright Office providing a full comprehensive database.

Additionally, we believe that the inclusion of information on the director in the database will help resolve the orphan works issue. Rights in motion pictures, including the underlying copyright and fractionalized distribution rights, can—and often do—pass through many hands over the economic life of a motion picture. Subsequent rightsholders often transfer partial or all rights to further transferees, and may well not record their transfers with the Copyright Office. Sometimes even if rights are transferred, the original rightsholder retains the underlying copyright. Long after copyright may have been transferred and ownership obscured, the name of the director is easily identified in the scroll of credits. The addition of director information in the new digital databases would enable more effective searches for copyright holders, and would assist directors in protecting their continuing interests in their work.

DGA greatly appreciates the opportunity to comment on the House Judiciary review of the U.S. Copyright Office. As the process moves forward, DGA welcomes the chance to further demonstrate how the economic and creative interests of its Member directors are intricately linked with copyrights, ever more so in the digital age. The Guild stand ready to work with the Committee on its work on Copyright Reform.

Sincerely,

/s/

Jay D. Roth
National Executive Director
Directors Guild of America