

January 31, 2017

The Honorable Bob Goodlatte
Chairman
House Judiciary Committee
2138 Rayburn House Office Bldg.
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member
House Judiciary Committee
2426 Rayburn Building
Washington, DC 20515

Re: Proposal on Copyright Office Reform

Dear Chairman Goodlatte and Ranking Member Conyers:

Thank you for the opportunity to comment on the first policy proposal to come out of the Committee's review of U.S. Copyright law.

The Register of Copyrights and Copyright Office Structure

The revelation that former Register of Copyrights Maria Pallante was prohibited from having "any communications" with Congress, including the Committee's review of U.S. Copyright law,¹ suggests that the position of Register has become politicized. Both of you were correct to pledge at the time to review the selection process for the new Register to ensure that he or she is both qualified to advise Congress on copyright law and policy and is "dedicated to protecting creative rights and modernizing the Copyright Office."² The proposal addresses this issue by requiring that future Registers will be subject to a nomination and consent process with a 10-year term limit, subject to potential renomination. Congress should have expert advice that is independent and timely from the Copyright Office on copyright law and policy matters, and the public should be able to provide input on the selection of the Register through their elected representatives. Although the placement of the Copyright Office in the Library of Congress has traditionally helped the Library in collecting published works, the only reason the Register is appointed by, and responsible to, the Librarian is because from

¹ "A Copyright Coup in Washington," *Wall Street Journal* (Nov. 2, 2016).

² "Goodlatte & Conyers Statement on the Resignation of Maria Pallante" (press release), *Committee on Energy and Commerce, United States House of Representatives* (Oct. 24, 2016).

1870 to to 1896 the Librarian administered the copyright registration system directly.³ The Register is responsible for administering laws that protect both the owners and the users of valuable copyrights, copyright law and policy has become increasingly complex and contentious and there is no justification for a complete absence of direct Congressional oversight in the selection of this particular public official.

The addition of Chief Economist, Chief Technologist, Deputy Register positions are also appropriate. A Chief Economist is particularly appropriate given that core copyright industries added more than \$1.2 trillion to U.S. GDP in 2015 and account for almost 8 percent of all employment in this country, according to one study.⁴ Clearly, the copyright system does not exist solely to protect copyright owners. A Chief Technologist will be invaluable in helping the Copyright Office address one of it's most urgent challenges, i.e., a transformative five-year, \$165 million IT upgrade.

Copyright Office Advisory Committees

Permanent and ad-hoc advisory committees representing a wide range of views and interests to advise the Register on critical issues—as the policy proposal envisions—would most likely promote efficient knowledge transfer from the private sector.

Information Technology Upgrades

The public must have easy access to historical and current copyright ownership information in the form of a searchable, digital database. It should also be easier for creators to register their works. As noted in the Copyright Office's IT modernization plan, it isn't possible to register works through mobile devices or apps nor to search public data in real time via an API.

the registration system is tied to a proprietary product, a federally-owned data center, and dated and costly underlying architecture which, even if updated, could not permit the kind of flexibility needed for the national copyright system to stay current. The recordation system remains paper-based.⁵

The Committee's policy proposal welcomes the thoroughness of the plan and urges the quickest possible rollout. According to the plan, the Copyright Recordation system would move from a paper-based intake system to an automated system where

³ "Positioning the United States Copyright Office for the Future—Strategic Plan 2016-2020, *U.S. Copyright Office* (Dec. 1, 2015), 64.

⁴ "Copyright Industries in the U.S. Economy—The 2016 Report" prepared by Stephen E. Siwek, Economists Incorporated, for the International Intellectual Property Alliance.

⁵ "Provisional Information Technology Modernization Plan and Cost Analysis," *U.S. Copyright Office* (Feb. 29, 2016).

recording parties may enter their own information, digital search capabilities will provide users with dynamic access and the integration of registration and recordation data will provide a more seamless chain of title from registration to licenses to transfers and the public domain.

By allowing the Register to determine whether the costs, reliability and security of using the Library’s datacenter for its own IT needs meet or exceed what can be obtained from the private sector and choose accordingly--together with the creation of a Chief Technologist to lead the Copyright Office’s own IT department—the Committee’s policy proposal addresses serious IT problems that have occurred at the Library of Congress in the past. In march 2015, the Government Accountability Office (GAO) found “significant weaknesses” in how the Library managed it’s IT resources. Among other things, the Library didn’t have an IT strategic plan, was not managing it’s IT investments effectively and did not possess the “leadership” needed to address it’s IT management weaknesses.⁶ The Library’s Inspector General has noted that multiple GAO and IG audits over the past *decade and a half* have revealed “strategic and operational weaknesses that have negatively affected the delivery of Library services (footnote omitted).”⁷ This clearly suggests that, for whatever reason, the Office of the Librarian of Congress may not be the best source of leadership for ensuring that the Copyright Office can provide advanced services to it’s technologically-savvy customers.

Small Claims

The Committee’s policy proposal would authorize the Copyright Office to host a small claims system as outlined in it’s 2013 report on the subject.⁸ Such an alternative to federal court would be voluntary for both the claimant and the responding party and would be limited to infringement cases valued at less than \$30,000. Among other features, online and teleconferencing facilities could be used without the requirement for personal appearances, any relevant defense--including fair use--could be asserted and limited counterclaims would be permitted. The report noted that small copyright owners often find federal litigation too difficult or expensive to pursue, and as a result even meritorious claims can be shut out of court. A voluntary small claims system located in the Copyright Office could greatly assist copyright owners for whom the claim may not seem small.

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⁶ “Library of Congress: Strong Leadership Needed to Address Serious Information Technology Management Weaknesses, *U.S. Government Accountability Office*, GAO-15-315 (Mar. 31, 2015).

⁷ Semiannual Report to Congress, *Library of Congress Office of the Inspector General* (Sept. 2016), 8.

⁸ “Copyright Small Claims, A Report of the Register of Copyrights,” *U.S. Copyright Office* (Sept. 2013).

Thank you again for the opportunity to submit these comments regarding the first policy proposal to come out of the Committee's review of U.S. Copyright law. These comments reflect my views and do not necessarily reflect the views of the Discovery Institute. The mission of Discovery Institute's Technology & Democracy Project is to advocate free market-oriented public policies for promoting investment and innovation in the information economy.

Respectfully Submitted,

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