

**KERNOCHAN CENTER**  
FOR LAW, MEDIA AND THE ARTS  

---

**COLUMBIA UNIVERSITY SCHOOL OF LAW**

January 31, 2017

Submitted via e-mail to [copyright.comments@mail.house.gov](mailto:copyright.comments@mail.house.gov)

Chairman Bob Goodlatte

Ranking Member John Conyers, Jr.

Members of the House Judiciary Committee

Re: Policy Proposal Concerning Reform of the U.S. Copyright Office

Dear Chairman Goodlatte, Ranking Member Conyers, and Members of the House Judiciary Committee:

The Kernochan Center for Law, Media and the Arts submits these comments in response to the Proposal Concerning Reform of the U.S. Copyright Office. The Kernochan Center for Law, Media, and the Arts at Columbia Law School is one of the leading centers for intellectual property research in the United States. Its faculty and staff dedicate their research and writing to copyright, trademarks, and related areas as they concern traditional and emerging media, entertainment and the arts. The Center offers students an in-depth program of instruction, lectures, internships and externships while providing symposia, lectures, research studies and publications to the broader legal community. Founded as the Center for Law and the Arts, it was renamed in 1999 to honor Professor John M. Kernochan, its founder and a pioneer in teaching copyright in American law schools.

We appreciate the work of the Committee in conducting its lengthy review of the Copyright Act and in developing its initial proposal. We recognize that many of the issues discussed in the hearings are not currently ripe for resolution, but we believe that the issues addressed in the Proposal are among the most pressing and most realistic to achieve.

**The Register of Copyrights and Copyright Office Structure**

We support the proposal to provide the Copyright Office with greater autonomy, and believe that such autonomy is essential to providing Congress with independent advice. The head of the Copyright Office should be a Presidential appointee confirmed by the Senate, as suggested in the Proposal. We also believe that a commission, similar to the one which recommends candidates

for the position of the Comptroller General of the Government Accountability Office, should be created to make recommendations to the President regarding the appointment of the Register.<sup>1</sup> The participation of legislators with a range of perspectives in the recommendation process will, we hope, help to ensure that the head of the Copyright Office will be a highly qualified person well-suited to lead the Office, and who will provide all three branches of government with expert advice unfiltered by other governmental agencies. As the Proposal suggests, the Register should have a ten-year term. We would further suggest that the Register be removable only for cause.

The Proposal suggests providing the Register with greater autonomy in respect of "its budget and technology needs," but we would further suggest that the Register have autonomy with respect to the substantive decisions of the Copyright Office. It makes no sense to continue to require that the Librarian review substantive decisions of the Copyright Office, first because the Librarian is not required to have any expertise in copyright, and second, because libraries are one of many constituents of the Copyright Office and this requirement inevitably puts the Librarian in a position of conflict.

We agree with the suggestion that the Copyright Office add positions such as a chief economist, a chief technologist, and a deputy register who can advise the Register. Our only hesitation is that the Copyright Office will need additional funding for these new positions; it is unrealistic to think that with its current budget, it will be able to implement a significant technology upgrade and fund these new positions. While the Office may be able to generate more income by revising how fees are set, for the Office to be fully self-funded it would have to raise fees so high that it would deter registration and recordation, particularly by individual creators and small businesses, which would be counterproductive.

### **Copyright Office Advisory Committees**

The Advisory Committees suggested in the Proposal could provide the Copyright Office with helpful input, but it is important that the Committees be carefully balanced so that both users and copyright holders with an interest in the Committee's subject matter have an opportunity for input. The Copyright Office has an excellent track record of soliciting views of the public in studies and rulemakings, through comments, roundtable discussions and meetings. The existence and operation of these committees should in no way diminish the Office's practice of inviting and considering wide public input into issues of concern.

---

<sup>1</sup> See 17 USC 703 (a). The commission, which must recommend at least three individuals, consists of the Speaker of the House of Representatives; the President pro tempore of the Senate; the majority and minority leaders of the House of Representatives and the Senate; and the chairmen and ranking minority members of the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House. *Id.*

## **Information Technology Upgrades**

We heartily concur with the recommendation that the Copyright Office's IT modernization plan be implemented as rapidly as possible. The Copyright Office's current IT infrastructure simply cannot support a 21st century Copyright Office. An efficiently-functioning digital database with relevant copyright information would be a significant contribution to the U.S. copyright industries, both owners and users. It could provide information to help potential licensees locate licensors, and minimize the number of orphan works that remain unused due to the perceived risk of incurring liability for damages for infringement.

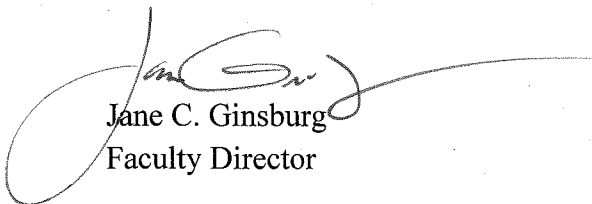
We caution, however, that determining precisely what information should be included in the database, particularly with respect to previously registered works, has to be weighed against the cost of compiling and inputting that information. The Copyright Office should be given the authority to make decisions, after consultation with its user base, as to the information to be included, the means by which it will be collected, and the priorities that will govern development of the upgraded database. The Office should be given broader authority to set fees in order to generate revenue for the implementation of its IT plan. However, it will be difficult if not impossible for the Office to raise all of the money in this manner, as discussed above. We believe additional appropriations are necessary and completely justified by the requirements of copyright owners and users, and copyright-related industries, which contribute so significantly to the education, culture, and economy of the United States.

## **Small Claims**

We fully support the Proposal to provide the Copyright Office with the authority to create a small claims adjudication system along the lines of that described in the Copyright Office's *Copyright Small Claims* report. As the Committee is well aware, the costs involved with federal court actions make it prohibitive for many copyright owners to sue for infringement, especially those who make money through high volume-low cost licenses. And pre-suit settlement is difficult since infringers know that these copyright owners often have little recourse. An efficient, well-run small claims system would make copyright enforcement fairer for individual creators and small businesses. The system described in the *Copyright Small Claims* report provides a sound basis for moving forward with legislation in this area.

Thank you for the opportunity to comment on the initial Proposal.

Respectfully submitted,



Jane C. Ginsburg  
Faculty Director

*June M. Besek*

June M. Besek  
Executive Director

*Philippa Loengard*

Philippa Loengard  
Deputy Director