



January 30, 2017

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Re: **Reform of the U.S. Copyright Office**

Dear Chairman Goodlatte and Ranking Member Conyers:

As a participant in the Judiciary Committee's review of our nation's copyright laws,¹ Microsoft applauds the Committee's early focus on modernizing the U.S. Copyright Office. We agree with the Committee that "The 20th Century statutory framework for the U.S. Copyright Office is not sufficient to meet the needs of a modern 21st Century copyright system," and we look forward to working with you and other members of the Committee as you consider important and necessary changes to Office structure and operations.

Microsoft's interest in the modernization of the Copyright Office reflects our reliance on and active participation in the copyright system. As a rights holder for some of the most popular software and entertainment products on the market, including Windows, Office, Halo, and Minecraft, we file significant numbers of copyright registrations each year. Microsoft's online entertainment platforms rely on Copyright Office records to enable offerings such as our Groove Music

¹ See Testimony of Jule Sigall, Assistant General Counsel, IP Law & Policy, Microsoft Corporation, Committee on the Judiciary, May 16, 2013, available at <https://judiciary.house.gov/wp-content/uploads/2016/02/Sigall-Testimony.pdf> (last accessed Jan. 30, 2017).



subscription service and Xbox Live platform. Microsoft online services, including our search engine Bing, our cloud storage service OneDrive, and our enterprise cloud services Azure and Office 365, serve hundreds of millions of users. And, consistent with safe harbors established by the Digital Millennium Copyright Act (DMCA), we process takedown notices covering a vast number of copyrighted works each year. Through each of these roles, we value greatly the work and contributions of the Copyright Office.

The Register of Copyrights and Copyright Office Structure

As the Committee's White Paper recognizes, the need to build and strengthen the Office's capacity to carry out its registration and recordation mission is a primary area of concern to all participants in the copyright system. To this end, we support the Committee's proposal to ensure that the senior leaders of the Office include a Chief Technologist. Such designation is consistent with best practice across federal agencies and will help ensure that the Office considers and leverages all technologies that will aid it in accomplishing its mandate.

Agencies that generate, consolidate, and/or serve as repositories for data often also identify a Chief Information Officer. We recommend designation of such a role for the Copyright Office to encourage the availability of Office data for broad use by stakeholders and the general public.

At this time, Microsoft takes no position on the location of the Copyright Office, the process for selecting the Register of Copyrights, or the term to be served. We look forward to working with the Committee as it examines these matters in greater detail.

Information Technology Upgrades

In addition to its long-established role in aiding Congress in the development of copyright policy, the Register of Copyrights, as the title itself suggests, is responsible for all administrative functions of the Office, principally the registration and recordation of copyright interests. Providing the Office with the technology and personnel resources it needs to bridge between its existing, outdated system of registration and recordation and one that can serve the interests of rights holders, users of copyright, researchers, and the public in the digital age should be, in our view, a primary objective for Office modernization.

Today, information retrieval from the Copyright Office operates largely on a "one transaction at a time" basis, ill-suited to supporting the reality of the digital



copyright world where the need to identify (often multiple) rights owners and to clear multiple rights through various agents is commonplace. Indeed, some of the most persistent policy challenges in the copyright arena, such as those surrounding orphan works and music licensing, are linked in no small part to difficulties in identifying rights owners and securing necessary licenses.

While functional at a transactional level – a single registration filed by a copyright owner, or retrieval of that individual registration by a user searching with basic keywords – the current copyright IT system cannot scale sufficiently to support the needs of modern platforms. Its inherent limitations contribute to inefficiencies across the copyright ecosystem that can frustrate copyright owners and users alike and delay or impede consumers’ legitimate access to and enjoyment of copyrighted works of all kinds.

As the Committee’s White Paper recommends, the “Copyright Office should maintain a searchable, digital database of historical and current copyright ownership information and encourage the inclusion of additional information such as licensing agents that would be available to the public.” We strongly support this goal, and view it as an essential, foundational step toward encouraging innovation in making available copyright ownership information, facilitating licensing, and fostering legitimate business models that enable consumers’ access to and enjoyment of copyrighted works.

To achieve this larger goal, we would urge that the modernization mandate for the Office include steps to ease burdens on copyright owners, particularly individual copyright owners and creators, by encouraging private registration services that use application programming interfaces (APIs) to record data and enable the registration of works in digital form (e.g., images submitted to a photo/picture agency). Making the information in the Copyright Office’s database available to and accessible by third parties will promote the development of new tools to promote efficiencies in the copyright ecosystem, for the benefit of copyright owners, users, and the public.

Microsoft supports investment in IT to modernize the Copyright Office and the important records it is charged with maintaining. In addition to the measures proposed in the Committee’s White Paper, we recommend that the Committee consider improvements designed to:

- Provide copyright owners with the capacity to upload deposits of works in digital form.



- Provide the capability for users to more easily search, locate and match works to their corresponding registration data, using available technology that can identify or match digital samples.
- Provide the public access to the status of applications and complete file history, including any correspondence between the Office and the applicant, similar to how the USPTO database operates.
- Provide up-to-date status of copyright in works (e.g., whether a work has entered the public domain or whether the copyright in the work has been invalidated by an appeals court).
- Enable access to the Copyright Office platform and public data to promote development of third-party solutions for registration, searching, and other services.

Copyright Office Advisory Committees

Microsoft agrees with the Committee's proposal to direct the Copyright Office to establish several Advisory Committees to ensure that the Register and other Office leaders have access to the diverse perspectives of its varied constituencies, and the benefit of a range of expert advice on technology, policy, and Office operations. In this regard, the structure and operation of the Patent and Trademark Public Advisory Committees provide a useful model. USPTO's Patent and Trademark Public Advisory Committees, by their charters, are tasked with reviewing "policies, goals, performance, budget, and user fees of the United States Patent and Trademark Office" and advising the Director in connection with these matters. The same types of advice and input would benefit the Register and the Office.

Given the particular and persistent technological challenges confronted by the Copyright Office, we further recommend that the Committee consider calling for the establishment of a separate, permanent Advisory Committee on Information Technology. Such an advisory body might direct its focus toward assessing the IT needs, deployments, and goals of the Office and to assisting the Office and Congress in assessing policy matters at the interface of copyright law and technology.

Small Claims

Many individual creators and copyright owners have spoken to the costs and challenges associated with the enforcement of their copyrights. Microsoft is sensitive to these concerns and open to the establishment of a small claims



process within the Copyright Office to ensure that those with limited resources for federal litigation have the option to be heard in an alternative, fair, and affordable process. In our view, it is important, however, that participation in any copyright small claims process be wholly voluntary for both the complaining rights holder and the defendant.

Microsoft thanks the Judiciary Committee for the opportunity to provide our views and comment at this early stage in the Committee process. We look forward to working closely with you and other members of the Committee as your consideration of this important initiative moves forward.

Sincerely,

A handwritten signature in blue ink that reads "Jacqueline Morales". The signature is written in a cursive style and is contained within a light blue rectangular box.

Jacqueline Morales
Senior Attorney
Intellectual Property Group
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