

Comments Submitted by Music Community Organizations to the House Judiciary Committee Re: U.S. Copyright Office Modernization

January 31, 2017

We thank Chairman Goodlatte, Ranking Member Conyers, and Members of the Committee for their first policy proposal, highlighting initiatives to modernize the U.S. Copyright Office. Today the industry sectors that create and license copyrighted works have become a significant driver of our national economy, adding \$1.2 trillion to U.S. GDP and employing over 5.5 million workers.¹ These national contributors – businesses both large and small – require the support and services of a modern, technologically-sophisticated agency, and this proposal for modernization is an excellent first step. We thank you for your leadership in copyright protection, and greatly appreciate this opportunity to provide our comments.

The Register of Copyrights and Copyright Office Structure

The Copyright Law of the U.S. notes as the very first function of the Register of Copyrights, to “Advise Congress on national and international issues relating to copyright, other matters arising under this title, and related matters.”² Congress relies regularly on the Copyright Office for its expert advice in developing and enacting appropriate and effective copyright policy. As such, the Committee’s proposal that the Copyright Office should remain part of the Legislative Branch makes sense, so that the Copyright Office can most effectively execute the statutory responsibilities Congress has assigned it under Title 17, Chapter 7 of the U.S. Code. The Judiciary Committee, which serves as the authorizing committee of jurisdiction under the Rules of the House of Representatives, should maintain direct oversight over the Copyright Office, requiring regular reporting and authorizing appropriations.

The historical connection between the Copyright Office and the Library of Congress exists because of the Library’s singular, and valuable, function as the depository for registered copyrighted works. We support retaining that deposit relationship. Outside of that singular nexus, the distinct duties, needs, and interests of these two establishments would be improved by providing the Copyright Office with independence. As an expert agency of a subject matter as important to the national economy as copyrights, the Copyright Office should have a head that is nominated by the President and confirmed with the advice and consent of the Senate, with a ten-year term limit, subject to potential re-nomination, and serving at the pleasure of the

¹ “Copyright Industries in the U.S. Economy: The 2016 Report,” <http://iipawebsite.com/pdf/2016CpyrtRptFull.PDF>.

² 17 USC § 701(b).

President. The Copyright Office no longer exists to simply register copyrights; it plays a key function in policy, law, rate-setting and advising Congress and other branches of government. The Copyright Office should be free to operate and issue opinions and reports autonomously as well as control its budget and technology needs, with appropriate congressional supervision.

A presidentially-appointed head, with the advice and consent of the Senate, would also allow the Copyright Office, given its knowledge and expertise, to appoint Copyright Royalty Board (CRB) judges, as well as any deputy and associate Registers, a CTO, and other supporting positions, avoiding any “inferior officers” clause issues that exists because it technically falls under the Librarian. Providing such flexibility also makes more sense than to anticipate the needs of the Copyright Office by defining positions in statute.

Copyright Office Advisory Committees

The Copyright Office is already one of the most transparent agencies within the government – conducting public inquiries and roundtables, issuing reports and opinions, and participating in a diverse array of events and Congressional hearings. Before nearly any Congressional or public-facing action by the Copyright Office, the public and representative interest groups have an opportunity to weigh in and be heard.

However, should a distinct collection of individuals be deemed necessary to analyze, discuss, and advise the Copyright Office, the Register should have the flexibility to create advisory committees, as needed. Being directly familiar with the resources and needs of the Copyright Office, the Register is in a unique position to determine whether an advisory committee is necessary and appropriate. Further, providing the Register with this flexibility (rather than establishing standing committees by statute) ensures that the Copyright Office will be able to keep up with a constantly evolving copyright field, and will not be impeded by irrelevant or obsolete committees (or a perceived obligation to use them).

Information Technology Upgrades

We join the Committee in its appreciation for the Copyright Office’s “Provisional Information Technology Modernization Plan and Cost Analysis,” released in February 2016. Upgrading the Copyright Office IT system is an important and necessary endeavor for both rights holders and copyright users, and will ensure that the system is as efficient, accessible, and economical as possible in the modern digital age.

The Copyright Office should engage stakeholders in developing technological solutions for the registration and recordation of copyrights, and in finding solutions for modernizing deposits and ensuring data interoperability. We agree that the Copyright Office should be allowed to charge a user fee for high speed, high volume access to registration and recordation information to generate revenue for IT modernization.

We also agree with the Committee that the Register should have the autonomy to determine whether the Library's IT system is sufficient or whether the Copyright Office should pursue other alternatives. Further, any new IT initiative should allow copyright owners to include with their registration or recordation, or subsequently, additional metadata, such as standardized identifiers, although such additional information must be added on a voluntary basis, have no effect on rights, and require no fee to provide the information, which would discourage participation and require time and manpower that many small creators lack.

In addition, the Copyright Office can play a central role in facilitating stakeholder discussions aimed at addressing other important data issues.

The Copyright Office should have the authority to offer additional fee-for-service options that would generate revenue for IT modernization, but authority to change any fee schedule for registration or recordation should ultimately rest with Congress. Both Congress and the Copyright Office should guard against increasing prices on necessary services beyond what is needed or warranted, as well as inappropriately pricing certain options out of the reach of copyright owners.

In today's internet-driven marketplace where works are available globally upon release, an antiquated IT system that results in a 6-12 month backlog of issuing registrations negatively affects the ability of copyright owners to enforce their rights. The Copyright Office must issue registrations in a timely manner and the law must be clarified to assure that compliance with deposit requirements by an owner allows for the availability of all rights and remedies.

Rights Ownership Databases

The Committee's proposal also raised, in addition to IT changes on registration and recordation, a database of right ownership identifications. Our organizations recognize the importance of accurate, publicly available ownership data and support data transparency. To that end, we have worked together to encourage making music ownership information publicly available online. As noted in the previous section, the Copyright Office can play a central role in facilitating stakeholder discussions aimed at

addressing data issues. However, as the Senate Judiciary Committee leaders noted in their July 2016 Copyright Office modernization outline, “...legislating a specific database result is a poor fit for the rapidly changing technological landscape.”

There are also fundamental questions about the Copyright Office’s ability at this juncture to effectively manage centralized data systems. During a December 9, 2016 public meeting organized by the Department of Commerce’s Internet Policy Task Force entitled “Developing the Digital Marketplace for Copyrighted Works,”³ the consensus among participants across multiple panels was that the government’s role in solving data issues should be to help develop and encourage use of common standards and private database initiatives, not take on the role of creating or running a centralized ownership information database.

Our organizations and many others in the music community stand ready to work with the Committee, the Copyright Office, and other stakeholders on ownership data issues. At the same time, given the complexities of this issue, we firmly believe that modernization legislation largely affecting all copyright industries is not the appropriate context in which to mandate specific solutions to perceived data problems in any single copyright industry. Moreover, we would be very concerned about any effort to condition copyright ownership/recognition, exploitation and/or royalty payments on participation in any government-operated – or other – data system. Not only would such a move significantly diminish support for this legislative effort, but could also conflict with U.S. trade/treaty obligations that prohibit formalities in order to receive copyright protection.

Small Claims

Many organizations within the music community have expressed past reservations about establishing a small claims process and we remain skeptical that such a process will be heavily utilized by the music community. At the same time, we also recognize there are other rights holders who believe they will benefit from such a system and we have worked with them to address our concerns.

We support establishing a small claims process that is 1) confined to handling low value infringement cases, 2) a strictly voluntary process (*i.e.*, both parties must agree to participate) that does not diminish any of the current legal remedies available, and 3) non-precedential in nature. We also hope Congress will ensure any regulatory authority given to the Register will be limited to helping promote an efficient system for

³ <https://www.uspto.gov/learning-and-resources/ip-policy/public-meeting-developing-digital-marketplace-copyrighted-works-dec>

adjudicating claims and does not become a back door to impose any policies/regulations that would not otherwise have been agreed to.

We would also urge Congress to consider whether it makes sense to first establish this system as a pilot program with jurisdiction over cases involving a limited universe of works, such as visual arts.

Our organizations look forward to continuing to work with the House Judiciary Committee to ensure our nation's copyright policy effectively meets the needs of creators and users in the digital age.

Sincerely,

American Association of Independent Music
American Federation of Musicians
Americana Music Association
Broadcast Music Inc.
Church Music Publishers Association Action Fund, Inc.
Christian Music Trade Association
Gospel Music Association
Living Legends Foundation, Inc.
Music Managers Forum – United States
National Music Publishers' Association
Rhythm and Blues Foundation, Inc.
Recording Industry Association of America
Screen Actors Guild and the American Federation of Television and Radio Artists
SoundExchange