

MUSICIANS ACTION
Website: <http://musiciansaction.org>

January 30, 2017

The Honorable Bob Goodlatte
Chairman, Committee on the Judiciary
United States House of Representatives
2309 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers
Ranking Member, Committee on the Judiciary
United States House of Representatives
2426 Rayburn House Office Building
Washington, DC 20515

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

Dear Chairman Goodlatte and Ranking Member Conyers,

We write in response to your request for written comments on the white paper entitled “Reform of the U.S. Copyright Office” issued on December 8, 2017 by the U.S. House of Representatives Judiciary Committee. We appreciate the opportunity to offer our views on this important process and we are grateful for your willingness to consider our comments.

Musicians Action is a participatory democratic grass roots organization dedicated to public direct action to support economic justice for working artists in the digital domain. The organization is comprised exclusively of working musicians. We have come together to present the voice of working artists. We exist for one purpose, and one purpose only—to inform legal policy discussions about how the decisions being made affect our livelihoods and ability to create, and to highlight the importance of modern and effective copyright protection to our ability to sustain ourselves and to fuel our creative output. Our website is available at <http://musiciansaction.org>.

We wish to comment on three of the issues outlined in the policy proposal for copyright reform.

The Register of Copyrights and Copyright Office Structure

The proposal recommends that the U.S. Copyright Office remain part of the Legislative Branch where it can provide independent and timely advice to Congress. We fully support the proposal that the Copyright Office have autonomy over its budget and technology needs.

More specifically, we believe that the Copyright Office should not fall under the general oversight of the Librarian of Congress. We believe that it should be removed from the Library of Congress so that it can function properly as an independent institution serving the public interest and immune from the influence of what we believe to be a misguided Library of Congress.

First, we view the recent removal of Register of Copyrights Maria A. Pallante by the new Librarian of Congress Carla Hayden as inappropriate. The unprecedented “reassignment” carried out by the Librarian of Congress in our view reflects special interest interference in governance at

the highest level. It has destroyed our trust in the Library of Congress as an institution capable of properly serving Congress or functioning in the full interest of the American public.

Second, the subsequent posting online by the Library of Congress of a public survey to solicit input on the knowledge, skills and abilities required for the position of Register of Copyrights was in our opinion also an exercise in bad judgment and it undermines confidence in the authority of the Library of Congress in matters relating to copyright. We are alarmed that the Library of Congress posted a public survey like this that invites manipulated comments and robotically generated replies. It is well-known that technology corporations and their supporters are adept at influencing the public, particularly younger people with no knowledge or awareness of the issues in question, to follow suggestions to join petitions and submit robotic comments, such as they did during deliberations on SOPA / PIPA in January 2012, and more recently on April 1, 2016, when they overloaded the regulations.com website with 86,000 sets of identical comments, crashing the system and making it impossible for people to file real comments by the deadline.

We are deeply concerned about the assumptions underlying this survey as it relates to public awareness of what the Register of Copyrights is, does, should be, or should do. The number of people who have adequate knowledge of the role of the U.S. Register of Copyright and the legal and policy context in which she works, and who are thus capable of sending a thoughtful reply, is small. The survey invites any member of the public over 13 years of age to participate; in actuality, there is no way to even confirm that a participant is over 13. We believe that this survey is subject to tampering and misrepresentation.

Also, questions arise as to whether and how the results of this survey can be used in public policy decisions or by the Library of Congress at all. As recently posted on The Trichordist blog,ⁱ a 2010 memo generated by the Executive Office of the President, Office of Management and Budget stated:

Because, in general, the results of online rankings ratings, and tagging (e.g., number of votes or top rank) are not statistically generalizable, they should not be used as the basis for policy or planning.ⁱⁱ

The fact that a survey is being conducted in this manner is troubling, and in our view it is evidence of faulty judgment at the Library of Congress. It indicates the inability of the Library of Congress to manage the issue of copyright law and to administer the U.S Copyright Office. We are concerned about the lack of common sense behind this survey and believe that it is critical to restore the integrity of the legislative process and the administration of copyright by removing Copyright Office from the Library of Congress where it does not belong.

Third, we observe that libraries as organizations have aligned with the interests of digital technology corporations against the interests of creators and other copyright holders. To the extent that the Library of Congress has authority over the Copyright Office, we believe that our interests will not be fairly served.

We ask Congress to resist the pressure of special interests who would destroy the integrity of the Copyright Office's historic mission and its ability to administer the copyright law and to provide impartial expertise on copyright law and policy. The Library of Congress should function as a library and do what libraries do, and leave matters of copyright to Congress and the Copyright Office.

We agree with the proposal that future Registers of Copyright should be subject to a nomination and consent process with a 10-year term limit, subject to potential re-nomination, and that new advisory positions be created, including Chief Economist, Chief Technologist, and Deputy Register.

Information Technology Upgrades

We support the IT modernization plan developed by the Copyright Office and the white paper proposal for a quick rollout of the plan. We welcome the idea that the Copyright Office will maintain a searchable digital database of copyrighted works and copyright ownership information that will facilitate fair licensing of copyrighted works. The lack of an effective licensing framework and the lack of a comprehensive database of copyright information has had a negative impact on the ability of creators and rightsholders to negotiate with those who wish to use their works and to be fairly compensated for use of their works. We strongly support efforts that will contribute to the development of an effective licensing environment for all types of works so that creators and rightsholders will be properly recognized, particularly in the online environment, and so that the economic value of their works will be restored.

Small Claims

In the course of the study that led to the report by the Register of Copyrights on Copyright Small Claims,ⁱⁱⁱ the U.S. Copyright Office received numerous comments from individuals and organizations representing the interests of creative people who face insurmountable challenges in enforcing legal rights that constitute the basis for their livelihoods. On the one hand, these rights are granted by copyright law but other hand, they are taken away by the inability to enforce them. In his letter to former Register of Copyrights Maria Pallante requesting the study, Representative Lamar Smith, Chairman, U.S. House Judiciary Committee wrote: “On an individual level, the inability to enforce one's rights undermines the economic incentive to continue investing in the creation of new works. On a collective level, the inability to enforce rights corrodes respect for the rule of law and deprives society of the benefit of new and expressive works of authorship.”^{iv}

This is the situation that we, as working musicians, face in the current environment where our rights, and enforcement of our rights, are being summarily denied due to a legal system that places the burden of infringement on us and provides us with no realistic mechanisms to address it. The vast majority of artists have limited incomes and we do not have the resources to engage in complex and expensive litigation when we find the value of our works decimated by infringement. What is most egregious is that the ineffective notice and takedown procedures and the special privilege “safe harbor” protections for corporate hosting platforms in Section 512 of the copyright law actually encourage mass infringement of our works.

We are grateful that this Congressional committee understands the importance of implementing a small claims system that will enable copyright owners to pursue small infringement matters and related claims, and provide a mechanism to ease the devastating impact of infringement. We would like to reinforce the urgency of this measure.

We also encourage Congress to amend the “safe harbors” for internet and online service providers in Section 512 that strip artists of their livelihoods and that enrich major technology corporations in what has become one of the most disgraceful episodes in the history of U.S. law. We urge Congress to end the massive injustice wrought by the safe harbors of Section 512 that were not intended by Congress when it implemented the DMCA. Testimony from the Section 512 Study being conducted by the Copyright Office provides more than adequate evidence than the business

model of user-generated content based on stolen content should be eliminated, as outlined in the submission of the Music Community.^v

We also ask Congress to amend the unfair and ineffective notice and takedown regime that has developed into a massive copyright exception for wealthy digital corporations, and transform it into an enforceable system of permanent “staydown” to enable creators and rightsholders to exercise their rights. One example of many that could be offered to illustrate how the current system fails musicians is Facebook, the sixth largest company in the world by market capitalization. By any measure, Facebook is the world’s largest media company. It hosts millions of music video performances a day. Yet Facebook does not pay any fees to songwriters. It hosts infringing works posted by the public as a business model, profiting from our works and posing this “service” as a benefit to the public.

Too many observers posit a false division between the interests of the public and those of working creators, and many of those who do so are seeking to defend exploitative practices that benefit them economically, directly at our expense.

We thank the United States House of Representatives Judiciary Committee for your efforts to reform the statutory framework for the U.S. Copyright Office and stand ready to provide further comments at your request.

Respectfully,



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On behalf of Musicians Action

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ⁱ “As We Predicted: Outlaw Librarian of Congress Violates Obama Administration Rules on Online Polls for Policymaking,” Trichordist, December 16, 2016, <https://thetrichordist.com/2016/12/16/as-we-predicted-outlaw-librarian-of-congress-violates-obama-administration-own-rules-on-online-polls-for-policymaking>.

ⁱⁱ Executive Office of the President, Office of Management and Budget, Memorandum for the Heads of Executive Departments and Agencies, and Independent Regulatory Agencies, from Cass

R. Sunstein, Administrator, Office of Information and Regulatory Affairs, concerning Social Media, Web-Based Interactive Technologies, and the Paperwork Reduction Act, April 7, 2010, p. 6.

ⁱⁱⁱ United States Copyright Office, Copyright Small Claims: A Report of the Register of Copyrights (September 2013), <https://www.copyright.gov/docs/smallclaims>.

^{iv} Letter from the Hon. Lamar Smith, Chairman of the U.S. House of Representatives Judiciary Committee, to the Hon. Maria A. Pallante, Register of Copyrights and Director, U.S. Copyright Office (October 11, 2011), in United States Copyright Office, Copyright Small Claims.

^v Joint Comments of the American Association of Independent Music; American Federation of Musicians; American Society of Composers, Authors, and Publishers; Americana Music Association; Broadcast Music, Inc.; Christian Music Trade Association; Church Music Publishers Association; Global Music Rights; The Latin Academy of Recording Artists & Sciences, Inc.; Music Managers Forum-United States; Music Publishers Association; Nashville Songwriters Association, International; National Academy of Recordings Arts and Sciences; National Music Publishers' Association; Recording Industry Association of America; Rhythm and Blues Foundation; Screen Actors Guild-America Federation of Television and Radio Artists; SESAC Holdings, Inc; and SoundExchange (the "Music Community"), submitted to the United States Copyright Office In The Matter of Section 512 Study: Notice and Request for Public Comment, Docket No. 2015-7, March 31, 2016, <https://www.regulations.gov/document?D=COLC-2015-0013-89806>.