



January 31, 2017

RE: NAB Response to the House Judiciary Committee Policy Proposal, “Reform of the U.S. Copyright Office”

The National Association of Broadcasters (“NAB”)¹ submits these comments in response to the House Judiciary Committee’s Request for Comments (the “Proposal”) on the reform and modernization of the Copyright Office.² NAB appreciates the opportunity to respond to the issues raised by the Committee on structuring the Copyright Office to best meet the needs of today’s dynamic copyright marketplace. NAB applauds the Committee for initiating this proceeding, and looks forward to participating in further deliberations that may stem from these initial comments.

As representatives of both significant owners and users of copyrighted material, NAB has a unique and important stake in the work that the Committee is undertaking to modernize the Copyright Office. As of December 31, 2016, there are 17,771 primary broadcast stations in the United States – 1,778 full power television stations, 417 Class A television stations and 15,516

¹ NAB is a non-profit trade association, which advocates for free, local radio and television stations and broadcast networks before Congress, federal agencies, other government entities, and the courts.

² House of Representatives Judiciary Committee, Chairman Bob Goodlate, Reform of the U.S. Copyright Office, <https://judiciary.house.gov/wp-content/uploads/2016/12/Copyright-Reform.pdf>.

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radio stations.³ Nearly 12.4 million Americans rely exclusively on broadcast television (and do not subscribe to cable or satellite service), and broadcast programs consistently attract the highest number of viewers.⁴ Nearly 268 million people listen to radio each week.⁵

The commercial broadcast industry directly employs more than 319,000 people across the country, including advertising and programming personnel, and directly generates nearly \$54 billion in GDP on an annual basis.⁶ Taking into account broadcasters' impact on other industries and their stimulative effect on the economy, broadcasters support approximately 2.5 million jobs nationwide, and contribute approximately \$1.19 trillion in GDP on an annual basis.⁷

As the broadcasting industry is driven by copyrighted material, NAB recognizes the important need to balance the rights of copyright owners, copyright users and the public in any changes to copyright law. Creators must be protected so as to provide the incentive to develop copyrighted works. The public's interest in access to creative works must also be recognized. And systems must be developed to allow users of copyrighted materials to easily identify those who have rights in copyrighted material, so that the users can efficiently distribute that material

³ These numbers were announced by the Federal Communications Commission in a document released January, 6, 2017, titled *Broadcast Station Totals as of December 31, 2016*.

⁴ Federal Communications Commission, *18th Annual Video Competition Report* ¶ 7, DA 17-71 (MB rel. Jan. 17, 2017), https://apps.fcc.gov/edocs_public/attachmatch/DA-17-71A1.pdf (citing Nielsen reports for 2015, which showed an increase from “approximately 10 percent to 11 percent of all television households); TVB, <https://www.tvb.org/Public/Research/CompetitiveMedia.aspx> (“95 of the Top 100 Shows in the 2015-'16 Season Were Broadcast”).

⁵ Nielsen, *State of the Media: Audio Today*, (Nov. 2016), <http://www.nielsen.com/content/dam/corporate/us/en/reports-downloads/2016-reports/audio-today-a-focus-on-network-radio-q4-2016.pdf>.

⁶ Woods & Poole Economics, *Local Broadcasting: An Engine for Economic Growth*, at 1-2 (2015), http://www.nab.org/documents/newsRoom/pdfs/Local_Broadcasting_Engine_for_Growth_Publication.pdf.

⁷ *Id.*

to the public while properly compensating the rightsholders. NAB recognizes that finding the proper balance between all stakeholders in the copyright universe is not always easy, and it appreciates the complexity of the issues being tackled by the Committee to achieve that balance with regard to the functions of the Copyright Office.

This Copyright Office modernization effort is being undertaken as tremendous changes in technology reshape how copyrighted material is created and shared with the public. Technological changes offer both complications in the assessment of the proper balance between creators, users and the public, and opportunities for addressing and remedying these complications. The Copyright Office must play an important role in enabling both businesses and consumers to benefit from this balance, and many of the Committee's proposals will further its ability to do exactly that. But to successfully turn the concepts presented in the Committee's white paper to concrete action, several principles must underpin any legislation.

First, the Copyright Office must have the independence and autonomy needed to assess and address its technological and logistical needs, while at the same time remaining accessible and open to the diverse interests of the parties who rely on its activities. By being autonomous, the Copyright Office can best assess its needs and present them to Congress in its own budget, free from conflicting needs and priorities that can arise in other settings. Where the Copyright Office lacks autonomy and is instead bundled with some larger governmental entity, its needs and action plans can become obscured and secondary to the systems and practices of the entity as a whole. As discussed below, the creation of comprehensive databases of copyrighted materials is a priority, and is best directed by an autonomous Copyright Office, where the Register and his or her staff can determine the most efficient and effective alternatives for their development. While uniformity for purposes of administration or otherwise may drive efficiencies in the

development of systems, such uniformity can be counterproductive where a subset of an agency has need for specialized systems as does the Copyright Office.⁸

Second, this enhanced autonomy must be accompanied by greater public accountability. To that end, NAB supports the Committee’s proposal for the appointment of the Register by the President, with the advice and consent of the Senate, for a 10-year term.⁹ An established 10-year term for the Register will provide continuity and experience in the Copyright Office and enable the Registrar to implement any changes necessary to respond in a nonpartisan fashion to developments in technology and other changes over time. Partisan considerations would be more likely to arise if the Register were appointed for a shorter tenure. The appointment of the Register by the President, with the advice and consent of the Senate, allows for the greater public accountability and stakeholder input inherent in the process of Congressional advice and consent.

Further, while independence of the Copyright Office is important, so is the participation of stakeholders in its deliberative and decision-making processes. NAB supports the Committee’s suggestion that advisory committees be formed to provide ongoing input outside the confirmation and oversight process.¹⁰ Only by having a wide array of advisory committees, comprising a diverse set of representative stakeholders, can the Copyright Office receive the broad input necessary to make the challenging decisions it will face. Advisory committees, both permanent and on an ad hoc basis, will allow this important collaborative process to develop in forums where all parties and industries affected by Copyright Office decisions have input into shaping those decisions. NAB stands ready to participate in such committees, and looks forward

⁸ See Proposal ¶ 6 (observing that the proposed Library of Congress datacenter in Virginia is “more appropriate for archival purposes than the needs of a modern copyright economy.”).

⁹ Proposal ¶ 3.

¹⁰ Proposal ¶¶ 4-5.

to working with other stakeholders to help fashion a Copyright Office and copyright processes that best serve 21st century America.¹¹

Finally, a modernized Copyright Office will best function through full transparency. Transparency in process is advanced by the advisory committee structure. But transparency must also extend to the administration of copyrights – in particular through the establishment and maintenance of high quality, reliable and accessible databases of copyrighted material, as the Committee recommends. Nowhere is this more important than in the area of music rights. Without a reliable and comprehensive database of both the owners of musical works and the sound recordings in which the rights reside there can be no fair and efficient marketplace for the licensing of musical works and sound recordings. Such a database must include up-to-date contact information for the copyright owner and licensing agent, and detailed information about the musical work and sound recording itself, including IWSC and IRSC data.

Any new database must be reliable and comprehensive to ensure that users can determine the owners of works with accuracy. This comprehensive database should be accessible to both users of copyrighted materials *and* application developers who may be able to create more efficient marketplaces for copyrighted works. Accordingly, while fees may be necessary to pay for the creation and administration of the databases, if the data is not accessible by all, they will not serve their function of advancing a more efficient copyright marketplace. In establishing any

¹¹ NAB is currently and has been a part of many such successful committees, authorized by the Federal Advisory Committee Act, 5 U.S.C. App., at the Federal Communications Commission. NAB is currently a member of the following FCC advisory committees: Communications Security, Reliability and Interoperability Council; Consumer Advisory Committee; Disability Advisory Committee; Technological Advisory Council; and the World Radiocommunication Conference. NAB has also participated in a number of previous FCC advisory committees, including the Diversity Federal Advisory Committee and the Video Programming Accessibility Advisory Committee.

fee structure associated with any copyright database, the Copyright Office must balance the ability to properly charge those who make money from the wholesale appropriation of any database and the information it contains, while allowing access at minimal fees to users of copyrighted content who are simply looking to clear rights to particular works.

NAB appreciates the opportunity to comment on the issues advanced by the Committee. It looks forward to participating fully as these matters are deliberated in the Committee's review of the important work of the Copyright Office and, more generally, of other copyright questions.