

National Writers Union  
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To: Bob Goodlatte, Chairman, House Judiciary Committee  
John Conyers, Jr., Ranking Member, House Judiciary Committee  
via email to <copyright.comments@mail.house.gov>

Carla Hayden, Librarian of Congress  
via Web submission form at <<https://www.research.net/r/RegisterOfCopyrights>>

**Re: Proposal on Copyright Office Reform; Register of Copyright**

### **Comments of the National Writers Union**

As a national union of working writers in all genres, media, and business models, the National Writers Union (UAW Local 1981, AFL-CIO) welcomes the requests for comments by the Chairman and Ranking Member of the House Judiciary Committee<sup>1</sup> and the Librarian of Congress<sup>2</sup> regarding proposals for reform of the Copyright Office, the qualifications and criteria for selection of the Register of Copyright, and the priorities of the Register and her Office.

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1 "With the release of this document, the Committee requests written comments from interested stakeholders by January 31, 2017. These comments will be shared with members of the House Judiciary Committee as they come in and the Committee intends to make comments publicly available after the comment period closes." Goodlatte & Conyers Release First Policy Proposal of Copyright Review, Press Release, December 8, 2016, <<https://judiciary.house.gov/press-release/goodlatte-conyers-release-first-policy-proposal-copyright-review/>>

2 "Beginning today, December 16, an online survey is open to the public. The survey will be posted through January 31, 2017. Input will be reviewed and inform development of knowledge, skills, and abilities for fulfilling the Register position." Librarian of Congress Seeks Input on Register of Copyrights, U.S. Copyright Office NewsNet No. 648, December 16, 2016, <<https://www.copyright.gov/newsnet/2016/648.html>>

Copyright and the Copyright Office exist "To promote the Progress of ... useful Arts, by securing for limited Times to Authors... the exclusive Right to their respective Writings."<sup>3</sup>

These interests – those of the public and of authors – should be paramount.

Publishers, printers, distributors, retailers, Web hosting providers, and other intermediaries and service providers can provide added value to the public and to creators of written work, but they are not the Constitutionally intended beneficiaries of copyright. Their role, and their entitlement to a say in copyright policy, should be recognized as subsidiary.

Self-publishing, the World Wide Web, and the commercial infrastructure of peer-to-peer distribution of written work directly from writers to readers make the use of third-party publishers and other intermediaries and service providers a business choice for writers, rather than a necessity. That business choice of business models and distribution methods and channels should be left to freelance writers to make as self-employed small business women and men, not enforced on us by Congress or the Copyright Office through laws, regulations, or practices which guarantee or entrench the position of publishers or other intermediaries or third parties.

The key question in assessing copyright law and regulations, the structure of the Copyright Office, and the selection of the Register of Copyright should be whether those policy and personnel decisions serve the interests of the public and of creators.

Writers, readers, and the relationship between us should be at the center of that inquiry.

With that in mind, the key criteria for selecting the Register of Copyright should be her ability and commitment to serve the interests of the reading public and the creative community, and her independence from other influences outside the Constitutional purposes of copyright.

Similarly, whether the Copyright Office remains within the Library of Congress (with recognition of its obligations as, in part, a regulatory, rulemaking, and administrative agency), or whether it is made an independent agency, its structure and procedures need to ensure that its policies and practices are based on understanding of, and engagement with, readers and creators and the organizations that represent them.

These are the groups that should be represented in any search committee for a new Register of Copyright or any committees created to advise the Register and the Copyright Office. These are also the groups that should be represented in hearings held by the Judiciary Committee to assess any legislative proposals for copyright or Copyright Office reform.

We have attached the short list of priorities for copyright reform which was adopted by the highest decision-making body of the National Writers Union, our triennial Delegate Assembly, in August 2013, and which we have previously provided to the Judiciary Committee.

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3 U.S. Constitution, Article I, Section 8.

We welcome the inclusion of a more accessible and affordable procedure for small copyright claims in the first policy proposal by the Chair and Ranking Member of the Judiciary Committee. But infringers – including large, sophisticated, deep-pocketed publisher-infringers who exploit rights beyond the scope or term of those they have been assigned by writers – will be able to opt out of the small claims process and insist that their victims make a Federal court case out of any infringement claim. Such an optional small claims process won't be sufficient to create an effective remedy against infringement for most writers, who currently have none.

Some of the most important copyright reform issues for working writers and related sections of the Copyright Act (including issues related to Sections 411 and 412 on registration and Section 203 on reversion of rights) have not yet been addressed by the Judiciary Committee in its hearing, or by the Copyright Office in its policy studies and rulemaking.

We would welcome hearings and an opportunity to present testimony on these issues to the Committee. We would also welcome recommendations from the Copyright Office and the introduction of legislation to redress their inequities in the current Copyright Act, and rulemaking initiatives by the Copyright Office<sup>4</sup> to mitigate their harmful effects on writers.

The National Writers Union remains eager to work with the House Judiciary Committee, the Librarian of Congress, the Register of Copyright, and the Copyright Office to advance the mutual interests of writers and the reading public through the ongoing copyright reform process.

Respectfully submitted,

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Larry Goldbetter, President

Susan E. Davis, National Contract Advisor and  
Co-Chair, Book Division

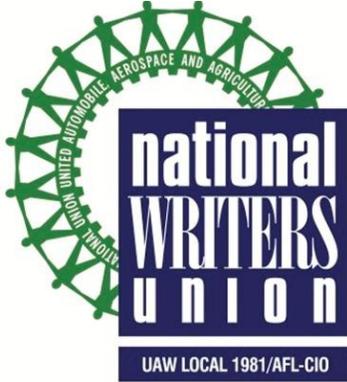
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Attachment: National Writers Union Priorities for Copyright Reform  
(Adopted by the NWU triennial Delegate Assembly, August 2013)

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<sup>4</sup> See e.g. Comments and Petition for Rulemaking by the National Writers Union, American Society of Journalists and Authors, Science Fiction and Fantasy Writers of America, Inc., and Horror Writers Association, "Group Registration of Contributions to Periodicals," January 30, 2017, Copyright Office Docket No. 2016-8.



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## National Writers Union Priorities for Copyright Reform

Reform of U.S. copyright law is long overdue, not just because of technological change, but also to rectify longstanding inequities to writers and other creators.

The key issue for the National Writers Union and other writers and creators is this: Will copyright reform help our members and other creative workers take advantage of new technologies and business models that benefit us and the reading public? Or will keeping up with technology be a pretext for changes in the law which re-allocate rights and revenues in ways that unfairly favor publishers, distributors, and intermediaries over creators?

### What We Want

**1. Elimination of 17 U.S. Code § 411 and § 412**, which require registration as a prerequisite for filing a copyright infringement lawsuit or obtaining statutory damages and attorneys' fees. These formalities are prohibited by the Berne Convention and deny creators the effective redress required by the WIPO Copyright Treaty. Repeal of these sections of the Copyright Act is essential for the U.S. to fulfill its global treaty obligations, and will encourage other countries to reciprocate by respecting U.S. copyrights. Repeal will make it easier for creators to defend their copyrights.

**2. Creation of a Copyright Small Claims Court as an accessible, effective way to defend copyrights** without having to bring costly, time-consuming lawsuits in federal court. Federal lawsuits are prohibitively expensive for most creators. As a result, we have no meaningful ability to enforce our rights. Since creators increasingly find their work has been pirated online by an unauthorized third party or their publishers have issued unauthorized digital editions of their work, creators need a less costly way to assert their rights, terminate infringements, and win fair compensation.

**3. Reform of 17 U.S. Code § 203 on the reversion of rights.** Section 203 of the Copyright Act has too many limitations and procedural obstacles to be useful to most

creators, and it cannot be invoked if an original publisher or other licensee has disappeared (an “orphan publisher”). Reversion of rights to a work’s creator should be automatic after a number of years (no more than 20) without requiring notice, registration, or other formalities. Reversion of rights held by a corporation, partnership, or other entity other than a natural person should be automatic and immediate on the dissolution of the corporation, partnership, or entity, unless notice of a successor is recorded with the Copyright Office beforehand.

## What We Don’t Want

### **1. No statutory license or exception to copyright for so-called orphan works.**

An orphan work is one whose rights holders have not been identified or located. All orphan works proposals to date would inevitably categorize as orphans many works that are being actively exploited by their creators and other rights holders because important ways that works are currently used and sold do not specify the rights holders. In effect, these orphan works' proposals would confiscate rights to these works and undermine their creators' livelihoods. They would also interfere with normal exploitation of the works and impose *de facto* formalities in violation of the Berne Convention.

### **2. No statutory, default, or extended collective licensing for digital distribution.**

Digital distribution, including through mass digitization, should continue to require permission from each copyright holder on an opt-in, not opt-out basis. Opt-out schemes are promoted as a means to build libraries’ digital collections, but they also function as statutory usurpation of copyright. We support expansion of digital libraries through increasing their acquisition budgets, not through expropriation of creators’ rights.

**3. No increased formalities for rights holders.** Mandatory registration already imposes an improper burden on the time and budgets of copyright holders, and it is a clear violation of the Berne Convention and other treaties. Under current procedures, it’s nearly impossible to register many types of works in a timely, inexpensive way, especially works published online. Registration procedures necessarily embody technological and business-process assumptions that are slow to adapt to change and therefore serve as a barrier to new publishing and distribution models. Current registration requirements should be repealed and no additional formalities should be added.

**4. No privatization of copyright registration functions.** Only a public body such as the Copyright Office can assure all rights holders of fair treatment and due process. In all likelihood, copyright registries would be dominated by and vulnerable to capture and control by large companies – mainly publishers and distributors – that would favor publisher-centric business models and assumptions over new media and self-publishing models to the detriment of creators and the public alike.