



January 30, 2017

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

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

Dear Chairman Goodlatte and Ranking Member Conyers:

Re:Create is a coalition founded in 2015 to engage policymakers and the public by starting a conversation on the positive impact the internet has had on creativity and innovation over the last 25 years. Collectively, the members of Re:Create operate over 100,000 libraries visited by the public 1.5 billion times per year; fight censorship by repressive regimes globally; provide platforms that enable lawful music and video content to reach a global audience; create new and interesting literary and visual works; invest in new startups and entrepreneurs; and generate billions of dollars in revenue for the motion picture, recording, publishing and other content industries. While our individual organizations may have diverse views on specific issues, we are united in our overarching respect for copyright and concern for its future.

Our members are the American Library Association, Association of Research Libraries, Center for Democracy & Technology, Computer and Communications Industry Association, Consumer Technology Association, Electronic Frontier Foundation, Engine, FreedomWorks, Harry Potter Alliance, New America's Open Technology Institute, Organization for Transformative Works, Public Knowledge, and R Street Institute. Most of them are individually or jointly submitting responses and we refer you to their responses. We are also filing this response on behalf of the coalition as a group.

Thank you for having an open door to us and our members. Users of copyrighted works have always been important stakeholders at the Copyright Office. While internet and technology companies have become important stakeholders over the last 20 years, the Copyright Office has sometimes been slow to adapt to and understand the important role that they now play as a facilitator of creativity and culture in society, as well as an engine for economic expansion and employment. Copyright law generally, and the Copyright Office specifically, have a large

influence on users and the technology industry and it is important that both groups are treated as valued stakeholders in the process.

In order for the process to move forward, we want to note the interesting jurisdictional aspects of oversight of the Copyright Office. The Judiciary Committee will play an important role in this process because of its jurisdiction over copyright law. The House Administration Committee also will play a role because of its jurisdiction over the Library of Congress and thus the Copyright Office. Finally, the Appropriations Subcommittee of the Legislative Branch, which has jurisdiction over appropriating funds to the Library generally and Copyright Office specifically, will also play an important part. It is important that the leadership of these three committees work together to move any plan forward and we look forward to working with all of you on this.

We are strong supporters of a needed and overdue modernization of the Copyright Office to meet the needs of today's digital environment. As you have proposed, the Copyright Office should maintain an up-to-date digital, searchable database of all copyrighted works and associated copyright information. We also concur with the ideas that the Copyright Office should constitute Advisory Committees so that it can more quickly receive information concerning marketplace changes, as well as add the positions of Chief Economist and Chief Technologist.

However, giving more autonomy to the Copyright Office is not the right solution to the Office's problems. There are many reasons that the Copyright Office has struggled to keep up with the technological demands of the digital era, including lack of resources and technical expertise. It is also due to lack of proper stewardship at both the Copyright Office and Library as a whole. But independence will not solve those problems. In fact, it may create more problems and delays as it is forced to organize under a new order. Rather, we would recommend that Congress appropriate the necessary resources to the Office and both partner with and exercise oversight over the Librarian and Register on proper implementation of a modernization plan.

Additionally, the challenge of Library stewardship of the Office should largely be remedied by the recent change in leadership at the Library. Dr. Carla Hayden, the new Librarian of Congress, has extensive experience in overseeing technological modernization and is very focused on making sure that the Copyright Office modernization plan moves forward. Taking her and her team's expertise and management strengths out of the room would be a huge loss to the Copyright Office at a time when it needs them.

Proper implementation of Advisory Committees to the Copyright Office is imperative. Advisory Committee structure must allow for a varied membership that includes not just members of the copyright bar and traditional creative industries and creators, but also digital-dependent creators, users, makers, libraries, technology companies and other stakeholders who are impacted by copyright. In the past, we have worked with many organizations which have created advisory committees that have specifically either prevented our members from participating or have been so skewed to one viewpoint as to be the equivalent of exclusion. This will not serve the Office or Congress, as it will lead to biased, uninformed and potentially harmful proposals and ideas. The main purpose of the Copyright Office, as with any government organization, is to serve the American people. And we are deeply concerned that the Advisory Committee process will be hijacked to serve only certain interest groups.

Additionally, if an Advisory Committee process moves forward, it is important that it is flexible to adjust to the changing needs of the Office over time. For example, just two years ago no one was discussing and thinking about questions around the copyrightability of works created by artificial intelligence. Today, that is a real issue that is quickly developing. If the Committees are unable to adjust, they will quickly become outdated and unable to serve the intentions for which they were created.

Finally, we would like to express our strong opposition to creating a small claims court at the Copyright Office. While we applaud your recognition that bad faith Section 512 notices are a problem that needs to be addressed, this is neither the right forum nor way to do it. There are legitimate Constitutional concerns about having a judicial process in the Legislative Branch that will likely tie up the Office in years of litigation, distracting from the need to modernize the Office.

As the proposal is written, only an uninformed defendant would ever submit to “voluntary” jurisdiction, causing small use of the process and, likely, allowing copyright knowledgeable industries to take advantage of average non-copyright knowledgeable Americans. Additionally, we have serious due process questions about the structure, including the appeals process and lack of access to the judicial branch on what is a judicial issue. Given these questions, the Copyright Office does not seem like an appropriate place for a small claims process.

Thank you for allowing us to submit these comments. We look forward to further collaboration on these issues.

Sincerely,

Joshua Lamel  
Executive Director  
Re:Create