

January 31, 2017

Hon. Robert Goodlatte
Chairman
House Judiciary Committee
2138 Rayburn House Office Bldg
Washington, DC 20515

Hon. John Conyers
Ranking Member
House Judiciary Committee
2426 Rayburn House Office Bldg
Washington, DC 20515

**Re: Welcoming the Judiciary Committee's Copyright Reform
Proposal**

Dear Chairman Goodlatte and Ranking Member Conyers:

The Software and Information Industry Association (SIIA) welcomes the Committee's policy proposal on copyright reform, and thanks the Committee for the opportunity to comment on its recommendations.

SIIA is the principal trade association of the software and information industries and represents over 800 companies that develop and market software and digital content for business, education, consumers, the Internet, and entertainment. SIIA's members range from start-up firms to some of the largest and most recognizable corporations in the world, and one of SIIA's primary missions is to protect their intellectual property and advocate a legal and regulatory environment that benefits the software and digital content industries. SIIA member companies are market leaders in many areas, including but by no means limited to:

- software publishing, graphics, and photo editing tools;
- corporate database and data processing software;

- financial trading and investing services, news, and commodities exchanges;
- internet search tools and cloud computing services;
- protection against software viruses and other malware; and
- education software and online education services.

Our members depend on the copyright law for the success of their businesses, and the “engine of free expression”¹ that the copyright law represents has generally functioned well. Its provisions have helped fuel advances in all kinds of fields. Overall, we believe that the statute is serving its intended substantive purpose of incentivizing creation well.

Administratively, however, the statute could use improvement. A better copyright marketplace depends on easier access to ownership information, leveraging the advances in technology that have occurred since 1976. As we have testified, the Copyright Office needs modernization and independence, and achievement of both of those goals remains an SIIA priority. We are therefore pleased and gratified that the Committee has decided to pursue Copyright Office reform, and offer the following comments on the Committee’s proposal.

The Configuration of a Modern Copyright Office

As the Committee is aware, the Copyright Office resides in the Library of Congress because of historical accident, not conscious policy choice. SIIA fully supports giving the Copyright Office greater autonomy through statutory change. Those changes should ensure both the Copyright Office’s policy

¹ Harper & Row v. The Nation, 471 U.S. 539, 558 (1985). *See also* Eldred v. Ashcroft, 537 U.S. 186, 212 n.18 (“copyright law celebrates the profit motive, recognizing that the incentive to profit from the exploitation of copyrights will redound to the public benefit by resulting in the proliferation of knowledge.... The two ends are not mutually exclusive; copyright law serves public ends by providing individuals with an incentive to pursue private ones.”) (internal citation and quotation omitted).

independence—including its long-standing role as a source of unfiltered expertise to the legislative branch—and its ability to make independent decisions about staffing, budget, information technology, and operations.

Section 701 of title 17 charges the Register with providing Congress with impartial expertise on copyright policy matters. As the copyright industries have contributed more and more to the U.S. economy, maintenance of that channel of communication is of increased importance. Accordingly, SIIA welcomes the Committee's suggestion that the head of the Copyright Office should be a presidential appointee confirmed by the Senate.

SIIA similarly agrees with the proposal's suggestion that any new legislation create a commission consisting of the Speaker, the president pro tempore of the Senate, the majority and minority leaders of each congressional body, and the Chairman and Ranking members of each body's Judiciary Committee.² Given the role of Congress in selecting the head of the Copyright Office and the status of the Office as a legislative advisor, the head of the Office should be removable for cause. We support the head of the Office serving in ten-year renewable terms, along the same lines as those set forth in the recent legislation dealing with the Librarian of Congress.

We support the Committee's recommendation that the Copyright Office should have its own IT system, and implement the modernization plan that it published. To this end, the Copyright Office should not be required to use the Library's future data center. In our view, the Office's IT plan both better serves its needs for efficiency, and does not require the Copyright Office's users to subsidize the Library's IT systems. That said, we do recognize that the library will have continued need of deposits for its collections, and reform legislation should enable the library to continue to collect them. Given the importance of copyrighted works to the digital

² *Cf.* 31 U.S.C. § 703 (GAO Comptroller General).

economy, SIIA similarly supports the establishment of Chief Economist and Technologist positions.

That said, we are concerned about some of the proposal's suggestions regarding fees. The proposal suggests that the Copyright Office ought to be able to charge additional fees if a copyright owner wishes to add additional metadata to the contents of the Office's not-yet-constructed database.

We urge the Committee to proceed carefully in this area. First, it is important that whatever legislation the Committee chooses to advance not undercut the private sector's incentive to develop services that both enhance what the Copyright Office does and makes registration information available and useful in different contexts. Registration information bears a rough resemblance to real estate records at a county clerk's office. SIIA members lawfully acquire that information and add value to it, sometimes integrating additional information, rendering the registration data more useful and accessible in a number of different contexts.

Second, it is also important that the registration system not become further complicated or burdensome to use. Many of SIIA's smaller publishing members already forego registration unless necessary for litigation due to its complexity and expense. It would be unfortunate, in our view, if the Committee's reform proposal – for example, by adding fees or expanding the information required to register – inadvertently exacerbated these hurdles.

That said, the Copyright Office should be given some discretion to set flexible fee schedules and balance the goals of funding the Office and encouraging the registration system's use. In addition, it would be useful for the Office to be able to maintain a reserve fund to deal with changing circumstances such as government shutdowns, or varying fee receipts.


Small Claims

SIIA has no position on the creation of a small claims court. If the Committee elects to create one, however, it should ensure

that the court is structured to provide a streamlined, efficient and cost-effective dispute resolution under existing law while discouraging nuisance or frivolous litigation.

Thank you for considering our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher A. Mohr". The signature is written in a cursive style with a large, stylized initial "C".

Christopher Mohr

Vice President of Intellectual Property and
General Counsel

Software & Information Industry Association

Cc: Rep. Jim Sensenbrenner, Rep. Jerry Nadler,
Rep. Lamar Smith, Rep. Zoe Lofgren, Rep. Steve Chabot,
Rep. Sheila Jackson Lee, Rep. Darrell Issa, Rep. Steve Cohen,
Rep. Steve King, Rep. Hank Johnson Jr., Rep. Trent Franks,
Rep. Judy Chu, Rep. Louie Gohmert, Rep. Ted Deutch,
Rep. Jim Jordan, Rep. Luis Gutierrez, Rep. Ted Poe,
Rep. Karen Bass, Rep. Jason Chaffetz, Rep. Cedric Richmond,
Rep. Tom Marino, Rep. Hakeem Jeffries, Rep. Trey Gowdy,
Rep. David Cicilline, Rep. Raúl Labrador, Rep. Eric Swalwell,
Rep. Blake Farenthold, Rep. Ted Lieu, Rep. Doug Collins,
Rep. Jamie Raskin, Rep. Ron DeSantis, Rep. Pamala Jayapal,
Rep. Ken Buck, Rep. John Ratcliffe, Rep. Mike Bishop,
Rep. Martha Roby, Rep. Matt Gaetz, Rep. Mike Johnson,
Rep. Andy Biggs