

U.S. Chamber of Commerce Comments to the House Judiciary Committee On Proposed Reform of the U.S. Copyright Office

The Global Intellectual Property Center of the U.S. Chamber of Commerce appreciates the Committee's leadership and thoughtful consideration through the copyright review process. The Chamber supports your efforts and desires to maintain the copyright system as an engine of economic growth and creativity. In particular, we support your choice to prioritize restructuring the Copyright Office to allow it to modernize its systems and preserve its historic policy independence, so that it can better serve consumers, the businesses that produce and distribute valuable copyrighted works, and you and your colleagues in Congress.

The U.S. Chamber of Commerce is the world's largest business organization, representing the interests of more than 3 million businesses of all sizes, sectors, and regions. Our members range from mom-and-pop shops and local chambers to leading industry associations and large corporations.

The Global Intellectual Property Center (GIPC) was established in 2007 as an affiliate of the U.S. Chamber of Commerce. Today, the GIPC is leading a worldwide effort to champion intellectual property rights and safeguard U.S. leadership in cutting-edge technologies as vital to creating jobs, saving lives, advancing global economic growth, and generating breakthrough solutions to global challenges.

The Chamber is encouraged by the emergence of restructuring the Copyright Office as the keystone of the copyright review process. The current limitations on the utility of the registration and recordation databases underserve the public, as the Copyright Office itself has acknowledged.¹

¹ *Report and Recommendations of the Technical Upgrades Special Project Team*, Office of the Chief Information Officer, U.S. Copyright Office (Feb. 2015)(available at <https://www.copyright.gov/technology-reports/reports/usco-technicalupgrades.pdf>).

A modern, fully functional Copyright Office would provide benefits to businesses and consumers, alike. The potential for more fulsome data sets in the registration database, making the recordation system electronic and interoperable with the registration database, and interoperability with external private sector right holder databases all would decrease friction and transaction costs in the marketplace. This would facilitate greater licensing of copyrighted works, increasing income to creators and publishers, facilitating new legal online services, which in turn benefit consumers by giving them even more options for their favorite entertainment and software products.

Further, the nimble IT plan put forth by the Copyright Office can reasonably be expected to offer greater data security and lower long-term costs than continuing to migrate from one fixed proprietary system to another, constantly a step behind contemporary technology. It provides improved services for lower costs, both to users of the Office and taxpayers, generally. Copyright Office modernization, properly implemented, is a win for everyone.

The placement of the Copyright Office within the Library of Congress is essentially an accident of history, driven by the desire of the Library in the 19th Century to be able to take copies of works submitted for copyright registration and add them to the Library's collection at no cost to the Library. This design is intended to serve the interests of the Library, but not the interests of the Copyright Office or its customers. That attitude permeates the relationship still today, producing real operational limitations on the Copyright Office that inhibit it from serving the public to its best utility.

Congress created a position of Register of Copyrights to lead the Copyright Office and administer the copyright system, but the limitations that result from the Copyright Office being organized within and subordinate to the Library of Congress do not provide the Register with the flexibility or authority to fulfill that mission. All Copyright Office internal operations such as IT and HR are dependent on the

approval of the Library of Congress, and the Register cannot issue rule makings or regulations, the Librarian of Congress does.

As a practical matter, the Copyright Office has a fundamentally different objective from that of the Librarian, whose primary mission is to run the national library. The Register is the source of copyright expertise; in copyright litigation, courts and litigants cite to the views of the “Copyright Office” or the “Register,” not to the Librarian. The Copyright Office, its customers, and the nation as a whole would be better served if the Office was able to operate autonomously from the Library. The Register of Copyrights, the head of the Copyright Office and a position grounded in copyright expertise, should be appointed by the President and confirmed by the Senate.

If Congress were creating the Copyright Office for the first time today, there could be no certainty that it should be housed in the Library of Congress. The Chamber does not have a specific recommendation on where the office should be housed, only that it have the necessary operational autonomy to better perform its mission and meet the needs of its customers. As previously noted, the Copyright Office was established within the Library of Congress in order to allow the Library to expand its holdings from the copyright registration system’s deposit requirements. Although at one time it may have made sense to place the Office within the Library to facilitate that, modern technology allows the Copyright Office to operate autonomously from the Library and still make deposit copies available for the Library’s collection. The Chamber also supports the creation of advisory committees to advise the Register on the business operations of the Copyright Office and supplement Congressional oversight.

The information technology problems of the Library and their negative effects on the Copyright Office have been well documented.² The Chamber considers IT modernization directly related to and one of the key benefits of restructuring. As the Committee noted, the Copyright Office has already consulted with the public and released an impressive IT modernization plan. The costs for the implementation of this plan by the Copyright Office, and for new services offered once it is implemented, should be spread fairly among taxpayers and the users of various Copyright Office services. Users of the Copyright Office should not be charged increased fees for implementation of a lesser plan or implementation overseen by the Library instead of the Copyright Office.

Conclusion

Observing the current realities, every living former Register of Copyrights, Ralph Oman, Marybeth Peters, and Maria Pallante, has directly advocated to you that the Copyright Office be restructured. The Chamber of Commerce agrees that the structural tensions between the Copyright Office and the Librarian of Congress inhibit the Copyright Office from serving its customers at its best. This, in turn, impedes the flexibility and agility that the Copyright Office requires to operate effectively in the twenty-first century. The Chamber appreciates your attention to this issue and this opportunity to provide our comments. We urge the Committee to enact the legislative change needed expeditiously and stand ready to assist the Committee in that effort.

² *“Library of Congress: Strong Leadership Needed to Address Serious Information Technology Management Weaknesses,”* United States Government Accountability Office Report to Congressional Committees (March 2015)(available at: <http://www.gao.gov/assets/670/669367.pdf>). Sadly, nearly two year since the issuance of this report, it is not clear that *any* of the dozens of recommendations have been fully implemented.