



THE LIBRARIAN OF CONGRESS

April 23, 2015

Dear Mr. Chairman:

My colleagues and I at the Library of Congress have taken a great interest in the hearing held by the House Judiciary Committee on February 26, 2015, *The U.S. Copyright Office: Its Functions and Resources*, and its antecedent, *Oversight of the U.S. Copyright Office*, held by the Subcommittee on Courts, Intellectual Property and the Internet on September 18, 2014. The Library applauds the Judiciary Committee's examination of the issues in updating the copyright law for the 21<sup>st</sup> century as Congress works to strike the right balance between the rights of authors and users in this era of ever-changing technology, when the economic, social, and intellectual value of copyrighted works is so significant to America and the world.

Ensuring a Copyright Office for the 21<sup>st</sup> century and beyond is a shared goal of the Committee, the Copyright Office, the Library of Congress, and mine personally. A strong, balanced, comprehensible and respected copyright system is vital to American culture and commerce in general. In particular, the Library agrees that the current copyright law is outdated, and there are serious legal and practical issues that Congress needs to resolve. Accordingly, I respectfully share these comments with the Committee and ask that my letter be included in the official record for the House Judiciary Committee hearing of April 29, 2015.

As the Act is updated, the Library wants to be sure that the concept of building and preserving a "national collection" for the benefit of the American people is not lost. Maintaining the mint record of American creativity is a commitment that the Congress, the patron of the national collection, and the Library, its steward, have made to current and future generations of Americans.

As the home of the Copyright Office, the Library of Congress has been steadfast in abiding by copyright law, and supporting the needs of the Copyright Office. As you know, copyright activities have been part of the Library of Congress for 145 years, since 1870. The issue of severing the Copyright Office from the Library has recurred periodically during my tenure as Librarian of Congress. As Congress considers how best to achieve a Copyright Office for the 21<sup>st</sup> century, I respectfully request that it be equally mindful of the needs of the American people for a truly

comprehensive national library, as well as the needs of the Copyright Office and the universe of interests served by copyright.

In the Library's 215-year history, nothing has been more important to the building of an American national collection than Congress' idealistic and practical decision to place the copyright function within—and direct that copyright deposits be sent to—the Library of Congress. The visionary who successfully made this case to Congress, Librarian of Congress Ainsworth Rand Spofford, wrote to Representative Thomas A. Jenckes of Rhode Island outlining his arguments favoring the centralization of all copyright activities at the Library:

*"The advantage of securing to our only National Library a complete collection of all American copyright entries can scarcely be over-estimated .... We should have one comprehensive Library in the country, and that belonging to the nation, whose aim it should be to preserve the books which other libraries have not the room [for] nor the means to procure."*

Within a decade of the enactment of the 1870 Act, the Library of Congress had tripled in size and risen to the top rank of American libraries, becoming for the first time a truly national library collection. It is fair to say that requiring deposits be sent to the Library for its use protected the right of the public to access these works, just as deposit for copyright record protected the author's ownership rights. We believe the public's continued access to these items must not fall by the wayside as Congress considers the placement of the Copyright Office. We therefore ask that the Library's commitment to the Congress, the American public and the world's researchers be kept: that the intellectual and creative output of our nation's citizens be part of a comprehensive national collection, to be systematically acquired, organized, and preserved so that Congress and the public will continue to be able to read, learn from, and build upon the full range of copyright creativity into the 22<sup>nd</sup> century and beyond.

There have been a number of rationales laid out to support the re-creation of the Copyright Office as a separate, independent unit of government, several of them posited as ways to remedy shortcomings of the current arrangement within the Library. As you deliberate on the best path forward, the Library would like to actively participate in the conversation. A few of the points we would like to present in further detail follow.

It has been asserted to the Committee that the Library of Congress, "like other libraries, often takes positions on policy matters that are the subject of the Office's

studies and rulemaking proceedings.” As a matter of fact, the Library, as the home of the Copyright Office, recognizes that the Office is the locus of national copyright policy, and my office avoids taking positions unless Congress has asked me to, or unless the Library, as the home of the National Collection, is one of many entities submitting written comments for the record of a rulemaking proceeding or public inquiry. For example, last year Gregory Lukow, Chief of the Library’s Packard Campus for Audio Visual Conservation, testified on copyright reform at the Committee’s invitation.

At the 2014 oversight hearing of the Copyright Office, Register Pallante was asked whether interference from the Librarian in matters involving copyright policy has been an issue. She briefly described the clear distinction in rulemaking at the Library level and the Copyright level, and noted “there could potentially be a conflict in the future. We haven’t had that, really, to date.” The Librarian’s review of Copyright Office regulations is quite limited, with considerable deference to the Copyright Office. Moreover, when the Copyright Office has testified before this Committee and submitted studies to inform the legislative process, it has done so without additional review by the Library.

It was in 1897, when the Library was preparing for its move into new quarters separate from the Capitol, that a separate Copyright Office was established and the first Register of Copyrights was appointed. I believe the record demonstrates that Librarians of Congress have appointed Registers of Copyright whose expertise in copyright law and processes are unparalleled, and Congress has continued to rely on that expert advice. The appointment of the Librarian of Congress has, for two centuries, been largely immune from the injection of politics and, as a result, the appointment of the Register by the Librarian has been based on clear merit.

An issue that has been raised by the Register, some Members of the Committee and testifying witnesses, is purported confusion arising from placement of the Copyright Office within a legislative branch agency. For 145 years, all three branches of government have comfortably accepted this statutory placement of the Copyright Office. The D.C. Circuit was recently presented with a constitutional challenge to the placement, in the context of a royalty determination by the Copyright Royalty Judges (CRJs), appointed by the Librarian of Congress. Litigants argued that the Librarian’s appointment of the CRJs violated the “Appointments Clause” of Article II of the Constitution. After reviewing the laws and history, the court severed statutory language (the “good cause” removal provision), removing any further issue under the Appointments Clause and ensuring that the CRJs serve at the pleasure of a Presidential appointee who is effectively the “head of a department.” A petition for Supreme Court review of the D.C. Circuit’s decision was denied by the Court, without comment.

Another issue raised in the course of the Committee's discussion about the Copyright Office is budget autonomy. Currently, the Copyright Office, like the Congressional Research Service, is a separate appropriation, distinct from the general Library of Congress Salaries and Expenses appropriation. The Office is funded via appropriations and fees it collects, and thus is shielded from having to use fees to cover 100 percent of expenses. Unlike for patents and trademarks, copyright registration is not a prerequisite to enjoying basic copyright protection and, when setting fees, the Copyright Office is mindful not to create disincentives to registration. Several commenters have noted that it would be helpful to provide the Copyright Office with more flexibility in setting fees; the Library would have no objection and, in fact, has discussed with the Copyright Office ways to better ensure an adequate reserve of funds—from Copyright Office revenues—that could be used for major information technology upgrades and other capital improvements.

Copyright Office receipts are deposited in the U.S. Treasury and managed by the Copyright Office. The Library plays an oversight role only. For example, the Library provides advice and assistance in assuring Copyright financial transactions are in conformance with Congressional directives, obligational authority limitations, and applicable laws. The Copyright Office's funding is separate from all other funds of the Library, and Copyright has full autonomy regarding how to use its funds—appropriations and fees—to fulfill its mission.

The appropriation bill for the legislative branch authorizes the Copyright Office to obligate both its appropriated funds and fee revenues. The Library's senior management, which includes the Copyright Register, reviews the overall budget justification each year in light of the Library's strategic priorities and the current budget climate. During fiscal years 2000-2007, the Copyright Office designed, developed and implemented two major projects. The first was a Business Process Reengineering project, a top-to-bottom overhaul of Copyright Office work areas designed to optimize efficiency by aligning the Office's various processing units with newly reengineered workflows. The second project was the establishment of a web-based electronic Copyright Office registration system upgrade, which was the cornerstone of the entire re-engineering process. Both were fully supported by the Library throughout the appropriations process.

The longstanding placement of the Copyright Office in the Library affords significant additional synergies, economies, and public benefits even beyond the additions of copyright deposits in the national collections. The Copyright Office staff occupies customized office space and uses the Library's equipment. The Library

provides secure storage space for deposits and records and substantial infrastructure support including police and security, finance, human resources, contracts and grants, information technology, office systems and web services support, as well as the services of an Inspector General. The Library is able to provide support in other ways; for example, in 2010 fifty Library staff were detailed to the Copyright Office over the course of several months to help process a significant backlog of copyright claims. Placement of the Copyright Office in the Library also means receipt of the timely and relatively seamless additions to Library collections without incurring additional transportation costs; copyright records that the Library considers a significant joint asset; the proximity to deposits, which enables cooperative efforts such as cataloging and metadata development; and opportunities to conduct joint policy studies, such as the one on library preservation under sec. 108 of the Copyright Act of 1976.

Information technology infrastructure is certainly an area where the Copyright Office and the Library can work together to better ensure that the Office's information technology is best configured to meet customer needs and internal operations. The Library is working with GAO to implement recommendations in recent audit reports about Library-wide information technology priorities and services.

Regardless of the final physical and organizational disposition of the Copyright Office, the practice and tradition of copyright deposit—and its update to meet the needs of the digital era—must be maintained at the Library of Congress in order for this institution to continue to be a comprehensive and world-class collection of global knowledge, and a complete record of the intellectual creativity of the American people.

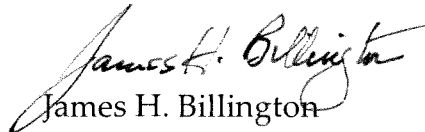
As Congress examines all the options to determine the proper organizational structure for the Copyright Office, I request that you consult with the Library on measures that would need to be taken to ensure no harm to or gaps in the national collection. These, at the very least, would include the following:

- Strengthened mandatory deposit, including for born-digital works;
- Process and authority for demand deposit, with copyright-related sanctions;
- Funding and staffing to separately manage at both the Copyright end and the Library end functions that are now shared or combined, between the Library and the Copyright Office, such as demand deposit, transfer of deposit copies, and recordkeeping;
- Efficient shared access to descriptive metadata of works;

- Library rulemaking authority on “best edition” for purposes of collecting and preserving items in the formats needed for future access, i.e., non-encrypted works in appropriate preservation media.

I would be happy to provide additional detail on all these points as you continue to explore these issues. Thank you for your extensive work on developing a Copyright Act that will serve the nation’s creators and the public well into the future.

Sincerely,

  
James H. Billington  
The Librarian of Congress

The Honorable Robert W. Goodlatte  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
2138 Rayburn House Office Building  
Washington, DC 20515

cc: The Honorable John Conyers, Jr.  
Ranking Member  
Committee on the Judiciary  
U.S. House of Representatives  
2426 Rayburn House Office Building  
Washington, DC 20515

cc: Ms. Maria Pallante  
The Register of Copyrights  
United States Copyright Office  
101 Independence Avenue, S.E.  
Washington, DC 20559-6000



Good Morning,

As the 114<sup>th</sup> Congress continues its review of copyright law, the Copyright Alliance and CreativeFuture are proud to join forces in sharing letters with Congress affirming core copyright principles held by the creative community. Signed by over 300 members of CreativeFuture and over 1,100 members of the Copyright Alliance, the letters express broad support among creatives for a strong copyright system. Signers include members of the film and television, book publishing and music communities, leaders of creative unions and guilds, photographers, graphic designers, authors, musicians and more.

You can access the Copyright Alliance letter [here](#), and the CreativeFuture letter [here](#).

Speaking for creatives, these letters articulate the complementary relationship between a strong copyright system, free expression, creativity, innovation, and technology. The signers affirm:

- We embrace the internet as a powerful democratizing force for our world and for creative industries.
- We embrace a strong copyright system that rewards creativity and promotes a healthy creative economy.
- We proudly assert that copyright promotes and protects free speech.
- Copyright should protect creatives from those who would use the internet to undermine creativity.
- Creatives must be part of the conversation and stand up for creativity.

The letters conclude by stating:

There is no “left” or “right” when it comes to respecting copyright. The creative community stands united in support of a copyright system that has made and continues to make the United States the global leader in the creative arts and the global paradigm for free expression. Our copyright system is not perfect but, like democracy, it is better than the alternatives. It works. We urge Congress to resist attempts to erode the right of creatives to determine when and how they share their works in the global marketplace.

We thank you for the opportunity to share the views of the creative community.

Sincerely,

**Ruth Vitale**  
Executive Director  
CreativeFuture

**Sandra Aistars**  
Chief Executive Officer  
Copyright Alliance

May 14, 2015

The Honorable Bob Goodlatte  
Chairman  
2309 Rayburn House Office Building  
Washington, DC 20515

The Honorable John Conyers  
Ranking Member  
2426 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Goodlatte and Ranking Member Conyers:

The Fairness in Music Licensing Coalition (the “Coalition”) respectfully submits this letter to the Committee in reference to the Hearing on the Register’s Perspective on Copyright Review on April 29<sup>th</sup>, 2015.

The Coalition was founded earlier this year by small independent businesses in the hospitality industry. We currently have over 3,000 members. In particular, the Coalition advocates on behalf of small businesses that are impacted by opaque music licensing fees and heavy handed collection practices by performance rights organizations (“PROs”). Our goals are to simplify, modernize and clarify the public performance right in the Copyright Act and expand the small business exemption in section 110(5) of the Act. We want to make sure that when music users pay music licensing fees then they know what they are buying.

Our members are concerned about how they are treated by PROs like ASCAP, BMI and SESAC. Each year, PROs provide our members with a "take-it-or-leave-it" proposition: pay higher music licensing fees for the music played in their establishments or face costly litigation. They are given a form to fill out and told to return it with payment. If a business owner attempts to opt-out of paying the PRO’s fees, then that business becomes the target of a PRO’s covert operatives who relentlessly attempt to collect evidence of a small handful of “copyright infringement” incidents in that establishment. These “infringement” incidents are later used as evidence during litigation, which tend to result in default judgements in the order of tens of thousands of dollars. We have been told by our members that PROs are ruthless in their litigation tactics, most likely to deter anyone from challenging the music licensing fees they seek to collect.

In an attempt to determine how much money PROs spend in covertly monitoring and suing small businesses, the Coalition tried to analyze annual financial reports from ASCAP and BMI. Interestingly, we learned that neither ASCAP nor BMI have tax-exempt status from the Internal Revenue Service (“IRS”). While both ASCAP and BMI emphasize the fact that they are “not-for-profit” organizations, they are shielded from disclosing how they operate internally. We find this to be an opaque way of servicing both music creators and music users.



We ask Congress to consider revising the public performance right in the Copyright Act so that our members are not subject to the high pressure tactics used by PROs. We also ask that the Copyright Office investigate how PROs collect their fees from small businesses and analyze whether these tactics are part of the spirit of our Copyright Act.

We appreciate the opportunity to submit this comment on behalf of our members and look forward to working with Congress in making our copyright system more efficient and equitable.

Sincerely,

A handwritten signature in black ink, appearing to read "RSH" followed by a long horizontal flourish.

Rick Swindelhurst  
President  
Fairness in Music Licensing Coalition



April 29, 2015

The Honorable Bob Goodlatte  
Chairman  
House Judiciary Committee  
2138 Rayburn House Office Building  
Washington, DC 20515

The Honorable John Conyers, Jr.  
Ranking Member  
House Judiciary Committee  
2138 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Goodlatte and Ranking Member Conyers:

The Internet Association respectfully requests that this letter be submitted to the record for the committee's hearing entitled "The Register's Perspective on Copyright Review." Our association represents the interests of leading global Internet companies.<sup>1</sup> We are dedicated to advancing public policy solutions to strengthen and protect Internet freedom, foster innovation and economic growth, and empower users.

The purpose of this letter is to discuss our association's position on key domestic issues discussed during Chairman Goodlatte's comprehensive review of the U.S copyright system. As such, our association urges your committee to take these positions into careful consideration.

**I. The Internet Association's Assessment of the House Judiciary Committee Comprehensive Copyright Review**

During the 113th Congress, Chairman Goodlatte launched a comprehensive review of the U.S. copyright regime. To a large extent, the Internet's rapid growth and development served as the impetus behind this review.<sup>2</sup> The Internet Association has actively engaged in and monitored the committee's review process.

---

<sup>1</sup> The Internet Association's membership includes: Airbnb, Amazon, AOL, Auction.com, Coinbase, eBay, Etsy, Expedia, Facebook, FanDuel, Gilt, Google, Groupon, IAC, Intuit, LinkedIn, Lyft, Monster Worldwide, Netflix, Pandora, Pinterest, Practice Fusion, Rackspace, reddit, Salesforce.com, Sidecar, Snapchat, SurveyMonkey, TripAdvisor, Twitter, Uber Technologies, Inc., Yelp, Yahoo!, and Zynga.

<sup>2</sup> Press Release, Chairman Goodlatte Announces Comprehensive Review of Copyright Law (Apr. 24, 2013), *available at* <http://judiciary.house.gov/index.cfm/2013/4/chairmangoodlatteannouncescomprehensivereviewofcopyrightlaw>.



The Internet Association draws three core conclusions from the committee's review process:

- Existing U.S. copyright law and policy has adapted well to the Internet era. It strikes an appropriate balance between strong protections and clear limitations and exceptions such as fair use, the first sale doctrine, and the Digital Millennium Copyright Act (DMCA), which do not undermine the copyright owner's ability to exploit and benefit from their own creations. The flexibility inherent in the U.S. system allows for innovation in the marketplace, both for content creators and others, consistent with the Constitution's goal for copyright.
- In contrast, the Copyright Office has not adapted to the Internet era. Modernization of the Copyright Office should occur prior to any legislative efforts.
- Lastly, if legislative efforts are pursued following the comprehensive review, the committee should prioritize statutory damages and music licensing.

## **A. The U.S. copyright system works well and achieves its intended goals.**

History shows that with the introduction of new technologies, policymakers and regulators evaluate the technologies' impact on existing legal frameworks and consider whether revisions should be made to the law. Beginning in the 1990's, the Internet, like any new disruptive technology, created opportunities but also challenged traditional business models.<sup>3</sup> However, the U.S. copyright regime has adapted well to the Internet and recognized both the importance of providing adequate protections for works while also allowing for appropriate limitations and exceptions such as fair use, the first sale doctrine, and the DMCA safe harbors.<sup>4</sup>

Today, about 3 billion Internet users worldwide access online services to engage in a number of activities, including the creation and dissemination of content. The Internet is fast becoming the most important and predominant platform for content distribution globally. In a recent IP subcommittee

---

<sup>3</sup> Rightsholders have long feared the rise new technologies, which ultimate yielded significant benefits for these creators. *See, e.g., White-Smith Music Publishing Co. v. Apollo Company*, 209 U.S. 1 (1908) (finding that player piano music rolls did not infringe the plaintiff's copyright because they are not intelligible). *See also Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417(1984) (finding the legality of VCR technology because it had substantially non-infringing uses and was frequently used for time shifting).

<sup>4</sup> The benefits offered by U.S. limitations and exceptions, particularly fair use, are not limited to Internet platforms but expand across many U.S. industries such as entertainment, media, and education. *See* Ali Sternburg, *Fairly Useful: The Many Ways Fair Use Helps Industry* (Jan. 21, 2015), available at <http://www.project-disco.org/intellectual-property/012115-fairly-useful-the-many-ways-fair-use-helps-industry/>.



hearing<sup>5</sup>, then Chairman Coble stated that, “*the benefits to America’s economy, brought about by our Nation’s copyright laws are the envy of the world. Our economy is stronger and generates more original creativity than in any other country.*”<sup>6</sup> We agree. The success of the Internet in cultivating and promoting creativity is no accident but rather is attributable to the U.S. government’s deliberate decisions regarding balanced copyright policy. Congress should continue to support these policies, both domestically and abroad, to ensure that the Internet continues to grow as a successful platform for innovation, economic growth, and free expression.

While our association believes that the comprehensive review process shows that the current U.S. copyright system generally works as intended, we acknowledge that it is not flawless. The unauthorized distribution over the Internet of digital copies of sound recordings, audiovisual works, and literary works remains a problem, but responses to that problem must be balanced and thoughtful. No one set of “players” is capable of (or should be responsible for) solving it alone. Rather, curbing this conduct requires the cooperation of many actors. In particular, Internet Service Providers (ISPs), Online Service Providers (OSPs), and copyright owners all must play a part. Section 512 of the current copyright statute, for example, does a reasonably good job of balancing the responsibilities of these parties.<sup>7</sup> Congress should be loathe to disturb significantly the sensible allocation of responsibilities that section 512 generates.

On top of this, we believe that the courts are in the best position to adapt the principles articulated by Congress under the current copyright system to changing technologies, activities, and business models and, moreover, have done that well. On several occasions courts have invalidated practices that disrupt the balance under the current copyright system.<sup>8</sup>

---

<sup>5</sup> See *Rise of Innovative Business Models: Content Delivery Methods in the Digital Age: Hearing Before the Subcommittee on Courts, Intellectual Property, and the Internet on the Committee of the Judiciary House of Representatives*, 113th Cong. 1 (2013) [hereinafter *Content Delivery Methods*].

<sup>6</sup> *Content Delivery Methods* (statement of Chairman Howard Coble, Member, H. Comm. on the Judiciary).

<sup>7</sup> The protections afforded by the Digital Millennium Copyright Act shield online service providers from monetary liability when providing the facilities that power the Internet. This balanced approach has driven tremendous innovation over the past 20 years, enabling entirely new industries to develop while also empowering creators to communicate directly with their fans without the involvement of traditional gatekeepers. In the absence of a legal regime that protects online service providers, it is highly questionable whether we would have had an explosion in new content creation, new forms of content distribution, social media that connects all of the world, and user-generated content platforms that give everyone person on the planet the ability to express themselves.

<sup>8</sup> See *MGM Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005) (invalidating peer-to-peer file sharing services because they were found to have substantial infringing uses and induced infringement); See also *American Broad. Cos. v. Aereo*, 134 S. Ct. 2498, 189 L. Ed. 2d. 476 (2014) (finding Aereo’s technology illegal because it had an “overwhelming likeness” to cable systems that Congress intended to regulate).



Rounding out this picture is the fact that Internet Association member companies have turned to free-marketplace solutions and constantly evolving industry standards and voluntary practices to tackle unlawful activity online, which have proven to be effective and workable solutions. These approaches have been driven in large part by evolving business models, as technology platforms increasingly produce original content<sup>9</sup>, content builds out its own online distribution platforms and voluntary standards<sup>10</sup> that can evolve as the technology and business models evolve.

The Internet Association believes that before the committee considers changes to copyright law, it should first consider and determine solutions that upgrade the Copyright Office (Office) for today's digital marketplace. We believe that this approach is consistent with testimony from the hearing record as well as the views of committee members.<sup>11</sup>

## **B. The Copyright Office should be modernized to meet the needs of the digital marketplace.**

Despite the incredible innovation and technological developments spurred by the Internet, the Copyright Office (Office) has lagged behind in offering services that reflect today's digital environment.

Multiple observers agree that the Office is in need of reform to meet today's demands and to better service all of its customers including rightsholders, licensees, and Internet users. According to a recent study by the U.S. Government Accountability Office (GAO), the Office experiences limitations and

---

<sup>9</sup> Free-market solutions have resulted in a substantial shift of users from unlawful, online services towards licensed platforms. Studies indicate that the introduction of legal alternatives offered by online video and music services is typically followed by dramatic reductions in online infringement by 50 and 80 percent, respectively. See Sophie Curtis, *Spotify and Netflix curb music and film piracy*, (July 8, 2013), available at

<http://www.telegraph.co.uk/technology/news/10187400/Spotify-and-Netflix-curb-music-and-film-piracy.html>.

<sup>10</sup> In addition to these marketplace developments, Internet companies engage regularly in voluntary initiatives to address online infringement. These initiatives supported by the White House Intellectual Property Enforcement Coordinator include development of best practices to withdraw payment services for websites selling counterfeit and infringing goods, as well as best practices by advertising networks to terminate advertising on websites engaged in widespread unauthorized dissemination of copyrighted works.

<sup>11</sup> During the hearing, Representative Doug Collins (R-GA) raised an important question to consider: "...what comes first, a modernization of the Copyright Office or a modernization of the Copyright Act?"<sup>11</sup> While witnesses did not directly answer this question, their statements indicate that process should come first. See *U.S. Copyright Office: Its Functions and Resources: Hearing Before the Committee on the Judiciary House of Representatives*, 114<sup>th</sup> Cong. 100-01 (2015) [hereinafter *U.S. Copyright Office Its Functions and Resources*] (statement by Rep. Doug Collins (R-GA)).



challenges in the performance and usability of its registration system.<sup>12</sup> The report also found that the Library of Congress suffers from a weak IT system, which prevents the Office from achieving its goal of supporting creative industries.<sup>13</sup> The Internet is a revolutionary platform offering its users unprecedented abilities to search and access current – *often real time* – information. Transitioning the Office’s registration and recordation systems into online services would not only yield efficiencies achieved elsewhere in the digital marketplace but also help the Office fulfill its mission of ensuring the public has appropriate notice of the copyrights in various works.

The committee’s review process also spurred debate about the Office’s structure and autonomy. Suggested solutions range from turning the Office into an independent agency<sup>14</sup> to relocating the Office within the United States Commerce Department, specifically the United States Patent and Trademark Office. While the Internet Association does not have a position on the future location of the Office, we note that at least one committee witness<sup>15</sup> has suggested that Congress authorize a study to investigate the issue in detail. We agree that this would be a useful exercise. In particular, an independent review could ensure that Congress is provided with impartial advice on this important issue.

### **C. If this Committee undertakes legislative reform, statutory damages and music licensing should be priority issues.**

As previously stated, the Internet Association does not support broad legislative reform of U.S. copyright law. However, if the committee intends to amend existing laws, our association requests that the changes be limited to the existing regimes governing statutory damages and music licensing. Our association believes the current statutory regime’s legal uncertainty in terms of the potential for enormous monetary damages being completely out of proportion to harm incurred and copyright plaintiffs’ flexibility in timing of choosing their preferred damages award during litigation discourage investment and innovation. With respect to music licensing, we believe that certain amendments to

---

<sup>12</sup> U.S. GOVERNMENT ACCOUNTABILITY OFFICE, COPYRIGHT OFFICE NEEDS TO DEVELOP PLANS THAT ADDRESS TECHNICAL AND ORGANIZATIONAL CHALLENGES 2 (2015).

<sup>13</sup> *Id.*

<sup>14</sup> Register Maria Pallante submitted a letter to House Judiciary Committee on March 23, 2015 in which she explained her belief that the U.S. copyright system would be best served if Congress established an independent copyright agency. See Letter from Register of Copyrights and Director Maria Pallante to House Judiciary Committee Ranking Member John Conyers (Mar. 23, 2015), available at <http://copyright.gov/laws/testimonies/022615-testimony-pallante.pdf>.

<sup>15</sup> See *U.S. Copyright Office Its Functions and Resources*, available at [http://judiciary.house.gov/\\_cache/files/d4ef86c4-0f36-46b5-9f22-cc94a8742a00/114-4-93529.pdf](http://judiciary.house.gov/_cache/files/d4ef86c4-0f36-46b5-9f22-cc94a8742a00/114-4-93529.pdf) at 10.



section 115 would create increased transparency, simplify a thoroughly complex ecosystem, and generate efficiencies that would benefit all stakeholders.

## **1. The current statutory damages regime is excessive and discourages investment and innovation.**

In addition to the current marketplace and Copyright Office modernization, the committee has also reviewed whether existing copyright remedies are sufficient.<sup>16</sup> Under current law (17 U.S. Code Section 504), a copyright owner may seek either actual damages or statutory damages in cases of infringement. Plaintiffs are granted flexibility to choose their preferred remedies even after the jury returns its verdict. To receive statutory damages, current law does not require a plaintiff to prove actual harm. Statutory damages range from \$750 to \$30,000 per work for infringement. While damages can be as low as \$200 for innocent infringement, damages relating to the infringement of a single work (*e.g.*, an MP3 file that retails for \$.90) may escalate to \$150,000 for willful infringement. For these reasons, the Internet Association submits the existing statutory damages scheme allows for damages, which are, in many instances, excessive.

Representative Nadler has flagged that many stakeholders believe statutory damages are “unreasonably high” and “have a chilling effect on innovation.”<sup>17</sup> We agree. Our experience shows that the uncertainty around damages liability in the current statutory regime hinders rather than promotes the development of innovative products and services. Investors’ decision-making process is partly based on their confidence (or lack thereof) in a nation’s legal and regulatory environment, particularly with regards to uncertain and potentially large damages awards. A recent study revealed that 85% of investors surveyed either agree or strongly agree that the uncertainty presented by statutory damages regime creates a sense of discomfort when investing in online intermediary platforms.<sup>18</sup> And, companies themselves are less likely to invest resources in new technology if the monetary risks appear to be too great.

---

<sup>16</sup> *Copyright Remedies: Hearing Before the Subcommittee on Courts, Intellectual Property, and the Internet on the Committee of the Judiciary House of Representatives*, 113th Cong. 7 (2014) [hereinafter *Copyright Remedies*] (statement of Representative Jerrold Nadler (D-NY)).

<sup>17</sup> *Copyright Remedies* at 7.

<sup>18</sup> MATTHEW C. LE MERLE, ET. AL., *THE IMPACT OF INTERNET REGULATION ON EARLY STAGE INVESTMENT* 5 (2015), available at <http://engine.is/wp-content/uploads/EngineFifthEraCopyrightReport.pdf>.



Amendments to the current damages regime, such as rethinking the minimum and maximum standards applied, providing “predictability of statutory damages in secondary liability cases,” and requiring plaintiffs to choose their preferred option for damages at the outset of litigation<sup>19</sup> would provide increased legal certainty, ultimately, strengthening the overall system, increasing investors’ confidence, and enriching the marketplace and consumer choice with cutting-edge technologies and new content.

## **2. The current music licensing system is complex and amendments to section 115 would promote increased transparency.**

Music-licensing issues are also critically important to several of our member companies who offer Internet radio to streaming services. The current music-licensing ecosystem remains riddled with requirements that are holdovers from an analog world. But in a digital world, this system fosters a largely ineffective complex regime that licensees find difficult to navigate. Our member companies believe that amending section 115 of the Copyright Act, which deals with compulsory licensing for the reproduction and distribution of musical works, would create a more efficient and effective licensing regime that would ultimately benefit songwriters, music publishers, and the American people.

While we disagree with many of the recommendations in the Copyright Office’s recent music-licensing report, we do support its recommendation to establish a blanket licensing system for digital services covered under Section 115 as compared to the current system that requires licensing on a work-by-work basis.

The current system lacks transparency. Presently, there is no centralized database containing information to facilitate work-by-work licensing, which encourages a duplicative licensing system and exposes licensees to the risk of massive infringement damages (as discussed above). At a recent committee hearing, Pandora’s Vice President Chris Harrison highlighted the current opaque system perfectly when he walked committee members through the inconsistencies between the ASCAP and Universal Music Publishing databases.<sup>20</sup>

---

<sup>19</sup> See *Copyright Remedies* at 61-64.

<sup>20</sup> “Those databases that are available (*e.g.*, ASCAP, BMI, and some music publishers maintain online databases that can be searched on a title-by-title basis) often contain conflicting information. For example, the ASCAP database indicates that Universal Music Publishing owns the composition for the song “Somebody that I Used to Know” co-written and recorded by Gotye; however, a search of the Universal Music Publishing websites results in no matches for the title “Somebody that I Used to Know” or songs recorded by Gotye.” See *Music Licensing Under Title 17: Hearing Before the Subcommittee on Courts, Intellectual Property, and the Internet of the Committee on the Judiciary House of Representatives*, 113<sup>th</sup> Cong. 336 (2014).





Due to the lack of transparency, licensees are often forced to identify the copyright owners of each musical work embodied in a sound recording. This can be a daunting task when a service has a database of millions or tens of millions of sound recordings. Further, given the fact that many musical works have multiple copyright owners, record labels do not provide ownership information on the musical works embodied in their recordings, and the common practice of music publishers to only license their respective ownership interests in a work, it is often challenging to identify and locate all relevant stakeholders in order to secure the necessary licenses.

A blanket license would obviate many of the risks associated with the current section 115 statutory license. Similar to the license under section 114 of the Copyright Act for noninteractive digital audio transmissions of sound recordings, a blanket license and combined collective administration for the mechanical and public performance rights would give licensees the right to reproduce and distribute any musical work lawfully released to the public. The efficiencies offered by such a regime would reward all stakeholders, including artists and songwriters, and facilitate the development of new products and services that would also create new revenue streams. Legislation should provide for the collective administration of mechanical and public performance royalties without the ability for individual publishers or songwriters to opt-out to establish such efficiencies.

Additionally, we support the creation of a single, public database, which the Office suggested in its report, coupled with a safe harbor for statutory damages. Such a publicly available database would further increase transparency, lessen anti-competitive behavior by music publishers,<sup>21</sup> and provide online music streaming services the certainty they need to develop their business and increase the flow of revenue to artists.

Our association supports fair compensation for artists, which would be facilitated by increased transparency across the system. Not only would licensees benefit from an accessible and comprehensive system to facilitate the clearing of all rights in a work, but artists and songwriters also deserve greater insight in how money flows from distributors, through the publishers and performance rights organization, and makes its way to their hands. Therefore, we respectfully urge the committee to

---

<sup>21</sup> Beyond legislative efforts, the Internet Association is actively monitoring the Department of Justice's review of ASCAP and BMI consent decrees. In a March 10, 2015 letter to the Subcommittee on Antitrust, Competition, and Consumer Rights of the Senate Judiciary Committee, we explained that the existing consent decrees should be maintained and should not be amended to permit partial withdrawals. This type of modification would only undermine their very purpose. *See Letter from the Internet Association to Chairman Mike Lee and Ranking Member Amy Klobuchar of Senate Judiciary Committee Subcommittee on Antitrust, Competition, and Consumer Rights* (Mar. 10, 2015), available at <http://internetassociation.org/wp-content/uploads/2015/03/Internet-Association-Letter-On-Music-Licensing-031015.pdf>.



consider section 115 amendments discussed above along with other proposals to improve music licensing.

## **II. Conclusion**

The current U.S. copyright system continues to successfully balance copyright owners' and the public interest. The legal framework is further bolstered by court decisions and marketplace developments to ensure that innovation and development of online platforms continue. As such, the Internet Association respectfully requests that Congress avoid sweeping legislative reform of domestic copyright policy. Rather, we urge Congress to focus its efforts on working with stakeholders to determine how best to modernize the Copyright Office. To the extent that reform efforts are pursued, we urge Congress to keep this effort narrowly tailored to the current statutory regime and music licensing issues.

Respectfully Submitted,

Michael Beckerman  
President & CEO  
Internet Association



**BEFORE THE HOUSE COMMITTEE ON THE JUDICIARY**

**RECOMMENDATIONS OF THE LIBRARY COPYRIGHT ALLIANCE ON  
COPYRIGHT REFORM**

The Library Copyright Alliance (LCA) consists of three major library associations—the American Library Association, the Association of College and Research Libraries, and the Association of Research Libraries—that collectively represent over 100,000 libraries in the United States employing over 350,000 librarians and other personnel. An estimated 200 million Americans use these libraries more than two billion times each year.

LCA has actively participated in the Committee’s Copyright Review. LCA witnesses testified at two hearings, and LCA submitted [statements](#) for the record of eight additional hearings. Here we provide a summary of our recommendations for amendments to Title 17 that would enable libraries to better perform their missions. We also identify certain issues that Congress should not address in its copyright reform efforts. The statements LCA submitted to the Committee discuss these positions in much greater detail.

**I. ISSUES CONGRESS SHOULD ADDRESS**

**A. Statutory Damages.**

When Congress enacted the statutory damages framework in 17 U.S.C. §504(c)(2), it recognized “the special situation of teachers, librarians, archivists, and public broadcasters, and the nonprofit institutions of which they are a part,”<sup>1</sup> where the threat of statutory damages could deter lawful activities that involve the use of works. Accordingly, Congress required a court to remit statutory damages when a library, archives, educational institution, or public broadcasting entity believed and had reasonable grounds for believing that its use of a copyrighted work was a fair use. The

---

<sup>1</sup> H.R. Rep. No. 1476, 94<sup>th</sup> Cong. 2d Sess. 163 (1976).

plaintiff bears the burden of proving that such entities did not act in good faith. However, this safe harbor applies to libraries, archives, and educational institutions only with respect to their infringement of the reproduction right. This means that the safe harbor does not apply to a library's infringement of the performance, display, distribution, or derivative work rights. As a result, the safe harbor provides little benefit, particularly for Internet uses that involve the performance or display of a work on a website. The safe harbor needs to be updated to reflect the digital era. It should apply whenever the entity had a reasonable belief that any type of use of any type of work was non-infringing. It also should be expanded to include museums. For these entities to perform their critical public service missions in the 21st Century, the safe harbor must be amended to apply to innocent infringement by these entities of all exclusive rights with respect to all kinds of works.

**B. Section 1201.**

The fact that every three years the blind need to expend scarce resources to petition the Librarian of Congress to renew their exemption—or that libraries and educators have to seek renewal of the film clip exemption every three years—demonstrates a fundamental flaw in section 1201. That flaw is that section 1201 could be interpreted to prohibit the circumvention of a technological protection measure even for the purpose of engaging in a lawful use of a work. Congress should adopt the approach proposed by the Technology Unlocking Act of 2015, H.R. 1587, attaching liability to circumvention only if it enables infringement.

The Section 1201 rulemaking should be broadened to apply to sections 1201(a)(2) and (b), i.e., to the development and distribution of circumvention tools. Further, the Copyright Office's requirement that an exemption be renewed *de novo* every three years is enormously burdensome. Accordingly, when a person seeks renewal of an exemption granted in the previous rulemaking cycle, the burden should be on those opposed to renewal to demonstrate why the exemption should not be renewed or should be modified in some manner. (This approach is proposed in the Breaking Down Barriers to Innovation Act of 2015, S. 990, H.R. 1883.) Moreover, if a second renewal is granted, the exemption should become permanent.

Additionally, the final rulemaking authority should be shifted from the Librarian of Congress to the Assistant Secretary for Communications and Information of the Department of Commerce. Currently, the Librarian issues the exemptions on the recommendation of the Register of Copyrights, who must consult with the Assistant Secretary. This process should be reversed, with the Assistant Secretary making final determinations after consulting with the Register of Copyrights. Neither the Copyright Office nor the Librarian of Congress has any special expertise to evaluate the adverse effects of a circumvention prohibition. This is particularly true in the case of software. An ever-increasing range of products incorporates software that regulates the interaction of the components of the product, and the interaction between the product and other products and networks. By prohibiting the circumvention of technological measures that control access to software, section 1201 directly implicates the competitive conditions in large segments of our economy. The conflicts over “jailbreaking,” cell phone unlocking, replacement toner cartridges, and universal garage door opener remote controls are only the beginning. The Internet of Things envisions a world where the software in devices from pacemakers to refrigerators to cars are monitored and controlled over telecommunications networks. The National Telecommunications and Information Administration (NTIA) is much better situated than the Copyright Office and the Library of Congress to evaluate the adverse impact of restricting competition in such a networked world.

**C. Preemption of contractual provisions limiting copyright exceptions.**

An increasing proportion of library acquisitions are digital resources. Indeed, many research libraries spend well over 65% of their acquisition budgets on electronic resources. These licenses often contain terms that restrict fair use, first sale, and other user rights under the Copyright Act. Congress should adopt restrictions on the enforcement of contractual terms that attempt to limit the ability of libraries to use exceptions in the Copyright Act such as first sale, fair use or interlibrary loan under Section 108.

**D. People With Disabilities.**

Section 121, the Chafee Amendment, currently allows authorized entities to make accessible format copies for people with print disabilities. Section 121 should be

broadened to allow the making of copies accessible to people with any type of disability, *e.g.*, captioned copies of audiovisual works for people with hearing disabilities. However, we do not believe that it is necessary to amend Section 121 for purposes of ratifying the Marrakesh Treaty.

### **E. Misuse**

The penalties for making misrepresentations in takedown notices under Section 512 should be increased so as to create a more meaningful deterrent to abuse of the notice and takedown system. Additionally, the doctrine of copyright misuse should be codified.

## **II. ISSUES CONGRESS SHOULD NOT ADDRESS**

### **A. Section 108**

In her recent [testimony](#) before the Committee, Register of Copyrights Maria Pallante proposed updating Section 108, which contains exceptions for libraries and archives. We oppose an effort to overhaul Section 108 for four reasons. First, although Section 108 may reflect a pre-digital environment, it is not obsolete. It provides libraries and archives with important certainty with respect to the activities it covers. Second, as the recent decision in *Authors Guild v. HathiTrust*, 755 F.3d 87 (2d Cir. 2014), makes clear, fair use supplements Section 108 and thus provides a sufficient mechanism for updating it when necessary.<sup>2</sup> For example, fair use provides a sufficient basis for website archiving. Third, amending Section 108 could have the effect of limiting what libraries do today. Again using website archiving as an example, the Library of Congress's Section 108 Study Group proposed a complex regulatory scheme for website archiving, an activity already routinely performed by libraries as well as commercial search engines. Indeed, some rights holders see the updating of Section 108 as an opportunity to repeal the fair use safe harbor in Section 108(f)(4) and restrict the availability of fair use to libraries. Fourth, based on the highly contentious and protracted deliberations of the Section 108 Study Group, it is clear that any legislative process concerning Section 108 would be equally contentious and would demand many library resources just to maintain the status quo, let alone improve the situation of libraries. A Section 108 reform process would consume significant Congressional resources as well. Accordingly, we urge the

---

<sup>2</sup> Because of the importance of fair use to libraries and the public at large, LCA welcomes the Copyright Office's creation and posting of the U.S. Copyright Office Fair Use Index.

Committee to leave Section 108 as is.

### **B. Orphan Works**

LCA strongly supported orphan works legislation in the 109<sup>th</sup> and 110<sup>th</sup> Congress. However, significant changes in the copyright landscape since then convince us that libraries no longer need legislative reform in order to make appropriate use of the orphan works. First, fair use is less uncertain. The courts have issued a series of expansive fair use decisions that have clarified its scope, including the Second Circuit's decision in *Authors Guild v. HathiTrust*. Additionally, the application of fair use to orphan works has been clarified through the [Statement of Best Practices in Fair Use of Collections Containing Orphan Works for Libraries, Archives, and Other Memory Institutions](#). Second, the Supreme Court's decision in *eBay v. MercExchange*, 547 U.S. 388 (2006), makes injunctions for use of orphan works less likely. Third, mass digitization is much more common. The leading search engines, operated by two of the world's most profitable companies, routinely cache billions of web pages without the copyright owners' permission. This industry practice has faced absolutely no legal challenge in the United States since the fair use decision in *Perfect 10 v. Amazon.com*, 508 F.3d 1146 (9th Cir. 2007). Gatekeepers understand that a court would favorably evaluate a non-profit library's fair use defense in the context of this industry practice.

Moreover, the Copyright Office's recent inquiry concerning orphan works revealed that profound disagreement remains about the issue. The significant [diversity of opinion](#) expressed in the inquiry indicates that it will be extremely difficult to forge a consensus approach to orphan works. There is less agreement now than in 2006, when the Copyright Office completed its previous report on orphan works, both on the existence of a problem and the best approach to solve it. The hostility exhibited during the inquiry by some rights holders to users in general, and libraries in particular, suggests that any legislative process concerning orphan works is bound to fail.

In the event that the Committee decides to pursue orphan works legislation, we strongly urge that the bill that passed the Senate in the 110th Congress, S. 2913, *not* be used as the starting point. During the course of the 109th and 110th Congresses, the orphan works legislation became increasingly complex and convoluted. If Congress were simply to pick up S. 2913 where it left off, the legislation would become even more

complex and convoluted as stakeholders battled over precisely what would constitute a reasonably diligent search. Rather than start with the 20-page S. 2913, Congress should consider a simple one sentence amendment to 17 U.S.C. § 504(c)(2) that grants courts the discretion to reduce or remit statutory damages if the user conducted a reasonably diligent search prior to the use. Because courts would just have the discretion to reduce statutory damages, but would not be required to do so, there would be no need to define what constitutes a reasonably diligent search. That determination would be left to the court.

To be sure, some users would prefer greater certainty concerning what steps they would need to take to fall within the bill’s safe harbor. And some rights holders would prefer the same procedural certainty to prevent possible abuse. However, the enormous variety of potential works, uses, and users means that greater certainty could be achieved only if the legislation were highly technical and prescriptive. Fashioning such legislation (or implementing regulations) would take years and consume enormous resources, and in the end it might not provide better results than the one sentence solution proposed above.

### **C. Mass Digitization**

Register Pallante identified mass digitization as a policy issue that warrants near-term study and analysis. She stated that “while fair use may provide some support for limited mass digitization projects,” access to the digitized works “will likely be extremely circumscribed.” Accordingly, she proposed “a voluntary ‘pilot program’ in the form of an extended collective license that would enable full-text access to certain works for research and educational purposes under a specific framework set forth by the Copyright Office....”

The Register understated the degree to which fair use can facilitate full-text access to copyrighted works. Under the *HathiTrust* decision, providing access to accessible format copies for people who are print disabled is clearly fair use. The reasoning of *HathiTrust* indicates that fair use would permit providing accessible formats to people with other disabilities, for example, a captioned film to people with hearing disabilities.

Moreover, the *HathiTrust* court’s endorsement of the “functional transformation” approach (i.e., a use is transformative if the work is used for a significantly different purpose from its original market purpose), combined with its discounting of lost revenue



from such transformative uses, provides a library with a solid basis for providing full-text access to its digitized copies of out of print materials when the purpose of providing the access is clearly different from the author's original market purpose. For example, providing full-text access to digitized copies of many materials in special collections and archives is very likely protected by fair use because the research purpose of the access typically is different from the author's purpose in creating the works at issue.

Additionally, many classes of materials have time-limited markets. If that period has long since expired, the original market for that work no longer exists and subsequent uses would likely be considered fair and not a market substitution for the original work.

Furthermore, it is not clear precisely what the Register meant when she referred to a "voluntary" extended collective license. The entire point of an extended collective license is that applies to absent rights holders, *i.e.*, rights holders that have not affirmatively opted into the collective license. In other words, ECLs by definition aren't voluntary. To be sure, an ECL could allow a rights holder to opt out, but unless it does, its rights are managed by a collective rights organization (CRO). CROs have a [long history](#) of corruption, mismanagement, confiscation of funds, and lack of transparency that has deprived artists of the revenues they earned. At the same time, CROs have often aggressively sought fees to which they were not legally entitled or in a manner that discredited the copyright system. While properly regulated CROs in some circumstances may enhance efficiency and advance the interests of rights holders and users, the Committee should be aware of CROs' mixed history as it considers the appropriateness of CROs as a possible solution to copyright problems in general and obstacles relating to mass digitization in particular. Finally, it should be noted that at the roundtable the Copyright Office held concerning mass digitization, there was [general agreement](#) that ECL would not be an effective solution to issues relating to mass digitization, even if limited only to books.

We appreciate the opportunity the Committee has given us to provide our views throughout its Copyright Review process, and long forward to working with the Committee as it continues its important work in this area.

May 8, 2015



**MOTION PICTURE ASSOCIATION  
OF AMERICA, INC.  
1600 EYE STREET, NORTHWEST  
WASHINGTON, D.C. 20006**

**CHRISTOPHER J. DODD**  
CHAIRMAN  
CHIEF EXECUTIVE OFFICER

April 29, 2015

The Hon. Bob Goodlatte  
Chairman  
House Judiciary Committee  
2138 Rayburn House Office Building  
Washington, D.C. 20515

The Hon. John Conyers, Jr.  
Ranking Member  
House Judiciary Committee  
2138 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Goodlatte and Ranking Member Conyers:

The Internet Association sent you a letter today recommending that the Committee prioritize Copyright Office modernization in its current copyright review.

We agree.

Creators, copyright holders, and the public would benefit from a 21<sup>st</sup> century Copyright Office, as Register Pallante and a number of Members of Congress said at today's hearing entitled: "The Register's Perspective on Copyright Review." The Copyright Office administers aspects of the copyright law and helps guide policy on both the domestic and international stage. The Office currently resides in the Library of Congress, and various Librarians of Congress, including Dr. Billington, have been good stewards over the years. But the core copyright industries—those primarily engaged in creating, producing, distributing, and exhibiting copyrighted works—now contribute more than \$1 trillion to the country's GDP, represent 6.7 percent of the U.S. economy, and are responsible for 5.5 million jobs, according to a recent study by the International Intellectual Property Alliance. The growth of copyright as a large driver of our nation's cultural and economic prosperity, paired with the rise of the digital economy, means that the demands on the Copyright Office are increasing in both complexity and importance, as we have conveyed in written submissions for prior hearings in this review. Giving the Copyright Office better tools and a more autonomous voice would put it in a better position to rise to the challenge, would be a valuable achievement worthy of this Committee's copyright review, and could help address many of the issues these hearings have raised. Like the Internet Association, we continue to examine how best to accomplish those goals.

We also echo the sentiment expressed by the Internet Association that the Copyright Act, although not flawless, generally works as intended to promote the production and dissemination of creative works. It enables audiences, creators, and distributors to enter into a variety of

relationships in the free market as technology and consumer expectations change. Indeed, in our own industry, it has produced an environment:

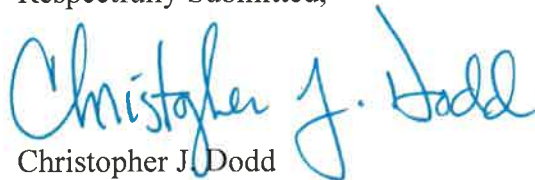
- in which we have enabled U.S. fans of video content to access 5.7 billion movies and 57 billion television episodes lawfully online in 2013, alone;
- that directly and indirectly supports 1.9 million jobs in the United States and accounts for \$111 billion in total wages;
- that is responsible for more than 99,000 businesses across all 50 states, 85 percent of which are small businesses employing fewer than 10 people;
- that injects \$225,000 per day into the local communities where we film; and
- that yields a \$13.6 billion trade surplus, 6 percent of the total U.S. private-sector trade surplus in services and more than the telecommunications, advertising, mining, management and consulting, legal, medical, computer, and insurance service sectors each contribute.

And as the Internet Association states in its letter, we believe that the unauthorized distribution over the Internet of digital copies of creative works remains a problem. The digital age has certainly been a boon, but it is also enabling criminal enterprises to steal valuable data—whether personally identifiable information, trade secrets, or content—at an alarming rate. The Internet has been a tremendous resource for creativity, communication, and commerce. And much of its success is attributable to its decentralized nature. Anyone can contribute to its content and architecture. But that also means no one entity can address issues when they arise. As the Internet Association letter puts it: “[n]o one set of ‘players’ is capable of (or should be responsible for) solving it alone. Rather, curbing this conduct requires the cooperation of many actors.” What we need right now is not necessarily changes in the video-related provisions of domestic copyright law, but collaboration among government, the private sector, civil society, and the public to make sure we have a stable and secure Internet that promotes healthy creativity, commerce, and discourse online. Everyone could be doing more, including content creators, search providers, ISPs, payment processors, advertising networks, and Internet registries and registrars. Their increased engagement, combined with vigilant enforcement of current U.S. law, will help continue our nation on a road to success at home. As for efforts abroad, Congress should approve the intellectual property language in the bipartisan trade promotion authority bills reported out of the House Ways and Means and Senate Finance committees. We agree with the Internet Association that copyright law must be balanced, and this language will begin to bring the right balance in countries that do not currently have the same level of respect for intellectual property. It will enable our members to create and bring entertainment to consumers around the world, to bring the benefits of that trade back home, and to help grow the creative industries in the countries of our trading partners.

Most stakeholders have a favored tweak they might make in U.S. copyright law if they held the pen unilaterally. Copyright Office modernization, however, is one of only a few that appears to enjoy consensus support. Music licensing may be another, but that is an issue for others to raise in the first instance. Overall, our wish list may differ a bit from the Internet Association's. We, for example, believe that the current statutory damages provisions are reasonable, and that criticisms are both anecdotal and greatly exaggerated. The availability of statutory damages promotes investment in the creation and dissemination of works by giving artists, copyright holders, and licensed distributors—as well as developers of legitimate services, devices, and applications to access that content—a measure of security that others will not be able to free ride on their efforts without consequence. They compensate copyright holders for infringement when actual damages are difficult or impossible to calculate. In many cases, especially online, the fact of harm—even massive harm—is certain, but the number of times a creative work has been illegally uploaded, downloaded, or streamed, and the amount of harm caused copyright owners, is not knowable. Because statutory damages serve these societal goals, the First Congress included them in the first U.S. copyright statute in 1790, and courts have consistently found them to be in the public interest. Moreover, adjusted for inflation, the current ranges are significantly *lower* than they were when the Copyright Act was last re-written in 1976. There is no epidemic of juries awarding outsized statutory damages. Guided by the law and the judge's instructions, juries award statutory damages in appropriate amounts, taking into consideration the circumstances of the case. Large damage awards are the exception, not the rule. Juries can assess as little as a few hundred dollars. When someone is assessed significant penalties, it's because a jury of his or her peers has found significant wrongdoing. The historically unparalleled innovation over the past two decades, together with the proliferation of legitimate online distribution options that give consumers unprecedented choice in accessing their favorite content, demonstrates that statutory damages have not had a negative effect on those businesses that respect others' rights and play by the rules.

While we disagree with the Internet Association on some issues, we are pleased that we have both come to the conclusion that Copyright Office modernization should be the Committee's priority at this point. We look forward to continuing that conversation and, like the Internet Association did with its letter, kindly ask that you include a copy of this letter in the record of today's hearing.

Respectfully Submitted,



Christopher J. Dodd

Cc: Sen. Chuck Grassley, Chairman, Senate Judiciary Committee  
Sen. Patrick Leahy, Ranking Member, Senate Judiciary Committee



THE RECORDING ACADEMY®

GRAMMYS ON THE HILL®

ADVOCACY & INDUSTRY RELATIONS

529 14th Street N.W., Suite 840  
Washington, D.C. 20045  
t-202.662.1285 f-202.662.1342  
[www.grammy.com/advocacy](http://www.grammy.com/advocacy)

April 28, 2015

The Honorable Bob Goodlatte  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
2138 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable John Conyers, Jr.  
Ranking Member  
Committee on the Judiciary  
U.S. House of Representatives  
2426 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Goodlatte and Ranking Member Conyers:

On behalf of The Recording Academy and its 24,000 members – songwriters, performers, studio professionals, and other music creators – I am writing to express our views about the future of the Copyright Office. As the Judiciary Committee prepares to hear from the Register of Copyrights on April 29, I appreciate your consideration of our views on this important matter.

The Judiciary Committee's wide-ranging review of copyright law has made clear that the environment for creators has changed rapidly. The dynamic digital marketplace is constantly presenting both new opportunities and new challenges to creators who wish to make a living from their creative labor. Now more than ever, creators require a modern, nimble Copyright Office that is equipped to safeguard their rights and help them navigate the evolving landscape.

The Register and the staff of the Copyright Office have worked hard to update the Office for the digital age. But as she and others have testified, congressional action is required to ensure that the Copyright Office has the independence, authority and resources needed to be truly effective. Accordingly, The Recording Academy agrees with the Register and with other stakeholder voices that the Copyright Office should be reorganized as an independent agency, separate from the Library of Congress. The result of this reorganization should be a Copyright Office that can serve copyright creators, users, and Congress in the way they deserve to ensure our robust copyright system continue to drive American creativity and innovation in the 21<sup>st</sup> century. The Academy and its creator members stand ready to assist you as you undertake this critical endeavor.

Respectfully Submitted,

Daryl P. Friedman  
Chief Industry, Government, & Member Relations Officer  
The Recording Academy