



copyright alliance

Statement of

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Chief Executive Officer
Copyright Alliance**

before the

**HOUSE COMMITTEE ON APPROPRIATIONS
Subcommittee on Legislative Branch**

May 3, 2017

The Copyright Alliance, on behalf of our membership, submits this statement for the record concerning the Subcommittee's May 3, 2017, open hearing. A modern and efficient Copyright Office is critical to a 21st century copyright system. We welcome the Subcommittee's attention to ensuring the Copyright Office has the necessary operational autonomy over its budget, staffing, and information technology (IT) to meet the challenges of the future, and we submit these comments to help the Subcommittee in this effort.

The Copyright Alliance is the unified voice of the copyright community, representing the copyright interests of over 1.8 million individual creators and over 13,000 organizations in the United States, across the spectrum of copyright disciplines. We represent the interests of authors, photographers, performers, artists, software developers, musicians, journalists, directors, songwriters, game designers, and many other individual creators. The Copyright Alliance also represents the interests of book publishers, motion picture studios, software companies, music publishers, sound recording companies, sports leagues, broadcasters, guilds, unions, newspaper and magazine publishers, and many more organizations.

The Copyright Alliance is dedicated to advocating policies that promote and preserve the value of copyright and to protecting the rights of creators and innovators. The individual creators and organizations that we represent rely on copyright law to protect their creativity, efforts, and investments in the creation and distribution of new copyrighted works for the public to enjoy. Earlier this year, demonstrating the importance of

copyright, over 72,000 individual creators and supporters of copyright signed a letter to political candidates affirming the complementary relationship between a strong copyright system, free expression, creativity, innovation, and technology.

Within the copyright ecosystem, the Copyright Office plays a pivotal role in the registration of creators' works and the recordation of documents pertaining to those works. The ability of our Nation's independent creators and the businesses that support their work to promptly register and record copyright interests with the Office, and of the public to obtain copyright information that enables them to license copyrighted works, creates new industries and spurs the economy, which, in turn, advances our global competitiveness and technological leadership.

In view of the ongoing and rapid changes in the information, entertainment, and technology sectors, the Copyright Office has never been more important than it is today in ensuring that copyright owners have access to critical services that support their endeavors, including the creation and dissemination of works to the public, and the development of innovative new business models by which to distribute such works.

Given the global and dynamic characteristics of the copyright ecosystem, the Copyright Office must be able to rapidly adapt to ensure it is able to offer the tools and resources that all users of the Office's service demand, and Congress must have a direct line of communication with the Copyright Office so they are answerable immediately and directly to Members and their staffs. But neither of these exists today.

Unfortunately, the Copyright Office does not currently have the ability to rapidly adapt. Many of the challenges it faces can be traced back to the fact that the Copyright Office is within and under the "direction and supervision" of the Library of Congress. As a department of the Library, the Office is obligated to use the Library's Information Technology (IT) systems. The Copyright Office does not have its own IT infrastructure; it uses the network, servers, telecommunications, security and all other IT operations controlled and managed by the Library of Congress. It also lacks authority over its own budget and staffing because of its current structure. For many years, the Copyright Office has sought to modernize, including in a recent strategic plan, but has been unable to do so because its priorities are subordinated to those of the Library's. If the Copyright Office is to successfully modernize, it is essential that the *Copyright Office be given autonomy over its own budget, staff, and information technology (IT) to carry out its mission going forward.*

Greater autonomy over IT, budget, and staffing recognizes the difference between the mission and infrastructure of the Library and the Copyright Office, while retaining the historical connection between the Library and the Office with regard to deposits of registered works.¹

¹ Indeed, we support the Library's continued collection of deposits of copyrighted materials, which benefits both creators and the public.

Copyright Office's IT Plan

Modernizing the U.S. Copyright Office IT system and giving the Copyright Office control over its IT system is essential to an effective 21st Century Copyright Office. In 2015, the House Committee on Appropriations, as part of the Legislative Branch Appropriations Bill of 2016, directed “the Register of Copyrights to report, to the Committee on Appropriation and relevant Authorizing Committees of the House on a detailed plan on necessary IT upgrades, with a cost estimate, that are required for a 21st century copyright organization. In addition to the cost estimate, the Register shall include recommendations on a funding strategy and a time frame for completion of a new IT system that is necessary to better serve the public in the digital age.”²

The Copyright Office completed a Provisional Information Technology Modernization Plan (“IT Plan”) in February 2016 (ahead of schedule), which provided for a “lean, nimble, results-driven, and future-focused” cloud-based system that could be implemented within five years, at a projected cost of \$165 million.³ We urge that appropriators support the Copyright Office in its efforts to implement that Plan as soon as reasonably possible. Many of the technological issues our members face with registration and recordation are acute, so the sooner new or improved systems can be deployed by the Copyright Office, the sooner users of the Office’s services—creators, members of the public, and Congress—can reap the benefits of IT modernization.

The Copyright Office should not be forced to use the Library’s planned data center as part of its IT, and instead should have the autonomy to determine whether and to what extent the costs, security and reliability of using this data center for its future IT needs match or exceed what can be obtained from other government agencies or private sector providers and choose accordingly. Deference should be given to the Office’s expertise and assessment of its own needs to meet its copyright mission. Requiring the Copyright Office to use the Library’s not-yet-built data center would remove the flexibility and cost-effectiveness inherent in the Copyright Office’s IT plan without resulting in any synergies or savings. It would also, to the extent that funds for the data center come from Copyright Office user fees, result in Copyright Office users subsidizing Library IT.

Copyright Office Funding

Appropriations are an important and proper source of funding for modernization since the public is the ultimate beneficiary of copyright information retained and disseminated by the Office and, by extension, of a modernized Copyright Office. Copyright registration benefits the public by providing it with a searchable database of copyright registration and ownership information, which enables database users to determine authorship and other information about works, contact owners for licensing or other usage, and determine whether works are in the public domain and freely useable.

² H. Rep. No. 114-110 (2015).

³ U.S. Copyright Office, *Provisional Information Technology Modernization Plan and Cost Analysis* (2016), <https://www.copyright.gov/reports/itplan/technology-report.pdf>.

Moreover, a modern, robust copyright registration and recordation system will facilitate additional business investment and entrepreneurship along with reducing transaction costs and other marketplace inefficiencies, leading to long-term economic growth and cultural benefits. We urge, however, that any funds appropriated for the IT Plan, or any other aspect of the Copyright Office's funds, are prevented from being diverted to the general Library of Congress budget or to other projects. In particular, we are concerned that under the heading of "shared services," the Library may either direct the Copyright Office to use Library facilities without a cost-benefit analysis, and/or charge the Copyright Office for services historically not factored into the Copyright Office's budget and appropriation. Either of these would amount to a de facto diversion of Copyright Office funds, and we ask the Subcommittee to be on guard for such. We also acknowledge that the IT Plan would require "front-loading" of taxpayer support, but will ultimately result in cost savings and incentivize registration and recordation, thus increasing overall revenues from fees.

We strongly support increased funding of the Office, including improvement to Office services but are concerned that placing the burden of funding on registrants is the wrong approach. Raising fees should be the last option. Since copyright registration and recordation are voluntary, any additional costs or barriers serve as a disincentive to participation in the system. In most instances, any fee increase should not be imposed solely or disproportionately on any one type of user of the Office. However, if a new or improved service is intended solely or primarily for one group of users of the Office, it may be appropriate for those beneficiaries to bear the weight of any fee increase.

To the extent any fee increase is warranted as a means of increasing the Office's budget that increase should be: (1) a shared responsibility that is borne by *all users* of the Copyright Office as well as appropriators; (2) in conjunction with improvement in existing services and the addition of new services; (3) invested directly into the copyright system infrastructure. We also recommend that the Copyright Office be given the necessary authority to develop more flexible fee schedules that can fund its services while not discouraging registrations. The Copyright Office has previously communicated a summary of the public comments on funding strategies for IT modernization to this Subcommittee,⁴ and we commend that document to you once again.

With regard specifically to funding for specific Copyright Office projects, we urge that appropriate funding be given specifically to build a searchable registration and recordation database, that this be managed separately from the Library's IT system by the Copyright Office itself with appropriate oversight *provided that this database should only address data the Copyright Office is already required to collect as opposed to the collection of additional data that it does not presently collect*. We agree that it is critical that collection and dissemination of the former should be made easier and more efficient.

⁴ Letter from Register of Copyrights to Chairman, Subcommittee on Legislative Branch, Re: Funding strategy and timeline for implementing February 29, 2016 *Provisional Information Technology Modernization Plan and Cost Analysis* (May 9, 2016), available at <https://www.copyright.gov/reports/usco-it-funding-strategy.pdf>.

But requiring the collection and dissemination of information beyond what is currently required is not appropriate.

It's important to keep in mind that the Copyright Office's registration system provides public notice of ownership information, akin to a County Recorder. The administration of a comprehensive database for licensing and business transactions is best left to the private sector. At best, the Copyright Office could study the existing copyright licensing landscape and engage stakeholders to identify areas for potential improvement. That said, many copyright holders have extensive metadata attached to their work that would enhance this historical record, and they should be given the option of including that metadata in their registration in a manner that stays with the deposit—so long as the inclusion of metadata remains optional.

Additionally, the Copyright Office should be asked to look at finding ways to collect fees from database users, by, for example, providing high speed, high volume access to its data for a cost. While deference should be given to the Copyright Office to determine the best way to meet its needs, it should not have absolute discretion to change its fees. Congress must maintain some level of oversight of this fee structure.

We support granting the Office the ability to build a reserve account from the user fees it collects to help the Office deal with Government shutdowns, other emergencies, and fluctuations in incoming fee receipts. We also support the Office having access to its funds over multiple years through a multiyear budget cycle (i.e., a revolving fund).

We thank the Subcommittee for its interest in modernizing the U.S. Copyright Office. Please let us know if we can provide any additional information or answer any questions regarding our views in this matter.

Witness Disclosure Form

Clause 2(g) of rule XI of the Rules of the House of Representatives requires non-governmental witnesses to disclose to the Committee the following information. A non-governmental witness is any witness appearing on behalf of himself/herself or on behalf of an organization other than a federal agency, or a state, local or tribal government.

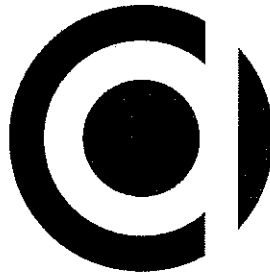
Your Name, Business Address, and Telephone Number: Keith Kupferschmid, 1331 H Street NW, Suite 701 Phone: 202-540 Washington, D.C. 20005 - 2243
1. Are you appearing on behalf of yourself or a non-governmental organization? Please list organization(s) you are representing. The Copyright Alliance
2. Have you or any organization you are representing received any Federal grants or contracts (including any subgrants or subcontracts) since October 1, 2012 related to the agencies or programs funded by the Subcommittee? Yes <input type="radio"/> No <input checked="" type="radio"/>
3. Have you or any organization you are representing received any contracts or payments originating with a foreign government since October 1, 2012 related to the agencies or programs funded by the Subcommittee? Yes <input type="radio"/> No <input checked="" type="radio"/>
4. If your response to question #2 and/or #3 is "Yes", please list the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof), and/or the amount and country of origin of any payment or contract originating with a foreign government. Please also indicate whether the recipient was you or the organization(s) you are representing.

Signature:



Date:

4/28/17



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Keith Kupferschmid Chief Executive Officer

Before joining the Copyright Alliance, Keith served as the General Counsel and Senior Vice President for Intellectual Property for the Software & Information Industry Association (SIIA). During his 16 years at SIIA, he represented and advised SIIA member software and content companies on intellectual property (IP) policy, legal and enforcement matters.

He has testified before Congress and various federal and state government agencies on IP issues and also supervised SIIA's Anti-Piracy Division, including working with federal and state government officials on civil and criminal piracy cases.

Prior to joining SIIA, Keith worked as an IP attorney at the law firm of Finnegan, Henderson, Farabow, Garrett & Dunner, IP attorney-advisor at the U.S. Patent and Trademark Office (PTO), Director of Intellectual Property at the United States Trade Representative, and Policy Planning Advisor at the U.S. Copyright Office.

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About the Copyright Alliance

The Copyright Alliance is a non-profit, non-partisan public interest and educational organization representing artists and creators across the spectrum of copyright disciplines, including more than 40 trade association, companies and guilds, and 8,000 individual artists and creators. For more information, please visit www.copyrightalliance.org.

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