

**Statement of Maria A. Pallante
Register of Copyrights and
Director of the United States Copyright Office**

**Before the
Committee on House Administration**

United States House of Representatives

December 2, 2015

**“Improving Customer Service for the Copyright Community:
Ensuring the Copyright Office and the Library of Congress
Are Able to Meet the Demands of the Digital Age”**

Chairman Miller, Ranking Member Brady, and Members of the Committee, thank you for inviting me to testify today about customer service for the copyright community in the digital age. This statement describes the statutory responsibilities of the United States Copyright Office and the public discussions and modernization goals that have been the focus of my work as Register. In undertaking this work, it has become clear that the Office and the Library of Congress have been steadily evolving in separate directions since Congress enacted the 1976 Copyright Act. The Office will need changes, and in some instances wholly new paradigms, if it is to meet the dynamic needs of the marketplace it is meant to serve.

Mission of the United States Copyright Office

The United States Copyright Office has a critical mission within the federal government. It administers the nation’s copyright laws for the advancement of the public good; offers services and support to authors and users of creative works; and provides expert impartial assistance to Congress, the courts, and executive branch agencies on questions of copyright law and policy. Through this work, the Office supports a vibrant marketplace of creativity and technological innovation that contributes trillions of dollars to the global economy and immeasurable value to society at large.

Copyright Office officials possess wide-ranging expertise in the Copyright Act, related provisions of Title 17, relevant judicial opinions, foreign copyright laws, international copyright treaties, trade agreements, and related business transactions, and are essential participants in bilateral and multilateral trade negotiations of the United States. Among other statutory duties, the Office examines, certifies, and registers copyright interests—including in music, motion pictures, books, and software—and publicly records commercial and noncommercial instruments involving the scope, term, transfer, and licensing of copyright interests. The Office administers several compulsory licenses (including, for example, the collection and distribution of over \$300 million in royalties in 2015) and provides legal review of royalty rate and distribution proceedings. It is responsible for regulations, practices, and educational programs that implement and explain the complex provisions and parameters of copyright law for the benefit of the general public, legal practitioners, libraries, educators, and a variety of large and small businesses.

Modernization and Strategic Plan

It has become clear that both the copyright law and the Copyright Office require updates, and I am grateful to lawmakers for reviewing these related goals comprehensively and in tandem. In the past few years, the Office has supported the work of Congress by conducting major studies and administering public processes about future goals. The entirety of this work is available at www.copyright.gov, and much of it is listed in our five-year strategic plan, further discussed below. Many policy issues, including improvements to copyright registration, copyright recordation, fee schedules, music licensing, orphan works, and small claims solutions, are directly related to, if not contingent upon, Office modernization. Our exacting work in these areas is well documented and incorporates considerable public input.

As many have stated, technology is the cornerstone of a modern copyright system and, upon becoming Register, I made it an immediate priority. Thus, in *Priorities and Special Projects of the United States Copyright Office October 2011-October 2013*, I announced a Technical Upgrades project to review potential improvements to Copyright Office operations. The project generated transparent feedback from all parts of the copyright community, as documented in the resulting February 2015 report. Among other points, the report strongly recommends building a technology enterprise solution that is designed for and accountable to the complex needs of the Office—and decoupled from central Library of Congress control.

In 2012, I created a Chief Information Officer position on the Register's management team (filled in 2013), following recommendations from public interest organizations and copyright customers alike. In the past two years, the Copyright Office CIO has engaged robustly with our customers and employees, and completed numerous technology assessments and planning efforts. But this is just the first phase. The Office will need to hire a robust team of technology and data experts to manage planning, project management, and maintenance requirements. These experts should not merely be assigned or on call from another part of the agency, but rather be integrated into the Office mission where they can work side by side with the legal and business teams.

Just yesterday, the Register's Office published the final version of the strategic plan, entitled *Positioning the United States Copyright Office for the Future, 2016-2020* (attached to this testimony for inclusion in the record and available on our website at <http://copyright.gov/reports/strategic-plan/sp2016-2020.html>). This plan is the result of several years of deliberative groundwork and public review that began with the *Priorities* projects mentioned above. As stated in the plan, the Copyright Office is at a point in time where it must re-visit almost all of its services, including how customers register claims, submit deposits, record documents, share data, and access expert resources, and it requires meeting the diverse needs of individual authors, entrepreneurs, the user community, and the general public.

The strategic plan sets forth six strategic goals: administering U.S. copyright laws effectively, efficiently, and skillfully to benefit authors and the public; making copyright records easily searchable and widely available; providing impartial expert assistance to Congress, executive branch agencies, and the courts; delivering outstanding information services, educational programs, authoritative publications, and other expert resources; building a robust and flexible technology enterprise dedicated to a modern copyright agency; and recruiting a diverse pool of legal, technology, and business experts. In addition, the plan provides dozens of measurable and transformative objectives tied directly to the goals of the copyright law, including the development

of new web tools, secure tracking and transaction systems, business-to-business prototypes, security and privacy measures, and a host of nuanced regulations for emerging or complex areas of authorship.

Implementation of the plan will require significant collaboration with experts in the copyright and technology sectors, and, when successful, will result in a Copyright Office that is as dynamic and future-focused as the marketplace it supports. The plan anticipates an updated and balanced funding strategy that is more appropriately tied to the value of the U.S. copyright system. One way to look at this is as follows: the Office is working in an institutional paradigm designed for the analog world, roughly the 1970s, and is dependent upon funding strategies from that same era. The strategic plan provides a path to leapfrog this trajectory, however, to the benefit of all who rely on the copyright system.

IT Governance and Investments

As many have noted, although the Register and her staff have primary legal responsibility for administering the copyright laws of the United States, officials in the Library of Congress control most of the tools necessary to perform this work, including the IT infrastructure and network that hosts registration and recordation software and public services. This IT arrangement is outmoded, frustrating, and inefficient, and it has provided substandard service to the Copyright Office and copyright customers. Indeed, the Office has never been granted administrative privileges to the operating systems, databases, authentication services, Internet services, security services, storage systems, and network services that are fundamental to its work.

As required by our Strategic Plan, and pursuant to congressional direction, the Copyright Office is currently analyzing the specific technology requirements for a modern, dedicated technology enterprise, as well as the associated costs. This follow-on work will include appropriate public processes regarding a variety of data and cloud-based strategies that will allow the Office to be interoperable with, and more responsive to, the copyright and technology businesses that extract, leverage, and otherwise rely on copyright information.

In this technology work, the Copyright Office greatly appreciates, and has learned from, the expertise of the Government Accountability Office (GAO). The Office swiftly took steps to implement the two recommendations (regarding IT investments and IT planning) in the GAO's March 2015 report, *Copyright Office Needs to Develop Plans that Address Technical and Organizational Challenges*, and will continue to look to GAO as a resource for benchmarks and best practices in other areas. Nonetheless, it should be understood that, in the current environment, Office modernization is necessarily tied to the Library of Congress's ability to correct the systemic deficiencies identified by GAO in its primary audit, *Library of Congress: Strong Leadership Needed to Address Serious Information Technology Management Weaknesses*. Among other issues, this audit describes 31 deficits that will necessarily take years to address.

The questions for the future are what is the promise to Copyright Office customers and why should they be satisfied by a renewed commitment to the same central processes that so completely failed? To provide one concrete example of the risk involved, this past August, the Office lost registration and other online services for nine days due to an extended systems failure following routine facilities maintenance in which the Architect of the Capitol powered down the Madison Building. These underlying systems are owned and managed solely by Library of Congress staff and vendors,

under Library-managed contracts, and yet they are essential to running online registration (eCO) and other Office software applications.

Once apprised of the outage, the Copyright Office became extremely concerned about the safety and integrity of its records. Because there appear to be a number of outstanding questions regarding the protocols and protection measures that were (or were not) taken, I have pressed the importance of a third-party investigation with both the Acting Librarian and the Inspector General.

Ideally, Copyright Office systems should remain available to customers during routine maintenance and testing, meaning that in such a situation the Office should be able to rely upon the Library-managed alternate computing facility (ACF) to maintain its operations. In fact, the Office requested to “fail over” to the ACF during the planned power shutdown to maintain service to its customers, but after investigation, the interim Library of Congress Chief Information Officer discerned that security controls were inadequate for copyright administration.

Whenever the Copyright Office is taken offline, it affects customers around the world. They cannot submit registrations, check the status of pending applications, complete business transactions, or obtain documents required by courts (other than through burdensome paper processes). But it also affects the majority of Office employees, who are unable to access files, process applications, or address backlogs, and who must, instead, manage public confusion and anger. In addition to these concerns, such an outage inevitably impacts the flow of Office revenue.

Because copyright records are the statutory responsibility of the Register—but the Copyright Office does not own or manage the IT infrastructure and network upon which they depend—there is, in effect, no one within the agency who has full and sufficient accountability for copyright data in the event of a failure. Given the fact that the Office database is the authoritative record of copyright ownership under U.S. law, this is an alarming state of affairs.

Relevant History and Related Issues

Although IT challenges are a focus of this hearing, they cannot be easily divorced from larger governance questions. While there is an historic relationship between the Library of Congress and the Copyright Office, their roles are in fact very separate, and it does not serve either institution or the public to conflate or entwine them. The Register carries out very specific and complex legal duties that serve a variety of important, and sometimes competing, public equities. The work of the Office directly affects the legal rights and economic interests of individuals, businesses, and members of the public. In this regard, it must also be noted that libraries—including the Library of Congress—are active and effective advocates in copyright debates, and they are regular participants in the Register’s studies and regulatory proceedings. These developments, largely a consequence of the digital revolution, create more—not less—reason to ensure safeguards and separation across agency lines.

It is instructive that when Congress created the Copyright Office in 1897, its overarching goal was to separate copyright functions from Library of Congress functions. The outcome pleased everyone, including the Librarian, who testified at the time that the volume and complexity of copyright matters were a drain on the Library’s core mission. Oddly, the separation of Office functions that Congress intended to erect has eroded over time, in inverse proportion to the extraordinary growth of the copyright law and expansion of the Register’s statutory duties.

This erosion is not without consequences. Today, there are a number of offices in the Library of Congress that affect or seek to inform the statutory work of the Register and her relationship with the Librarian. These positions exercise significant de facto control over the national copyright system by virtue of IT, budget, acquisitions, and staffing authorities. While it may be understandable that the Library, with some 3,000 employees, would seek to rely on senior staff to manage its various operations, this arrangement has created a number of conflicts—some merely frustrating, others serious—involving funding, staff hires, website administration, and, more substantively, registration and deposit policies. Certainly, there should be cooperation between Copyright Office and Library staff, but the parameters of this work need to be appropriately defined.

During the past two years, some Members of Congress have questioned, more directly, the nineteenth century organizational structure that is at the heart of the Library of Congress-Copyright Office relationship. Under this structure, the Librarian appoints the Register and provides general supervision over Office affairs, but recent judicial precedent has held that the Librarian of Congress is accountable to the executive branch when it comes to copyright functions. To the extent this fact would threaten the impartial and nonpartisan tradition of the Register's position, a recent draft House Judiciary bill would, among other things, ensure that the Register remains freely and independently available to Congress. At the same time, Members and stakeholders have suggested that the nation's leading copyright official should be appointed by the President and confirmed by the Senate, bringing the Register's position into alignment with other intellectual property posts and providing for a more modern chain of accountability. The Office appreciates and is respectful of these deliberations.

In closing, I want to underscore that copyright law is chasing an exponential increase in the way people create, distribute, and consume copyrighted works. As part of this new world order, customers should be able to transact easily and quickly with the Copyright Office, from anywhere and anytime, using consumer-friendly platforms, mobile technologies, and modern data paradigms. This is a fast-paced, results-driven focus for a government agency, but based on all of my experience I am convinced it is the right one.

Thank you for your interest and support on these issues and for inviting me to testify today.