



SIIA

Accelerating Innovation in
Technology, Data & Media

Statement of

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before the

House Judiciary Committee

on

“The U.S. Copyright Office: Its Functions and Resources”

February 26, 2015

Chairman Goodlatte, Ranking Member Conyers and members of the Judiciary Committee, thank you for the opportunity to testify before you today to discuss the functions and resources of the U.S. Copyright Office.

I am Keith Kupferschmid, General Counsel and Senior Vice President of Intellectual Property for the Software & Information Industry Association (SIIA). SIIA is the principal trade association for the software and digital information industries. The more than 700 software companies, data and analytics firms, information service companies, and digital publishers that make up our membership serve nearly every segment of society, including business, education, government, healthcare and consumers.¹ As leaders in the global market for software and information products and services, they are drivers of innovation and economic strength—software alone contributes \$425 billion to the U.S. economy and directly employs 2.5 million workers and supports millions of other jobs.²

SIIA's software and information members rely significantly on the copyright law to protect their investment in the creation and dissemination of their innovative new software and information products and services. They also rely on the copyright law as potential licensees interested in licensing the works of others and as information aggregators interested in copyright registration and recordation data. The copyright law is therefore critical to their success and prosperity as well as the short and long-term success of the U.S. economy. By testifying here today I hope to assist the Committee in better understanding the important role the U.S. Copyright Office plays in the creation and distribution of innovative new software and information products and services, the concerns we have relating to the Office's operations, IT infrastructure, security, staffing and budget, and the immediate need to take steps to modernize the Office.

¹ A list of SIIA's member companies may be found at: <http://www.siiia.net/membership/memberlist.asp>.

² Software & Information Industry Association, The U.S. Software Industry: An Engine for Economic Growth and Employment, Prepared for SIIA by Robert J. Shapiro, 2014 at <http://www.siiia.net/Admin/FileManagement.aspx/LinkClick.aspx?fileticket=ffCbUo5PyEM%3d&portalid=0>.

The Copyright Office is responsible for all administrative, policy and litigation matters relating to the U.S. copyright law. It plays the essential role of registering copyrighted works and recording transfers of ownership of these works. It also plays a crucial public policy role by advising Congress on all domestic and international copyright and related rights matters and providing information and assistance to Federal departments and agencies, as well as the Judiciary on all copyright issues.

As the Office responsible for administering all matters relating to copyright, few other government offices are more important to the growth of creativity and commercial activity in our nation than the U.S. Copyright Office. The ability of our nation's independent creators and small and large businesses to promptly register and record their 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 assists our global competitiveness and technological leadership.

Despite the critical nature of the services provided by the Office, many of these services have failed to keep pace with technology and the marketplace. While the Office should be held accountable for its shortcomings to some extent, in truth many of these deficiencies have been caused by many years of budgetary neglect and structural deficits that would make it difficult for any agency to merely keep pace, to say nothing about modernization.

Many of the challenges confronted by the Office can be traced back to the fact that the Copyright Office resides in the legislative branch, 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 systems, which are antiquated, incompatible and impractical in regard to the Office's underlying objectives and mission.

The Office is also significantly underfunded and understaffed. Within the past several years especially, it is proving exceedingly difficult for the Copyright Office to provide timely and effective services to its constituents. Consequently, we think the time is ripe for Congress to

examine the present structure of the Copyright Office and consider alternatives to the Copyright Office being within and under the supervision of the Library of Congress.

More specifically, we recommend that:

1. Congress should authorize a study to determine whether the Copyright Office, its users and the public are best served in the long-term by either retaining the Copyright Office within the Library while increasing its autonomy, or moving the Copyright Office from the Library and making it a free-standing independent agency within the executive branch or relocating it into the Patent and Trademark Office (PTO). This study should also examine whether the Register (or whomever heads the Office) should be a Presidential appointee.
2. Congress should increase the Copyright Office funding to enable the Office to make immediate critical improvements to its operations, staffing and IT.
3. Congress should pass legislation immediately that gives the Copyright Office the same type of autonomy that Congress has granted to the Congressional Research Service (CRS), which also resides in the Library.

Copyright Office Functions

The primary duties of the Register, as enumerated throughout the Copyright Act, include:

- *Registration*, which includes examining and registering copyright claims;
- *Recordation*, which includes recording assignments, licenses, termination notices, security interests, and other copyright documents;
- *Administering Statutory Licenses and Rulemaking*, which includes statutory licenses affecting online music services, cable operators, satellite carriers, and broadcasters

and often requires the Office to manage and disperse private monies and to review final determinations of rates and terms for statutory licenses that are set by the Copyright Royalty Judges;

- *Advice on Policy Matters*, which includes advising Congress on national and international issues relating to copyright through studies and other means, providing information and legal assistance to Federal agencies, and participating in negotiations and international meetings;
- *Education and Information Services*, which includes maintaining public databases, materials to educate its customers and the public about copyright, and related information and education services.

There are a host of critical concerns we have relating to the Copyright Office's ability to efficiently and effectively perform these duties, the most significant of which include:

A. *Decreased Staffing Has Caused a Backlog of Copyright Applications*

In fiscal year 2012, the Copyright Office processed more than 560,000 claims for registration. Despite this herculean effort, the number of copyright registration applications pending with the Office increased over the course of the year. At the start of fiscal year 2012, there were 183,676 registration applications pending with the Office and at end of the fiscal year 194,689 applications were pending. The Register has acknowledged that this growing backlog of applications is a direct result of decreases in staffing levels.

Until and unless the Office's staffing problems are effectively addressed this backlog will continue to grow. Applicants may become more disenchanted with the Office and many may begin to question (if they haven't already done so) why they spend their time and resources to register their works. This may result in the submission of fewer applications, which in turn will translate to fewer deposit copies for the Copyright Office and thus fewer works for the Library of Congress' collections.

B. The Library of Congress' Demands for Deposit Copies in Certain Formats Causes Friction with the Copyright Office and Copyright Applicants

The deposit copy required by the Copyright Office serves numerous purposes. It is used by the Office in the examination process to determine whether the work meets the conditions of copyrightability and to certify the copyright record for parties, for example, as in the case of infringement litigation. These deposit copies are also used by the Library of Congress to stock its collections. Because the deposit copy is used by the Library for one purpose and by the Copyright Office for a completely different – and often competing – purpose, the Library and the Office are often at odds with one another over the type and use of the deposit copy.

The Library of Congress regularly reviews the deposits submitted for copyright registration and then selects the deposits that it wants to include in its collection. The Copyright Office has no choice but to turn over its copy to the Library because under the statute the Library controls the Office. However, if the Library makes a selection and takes the Office's only copy, then the Office will be unable to satisfy its obligation to certify the copyright record in the case of copyright litigation.

To date, the deposits the Library has selected have been primarily physical formats. Often, the Copyright Office and registrants would prefer to submit a digital deposit copy, but because the Library desires that the deposit be in a physical format, the Copyright Office requires the registrant to submit a physical copy. This is a major obstacle to the Copyright Office's efforts to make the registration process more efficient and less expensive for copyright owners.

Some SIIA members do not register their works with the Copyright Office because they have found the process to be too expensive and cumbersome and because they are concerned about the security of their deposits. For example, many newspapers are no longer registering their works with the Copyright Office because the Library requires that newspaper deposits be in microfilm format. As publishers and institutions move away from microfilm, the Library's continued and unreasonable demand for microfilm copies places an undue financial and administrative burden

on newspaper copyright owners. The end result is that everyone loses – the Library gets nothing for its collection, the public may be missing valuable historical knowledge, and the resulting financial hardship precludes newspaper publishers from registering their newspapers, thus making it more difficult for them to take action against the online infringers.

C. The Functionality of the Copyright Office Registry is Outdated

The Office’s registration system and its companion recordation system constitute the world’s largest database of copyrighted works and copyright ownership information. However, the functionality of the registry is drastically out of date relative to search and database technologies available today.

A good example of the functionality problems can be demonstrated by a simple search of the database records on the Copyright Office website. A search of the Office records for “The Godfather” does not display either the Oscar-winning movie or the best-selling book by Mario Puzo within the first 25 search results. In comparison, the first 25 search results for “The Godfather” on Google and Bing display virtually nothing but references to the movie and book.

The present recordation process is also shockingly antiquated, cumbersome, and costly. It requires manual examination and manual data entry from paper documents much the same way as when the recordation system was first launched in the 1870’s. The recordation process is extremely time consuming, resource-intensive and costly to the Office because all information, except for information included in the recordation cover sheet (which often is never filed), is hand-entered (*i.e.*, keyed in) by Copyright Office staff regardless of whether the recordation materials submitted are in digital or print form. The process takes twelve to eighteen months for the Office to enter the data – largely because of insufficient staffing and because documents must be submitted on paper. This is much too long. The copyright marketplace moves quickly and licensees, lawyers, and others need this information immediately – not a year and a half later.

The efficiency and reliability of the recordation system must improve. It is essential that the Office reengineer the recordation process to make historic records available, and to build a

comprehensive, publicly accessible database of copyright ownership transactions that is easily searchable and user friendly. It must become easier and less costly for ownership and other documents to be recorded with the Office and the Office must improve the efficiency and speed of the recordation process, as well as making it easier to search and retrieve documents from the Office's recordation database.

It is also crucial that the information that the Office collects as part of its registration and recordation systems be more easily accessible, current and searchable by the public through the Copyright Office website. New digital technologies have dramatically quickened the pace of commercial transactions involving copyrighted works. Parties to these transactions require access to copyright information at a commensurate speed. Anything less, may slow the pace of commercial innovation and the copyright marketplace. It is, therefore, critical that the Copyright Office make the most current registration and recordation information available on its site.

The Office has been making progress toward these goals, but this progress has been slow. It will continue to be slow so long as the Copyright Office continues to be encumbered by the budget, staffing and IT limitations imposed by the Library of Congress.

D. The Copyright Office Needs Increased Regulatory Authority

The vast majority of copyright law is directly administered by Congress by statute, and more recently by the courts. Although the Register has authority to conduct rulemakings, that authority is extremely limited.

This approach has caused considerable problems. The Copyright Office conducts various studies and issues many policy recommendations. However, there is often no follow-on action taken as a result of these efforts because the Office lacks substantive rulemaking authority to take the next logical step. If the Office were to be granted more regulatory and adjudicatory authority, the Office could more easily take these next steps, resulting in a more flexible, contemporary and user-friendly copyright law.

Limiting the Office's ability to administer the copyright law by regulation has forced Congress to codify too much detail into the Copyright Act making it both lengthy and unwieldy at times. Copyright issues are inherently fast-moving issues that require quick consideration and response to changes in economic conditions and new technologies. The Copyright Office has a knowledgeable and experienced staff that is well versed in all aspects of the copyright law as well as marketplaces and technologies affecting and affected by the law. The Office is well suited to act expeditiously and effectively to address complex copyright issues as they arise. Therefore, one step that Congress should consider in any attempt to update the copyright laws is whether to give the Copyright Office more regulatory and adjudicatory authority to administer the law moving forward.

Copyright Office Resources

A. The Copyright Office Needs an IT Infrastructure that is Devoted to the Office

The Copyright Office does not have its own Information Technology (IT) infrastructure; it uses the network, servers, telecommunications, security and all other IT operations controlled and managed by the Library of Congress. This is a significant problem that needs to change going forward. The Library IT system is meant to service a library and its associated functions, not an organization like the Copyright Office, which has a very different mission from the Library and which is expected to provide services that affect the legal rights and economic interests of creators, owners, users and others who rely on the Copyright Act for their economic and creative well-being.

The Office needs a more advanced IT infrastructure – one that is specifically dedicated to the Office and can better support the needs of its users. Its customers need a more user-friendly registration and recordation system that is quickly adaptable to changes in the copyright marketplace and easily searchable across numerous data fields.

As copyright registration deposits are quickly moving toward solely digital copies, SIIA members are increasingly concerned about the security of the Office's database of copyright

deposits. For example, many SIIA publishers produce copyrighted test banks and solution manuals that are not published or otherwise publicly distributed. For obvious reasons, these materials are closely held by these publishers and not made available to others lightly. These publishers are required to deposit digital copies (where there are no print copies) with the Office as part of the copyright registration process. They are justifiably concerned about the security measures the Office takes to protect against accidental leakage of these works or cyberattacks into the Office's database. Public disclosure of these test materials would not only destroy the value of the tests themselves, but also in many cases would also destroy the value and the integrity of the certification and other programs built around these tests.

Improvements to the Office's IT system should also take into account the need for users to access information from the Copyright Office database for various purposes, including to seek out potential licenses as well as text and/or data mining of the Office's database for research purposes. Such improvements would require enhancing access and searchability of the database. These improvements could also have an immediate effect on various policy issues. For example, improved access and searchability of the Office's database could help address the orphan works problem, which the IP Subcommittee has considered in the past.

B. The Copyright Office is Underfunded

Although the Copyright Office resides within the Library of Congress, it receives a separate appropriation. The budget for the Copyright Office is exceedingly small, given the amount and complexity of its responsibilities. In fiscal year 2013, the Office had an overall budget of only \$44.2 million. By comparison the budget of its sister organization, the U.S. Patent & Trademark Office (PTO), was \$2.8 *billion*. About two-thirds of the Copyright Office's budget (approximately \$28.7 million) came from user fees for registration, recordation, and other public services. The other third (about \$15.5 million) came from appropriated dollars. The Copyright Office is also supported in part by Library services provided without charge, such as security, financial services and automation support. Nor does it pay rent to the Library.

Since 2010, the dollars appropriated to the Office have been reduced by 20.7% and its total budget authority has been reduced by 8.5%. This decrease in funding has caused staffing shortages and technology maintenance lapses. Under its present structure there seems to be no immediate solution to these budget problems. The Copyright Office is unable to increase user fees enough to offset the shortfall because the Office is statutorily required to limit its fees to the costs incurred by the Office for the registration of claims, the recordation of documents, and other services. The Office also may not use the money it collects from user fees for capital improvements or other investments. That seems to be a moot point in any event as fee collections in recent years have regularly fallen below the Office's spending authority. As a result, the Copyright Office has no money for infrastructure improvements, like an overhaul of its IT systems.

Insufficient funding has often prevented the Office from accomplishing its statutory responsibilities. For instance, due to budget constraints, the Office has been unable to attend several meetings at the World Intellectual Property Organization (WIPO) and participate in bilateral and multilateral treaty negotiations. As the copyright landscape becomes more dominated by trade and treaty discussions taking place in various international fora, the absence of the U.S. Copyright Office from those discussions is cause for grave concerns.

Insufficient funding has also prevented the Office from keeping pace with technology, business practices and user demands. These struggles are not the result of a one or two year belt-tightening, but rather twenty or more years of systemic monetary neglect. The Office is in desperate need of a complete overhaul. That cannot happen without Congress first committing to provide the Office with the necessary funding to modernize the Office.

The Office also needs more flexibility in its legal spending authority. The Office should have the ability to build a reserve account from the fees collected so it has the necessary funds to draw from to make capital and other improvements in different budget cycles, including during periods when incoming fee receipts are down.

C. The Copyright Office is Understaffed

The Library has gradually reduced Copyright Office staff over the past several years. Due to budgetary constraints and other reasons, the number of Copyright Office staff has dropped precipitously over the past five years when the Office's number of full-time staff was 483. For the first time in many years the number of Copyright Office staff has dropped below 400. This dramatic reduction in staff has placed an impossible burden on the Office to accomplish its registration, recordation, policy and litigation responsibilities in a timely and effective manner.

The Copyright Office must be able to hire sufficient staff to carry out its daily responsibilities and to prepare for future challenges. The Office needs additional lawyers to adequately meet the litigation and (domestic and international) policy demands faced by the Office now and in the future. Considering the numerous copyright policy review hearings held the past two years by the House Judiciary Committee and the copyright debates taking place throughout Europe and the rest of the world, there is more interest and analysis of the world's copyright laws than at any other time in our history. Copyright issues are emerging in more and more fora and more new, complex and diverse copyright issues are emerging every day. It is essential that the Office have the legal staff necessary to effectively address these policy challenges.

The Office also needs additional staff to adequately address its registration and recordation responsibilities. Having a sufficient and experienced staff is essential to ensuring the accuracy and efficiency of the registration program. The registration program has been decimated by budget cuts and retirements, which has resulted in 48 vacancies out of a staff of 180 experts. These staff reductions have resulted in longer copyright registration pendency periods.

The recordation division of the Office also faces enormous staffing challenges. Shockingly, there are only nine employees to handle the annual filing of 12,000 recordation documents. This has resulted in a processing time of 17 months – an unacceptable turnaround time by any measure. The recordation processing delays have an immediate real-world effect. It drastically hinders the ability of rights holders, potential licensees, businesses, litigants and numerous other

users of the copyright system to quickly and easily locate and identify copyright owners for licensing, litigation or other purposes, which in turn can adversely affect the U.S. economy.

Perhaps the most glaring staffing problem is the Office's lack of adequate IT experts. The Copyright Office is obligated to use the Library of Congress' technical infrastructure, including its network, servers, telecommunications and security operations. As a result, the Office has only 23 full-time employees to provide support for the entire Office and its existing registration and recordation systems.

Next Steps

New technological advances and innovative business models are continuously being developed and exploited that make creating, distributing, performing, obtaining, accessing and infringing copyrighted works easier than ever before. This creates more new types of authors, publishers, businesses, licensees, customers and infringers that use the copyright law and the services of the Copyright Office.

The Copyright Office is tasked with the tremendous challenge of keeping pace – or at the very least not falling too far behind – this fast-moving copyright juggernaut. The rapid changes in copyright will require dramatic changes to the structure and operations of the Copyright Office. It will require a number of paradigm shifts that will affect many of the Office's registration, recordation and other services; its use of technology and its funding.

The Copyright Office's customers are demanding more innovative services. They want the Copyright Office to do the things it already does but do them better and faster, and also to do many new innovative things to make the copyright law more functional, more efficient and more user-friendly. Because of staffing reductions and budgetary restrictions that have been in place for many years, the prospects of the Copyright Office being able to meet these demand are slim under the present regime. To have any reasonable hope of making the necessary improvements, immediate and wholesale changes in the structure and operations of the Copyright Office are necessary.

After reviewing each of the operational deficiencies, it is clear that many of the Copyright Office's struggles to administer the copyright law seem to lead down one path, and that path stops at the doorstep of the Library of Congress. Many of the staffing and budgetary limitations and restrictions, technical IT constraints and inadequacies, and registration deposit problems stem from requirements or restraints placed on the Copyright Office by the Library of Congress. Consequently, it is highly unlikely that the many operational problems can be resolved or that many of the suggestions for modernizing the Office can be achieved in the near future so long as the Copyright Office continues to operate under the supervision and direction of the Library of Congress.

SIIA therefore recommends that the following steps be taken to immediately to address the operational and resource problems at the Office:

Authorize a Study to Determine the Best Long-Term Solution for the Office: Congress should authorize a study to determine whether the Copyright Office its users and the public are best served by either: (i) retaining the Copyright Office within the Library of Congress while reducing the authority the Library has over the Office; (ii) moving the Copyright Office from the Library and making it a free-standing independent agency within the executive branch; (iii) moving the Copyright Office to the PTO, thereby creating a new executive-branch U.S. Intellectual Property Office that resides within the Department of Commerce; or (iv) integrating the Copyright Office and the PTO, thereby creating a new executive-branch U.S. Intellectual Property Office, and making that agency a free-standing independent agency that resides outside of the Department of Commerce. This study should also examine whether the Register (or whomever heads the Office) should be a Presidential appointee. The study shall be completed and submitted to Congress no later than nine months after the date Congress approved the study.

Increase the Copyright Office's Funding: Congress should increase the Copyright Office's funding to enable the Office to make immediate critical improvements to operations, staffing and IT. If the Copyright Office is going to be able to fully modernize it is going to need an infusion of staff and new technologies. Those needs come with a big price tag. Although the costs of implementing new functionalities and improvements in the Office will be significant expenditure

at the outset, these costs will likely be offset in the long run by the long-term cost savings created by these new functionalities and improvements and by revenue that the Office might generate from use of its new services and increased information availability. When one considers how important the copyright industries are to the U.S economy, increasing the Office's appropriations for modernization purposes is certainly justified.

Increase the Copyright Office's Autonomy: Congress should pass legislation immediately that gives the Copyright Office the same type of autonomy that Congress has granted to another department within the Library – the Congressional Research Service (CRS). Unlike the Copyright Office, the Library has no authority to supervise or direct the activities of CRS. To the contrary, the Library is statutorily required to “encourage, assist, and promote” the CRS's activities “in every possible way.”³ This type of autonomy is what allows CRS to provide Congress with analysis that is authoritative, confidential, objective and nonpartisan, while also maintaining its independence from the Librarian of Congress. By giving the Copyright Office more autonomy and the Library less control over the Office many of the operational issues previously identified could be resolved. For instance, concerns about the Copyright Office's continued reliance on the Library's IT systems and the Library's ability to control the types of deposit copies the Office can accept from copyright owners could be remedied under this new structure.

We provide a detailed analysis of the different options for structural change and various additional improvements the Office can make, as well as many of the operational and resource issues discussed in this testimony, in our recently published report titled “The Most Important and Immediate Copyright Reform for Congress: Modernizing the U.S. Copyright Office” (attached as Appendix A).

If there is one inescapable conclusion here it's that there needs to be wholesale changes in the structure and operations of the U.S. Copyright Office and those changes needed to take place yesterday. Therefore, it is SIIA's view that it is essential that Congress focus its efforts on fixing the Copyright Office before it takes on any other possible legislative copyright reforms.

³ 2 U.S.C. § 166(b)

Although the funds needed to effectuate such change are likely massive, in the long term the expenditure will be well worth it. The services provided by the Copyright Office are critical to the U.S. economy. The money spent today investing in an efficient and user-friendly Copyright Office will result in substantial benefits in the future for the U.S. economy, and of course, the U.S. Copyright Office itself.

We look forward to working with the Committee and other stakeholders as this and other copyright issues are considered by the Committee. I will be happy to answer any questions.