

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

Hearing Before the
Subcommittee on Courts, Intellectual Property, and the Internet
Committee on the Judiciary
United States House of Representatives

Oversight of the U.S. Copyright Office

September 18, 2014

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

**Before the
Subcommittee on Courts, Intellectual Property, and the Internet
Committee on the Judiciary**

**United States House of Representatives
113th Congress, 2nd Session**

September 18, 2014

Oversight of the U.S. Copyright Office

INTRODUCTION

Chairman Coble, Ranking Member Nadler, and Members of the Subcommittee:

Thank you for the opportunity to appear before you today regarding the work of the U.S. Copyright Office. This is a significant time for the Nation's copyright system, and I am grateful for your leadership in ensuring its continued effectiveness. Today's oversight hearing and the sixteen policy hearings you have convened to date in this Congress underscore the extraordinary value of the American copyright system and its role in encouraging authorship, disseminating creative works, fostering investment, and facilitating commerce in the global marketplace.

ROLE OF THE UNITED STATES COPYRIGHT OFFICE

The Copyright Office is a department of the Library of Congress. The Office plays an integral role in the overall functioning of the copyright system. It sits at the center of a dynamic marketplace in which creative content drives a sophisticated chain of businesses in the information, entertainment, and technology sectors. These businesses are both a hallmark and reflection of the 21st century. Consumers want to access and share content of all kinds, using devices and platforms of all kinds. Delivery of creative content is faster, more interactive, and more global than ever before. These kinds of changes are like no others in history. It is therefore understandable that our customers are calling for a faster and more nimble Copyright Office—one that is more technologically advanced and more interoperable with the marketplace it serves.

The Copyright Office carries out a variety of statutory duties. These include examining and registering copyright claims; recording assignments, transfers, terminations, and other

copyright documents; and administering statutory licenses (affecting online music services, cable operators, satellite carriers, and broadcasters). The Office administers the mandatory deposit provisions of the law, in which copyright owners deposit copies of published works with the Library of Congress for the national collection.

Pursuant to the provisions of the Copyright Act, the Register has the authority to conduct rulemakings and prescribe regulations relating to the administration of her statutory duties. For example, the Register may promulgate regulations addressing certain aspects of statutory licensing or the kinds of deposits or identifying information that should be submitted for registration. Pursuant to section 702 of the Copyright Act, all regulations established by the Register under Title 17 are subject to the approval of the Librarian of Congress.

Congress has also prescribed important law and policy functions for the Office. These include delivering policy assistance and expert studies to Congress and to the public; providing legal assistance to federal agencies (including legal interpretation of the provisions of Title 17); participating in trade and treaty negotiations, international meetings, and United States delegations; conducting rulemakings and public hearings; and reviewing final determinations of the Copyright Royalty Board. The Office maintains accurate and authoritative information for the benefit of the public, including physical and electronic registries; databases of copyright ownership information; a public website and public information services; and the Compendium of U.S. Copyright Office Practices.

As Congress considers updates to the copyright law, it is possible that the Copyright Office will absorb new functions, for example with respect to statutory licenses, small claims administration, or registration policy. Discussions about the future are invigorating, but they highlight the need for a series of improvements that may be both small and large, from minor upgrades to paradigm shifts. The Copyright Office has spent the past few years identifying and discussing what form these improvements might take and how best the Office might accomplish them.

THE PAST THREE YEARS

When the Librarian appointed me to the position of Register on June 1, 2011, the entire federal government was entering a phase of fiscal review and sequestration. I was very interested in engaging with Copyright Office customers and other stakeholders to evaluate how we might position the Office to be both fiscally prudent and highly effective in the years ahead, not only to assess potential changes to Office services but also to ensure that the Office will reflect the prominence of the copyright system in the greater marketplace.

In October 2011, the Office published a comprehensive document laying out seventeen legal and administrative priorities and a series of ten special projects designed to evaluate its capabilities and inform the future development of its services. (Priorities and Special Projects of the Copyright Office, October 25, 2011). The document was very well received by the public and provided a multi-year work plan that the Office has now largely

completed. The special projects, in particular, required outreach to the larger copyright community.

Here are a few highlights from the special projects.

Compendium of U.S. Copyright Office Practices, Third Edition

In August 2014, the Copyright Office completed the first major revision of the Compendium (Compendium of U.S. Copyright Office Practices, Third Edition) in decades and released it in draft form (see our website at www.copyright.gov). The prior version was published in 1984 and was amended in part in 1988 and 1998. The new version provides more than 1200 pages of Copyright Office administrative practices and sets the stage for further discussions and amendments in the areas of registration and recordation policy, especially in relation to the digital environment. The Compendium is a technical manual for staff, as well as a guidebook for authors, copyright owners, licensees, practitioners, scholars, the courts, and members of the general public.

As in the past, the Compendium addresses fundamental principles of copyright law—for example, standards of copyrightability, joint authorship, works made for hire, and termination of transfers—as well as routine questions involving fees, records retrieval, litigation documents, and other procedural matters. The Third Edition offers the significant benefit of electronic publication for the first time ever, so it will become a living document. More than three times the size of the previous edition, it will nonetheless be more navigable than ever before and allow for a regular schedule of updates. In final form, it will feature hypertext links to cross-referenced material, glossary terms, and statutory and regulatory provisions.

Technical Upgrades Analysis

The Copyright Office commenced a public discussion of its technical capabilities in 2012 in order to acknowledge and assess its relative strengths and weaknesses in providing services and otherwise executing the duties of Title 17. A broad section of the copyright community met with the Office or filed written comments, pointing out issues with the user interface, quality of public records, security concerns, interoperability, and overall customer experience.

Here are some of the forward-thinking suggestions we received: the Copyright Office must enhance the security of digital works deposited; adjust the requirements of registration to accommodate the manner in which content is created and disseminated on the Internet; improve the functionality of the Office's databases and the usability of the Office's website; establish or adopt granular metadata standards; implement platforms and data standards that allow for business-to-business applications with programs and databases in the copyright industries or technology sectors; encourage or require the use of unique identifiers of authors, owners, and discrete works; and develop an application program interface ("API") that will allow interoperability with third-party registration services and databases of information about works, authors, or licensing maintained by copyright

industries, new businesses, and the technology industry. These kinds of improvements would yield a more robust public record, e.g., one that not merely identifies the copyright owner of an album or sound recording but also every author or musician on every track. This information could then be relied upon and leveraged by businesses operating in the digital copyright space.¹

Many stakeholders focused specifically on potential improvements to the copyright registration system. Like other chapters of the 1976 Copyright Act, the registration provisions reflect an era in which businesses distributed physical copies of works and consumers typically expected to own them. Today, businesses offer many works by streaming or displaying them via an array of technologies, and consumers watch sports programming, read books, and listen to musical performances through a wide variety of mobile platforms and devices. Frequently this content is licensed for access only; copies may or may not be available for downloading. Because of the threat and reality of Internet piracy, many copyright owners choose to keep tight controls on digital formats, including access controls, copy controls, and other forms of digital rights management.

The Copyright Office has a responsibility to weigh these marketplace shifts against the purpose and efficacy of the law and to ensure that Copyright Office practices and regulations, e.g., in the area of registration, are not stuck in time but, rather, reflect the realities of the digital environment and the business expectations of those that the Office serves. This work requires the Office to engage with copyright owners as well as the Library, because the advent of digital works presents challenges and tensions that were not contemplated by the current statute.

A central question is the manner by which digital deposits—which are submitted by copyright owners for the purpose of examination, registration and legal protection—may be acquired, preserved, and made available by the Library to its patrons and the public generally. Such questions may or may not be separable from the question of digital deposits submitted in accordance with the so-called mandatory deposit provisions, under which the Library has long received physical deposits and would like to receive digital deposits pursuant to regulations and/or negotiated terms. These are important public policy questions and the Copyright Office will need to address all perspectives carefully and impartially, ultimately making regulatory recommendations to the Librarian or statutory recommendations to Congress, or both.

From an operational standpoint, the Office's electronic registration system was fully implemented in 2008 by adapting off-the-shelf software. It was designed to transpose the paper-based system of the 20th century into an electronic interface, and it accomplished that goal. However, as technology continues to move ahead we must continue to evaluate and implement improvements. Both the registration and recordation systems need to be increasingly flexible to meet the rapidly changing needs of a digital marketplace.

¹ The suggestions of the copyright community are described in further detail in Maria A. Pallante, *The Next Generation Copyright Office: What It Means and Why It Matters*, 61 J. COPYRIGHT SOC'Y U.S.A. 213 (2014).

New Programs

Since 2011, the Copyright Office has created several programs to attract new talent and invite robust discussions regarding complex issues. Of special importance are the Abraham L. Kaminstein Scholar in Residence Program and the Barbara A. Ringer Copyright Honors Program. The Kaminstein Program allows leading academics with a demonstrated commitment to the study of copyright law and policy to join the Copyright Office, working as paid scholars on mutually beneficial projects. The Ringer Copyright Honors Program offers 18- to 24-month paid fellowships for top law school graduates and other attorneys in the early stages of their careers. Ringer Fellows are selected based upon their exceptional ability and interest in copyright law. In addition, the Office created a program by which professors and their students may supplement the research needs of the Office on projects of mutual interest.

The Copyright Office has also launched two programs in the area of outreach and education. Copyright Matters is a series of public lectures in which artists, academics, public officials and members of the copyright marketplace discuss the practical implications of copyright law in the 21st century. Since 2011, the Office has hosted fifteen Copyright Matters events, including: “Current Developments in the Motion Picture Industry”; “The American Songwriter”; “Nimmer on Copyright: Celebrating 50 Years”; “Best Practices in Fair Use”; “Copyright Conversations with the United Kingdom”; and programs celebrating the 100th anniversaries of the Authors Guild, the Dramatists Guild and ASCAP, respectively. The Copyright Academy offers in-depth classroom training to Copyright Office staff on various aspects of copyright law. Since we launched it in 2013, five courses have been completed, and 110 Office staff have received certificates of completion.

Recordation System

The system by which copyright documents are recorded, including, for example, transfers, licenses, and security interests, has not been fundamentally changed in many decades. Recording is now a cumbersome and costly process that requires manual examination and data entry. How to bring it online has been a major focus of the Office. In the past two years, the Office has held three hearings, published several sets of public questions, and engaged with a broad variety of customers. It was a particular focus of the Office’s first Kaminstein Scholar, Professor Robert Brauneis of George Washington University Law School, as well as its first academic research partner, Stanford Law School, under the tutelage of Professor Paul Goldstein.

The recordation system is extremely important because it has the potential to connect registration information (which is a starting point based on when a registration certificate is issued) to the ongoing chain of commerce for a particular work (which could span decades). It provides information regarding who has acquired what exclusive rights and whether and how copyright ownership has changed hands. How we transform the recordation system from a 20th century paper-based system to a 21st century digital platform is a key question that could have long-term consequences for the global

marketplace. The Office is hopeful that we will have the resources and the technological flexibility to make this system authoritative and optimally useful to authors, businesses, technology platforms, researchers, and the public.

Fee Study and Schedule

On May 1, 2014, the Office implemented an updated fee schedule, following a two-year study and public comment opportunities. The general fee for registration is \$55, up from the \$35 fee set in 2009. (The 2009 fees were discounted to incentivize use of the new electronic system.) However, drawing on its authority to take into account the objectives of the copyright law, the Office retained the \$35 fee for single authors filing applications for single works. The Office also adopted new fees for the filing of statements of account by cable and satellite operators who avail themselves of statutory licenses, as directed by Congress under the Satellite Television Extension and Localism Act of 2010, or “STELA.”

As required under the statutory framework, the Office carefully considered its costs in proposing and implementing its new fees. At the same time, it is important to realize that the costs of the Copyright Office cannot be wholly or precisely accounted for in light of the fact that the Office’s technology is intertwined with and partially offset by the technology infrastructure of the Library of Congress, which is funded by appropriations and at the heart of the Library’s overall operation.

Legal and Policy Work

As this Committee conducts a comprehensive review of the Nation’s copyright laws, the Copyright Office is actively supporting the effort. The Office is leading multiple studies, public roundtables, and interagency discussions on a variety of urgent issues, from the statutory and regulatory framework for music licensing to the scope of exclusive rights for authors under the WIPO Internet Treaties to the problem of orphan works and outdated library exceptions. The Office published a major report last year regarding the creation of a voluntary small claims mechanism that would allow both copyright owners and those responding to infringement claims to avoid the significant burden and costs of federal court litigation.

Since 2011, the Copyright Office has delivered five policy studies to Congress. In addition to Copyright Small Claims (September 2013), these are: Resale Royalties: An Updated Analysis (December 2013), Federal Copyright Protection for Pre-1972 Sound Recordings (December 2011), Legal Issues in Mass Digitization: A Preliminary Analysis and Discussion Document (October 2011) and our Report on Marketplace Alternatives to Replace Statutory Licenses (August 2011). The Office is completing three additional studies in the areas of orphan works/mass digitization, music licensing, and the making available right, respectively.

As the Copyright Office supports and advises Congress on ways to address these and other policy issues, it is reviewing a range of statutory, regulatory, and voluntary solutions that would make the copyright law function better. At the same time, the Office is working

collaboratively across the government as the Administration considers its objectives regarding the intersection of copyright law and the Internet (under an Internet Policy Task Force of the Commerce Department). The Office's relationship to the Administration is defined by statute.²

Likewise, through the Office of Policy and International Affairs, which is headed by one of four associate registers, the Copyright Office has continued its workload in bilateral and multilateral arenas. We continue to participate on the interagency IP teams led by the United States Trade Representative in the Trans-Pacific Partnership (TPP) and the Trans-Atlantic Trade and Investment Partnership (T-TIP) negotiations. The Office also participated in negotiations and diplomatic conferences of the two recent WIPO treaties, the Beijing Treaty on Audiovisual Performances (2012) and the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (2013), efforts led by the U.S. Department of State and the U.S. Patent and Trademark Office. We also continue to work with our interagency colleagues to review and assess foreign copyright laws.

Finally, the Copyright Office carries a significant legal and regulatory workload, which is handled principally by the Copyright Office General Counsel and her staff, though frequently in partnership with the Associate Register of Copyrights and Director of the Registration Program. The Office is responsible for issuing regulations to administer the Register's functions and duties under the Title 17, including rules governing the national registration and recordation systems and certain rules affecting statutory licenses. It also handles the bulk of the work related to the triennial rulemaking mandated by the Digital Millennium Copyright Act to consider exemptions to that Act's anti-circumvention provisions. It is responsible for reviewing decisions of the Copyright Royalty Board to ensure that they comply with the Copyright Act. In addition, the Office works closely with the Department of Justice on litigation matters. For example, the General Counsel's office was closely involved in two major pieces of copyright litigation recently before the Supreme Court: *Petrella v. MGM*, involving equitable defenses to copyright infringement, and *Aereo v. ABC, Inc.*, involving the interpretation of the public performance right in relation to Internet retransmission of broadcast television.

OBSTACLES AND OPPORTUNITIES

The Copyright Office is very leanly funded. For fiscal year 2014, we have a budget of \$45 million, which breaks down as follows: 1) spending authority in the amount of \$27.9

² As a general matter, Section 701 of title 17 sets forth a list of functions of the Register of Copyrights, including providing information and assistance to federal departments and participating in international meetings. More specifically, the Undersecretary of Commerce for Intellectual Property (who is also the Director of the United States Patent and Trademark Office), a Senate-confirmed advisor to the President on intellectual property, is required by law to consult with the Register "on all copyright and related matters." 35 U.S.C. § 2(c). Likewise, the Register serves as a statutory advisor to the Intellectual Property Enforcement Coordinator, a Senate-confirmed position that was created by Congress in 2008 and is in the Executive Office of the President. 15 U.S.C. § 8111(a), (b)(3); Prioritizing Resources and Organization for Intellectual Property Act of 2008, Pub. L. 110-403, tit. III, 122 Stat. 4256, 4264.

million (congressional approval to spend this much from the fees we collect for services); and 2) another \$17.1 million in appropriated dollars.³

Since 2010, the budget has dropped by \$3.51 million, or 7.2 percent. As a result, the Office has had to rely on its small reserve fund of customer fees to meet operating expenses. Congress sometimes offsets the Office's request for appropriated dollars by the amount it may have available in its reserve fund at the end of the fiscal year, thus further reducing any operating cushion the Office could otherwise use for long-term planning or unexpected urgencies.

Under the current statutory language, we are limited to charging for "the costs incurred by the Copyright Office for the registration of claims, the recordation of documents, and other services." Our fee authority does not permit the Office to collect for capital improvements or other forms of investment above the cost it incurs in the ordinary course of business. At the same time, as suggested above, the true cost of the Office's services is unknown, as the infrastructure for the copyright systems is intertwined with, managed by, and subsidized to some degree by the central enterprises of the Library of Congress. Notably, the value of the works acquired by the Library through the Copyright Office—from registration as well as the mandatory deposit provisions of the Copyright Act—is almost double the Office's annual appropriation. This would seem to be a remarkable positive return on our funding, making it one of the greatest government bargains for taxpayers. The question is whether and how we can sustain it.

The Copyright Office staff is smaller than it should be to carry out the volume and complexity of work prescribed by Title 17. The Office is currently operating with 360 FTEs and an authorized ceiling of 439.⁴ The ceiling has been reduced by approximately 100 people over recent years. Having slimmed the Copyright Office over the past few years, we now have an opportunity to rebuild it in a more efficient and flexible manner, replacing dated positions with those of the 21st century. Nonetheless, we will need to attract the kinds of professionals who are capable of performing complex work, whether leading public roundtables and studies on the intricacies of the copyright law or planning for and executing technological developments. In the meantime, we have reorganized existing departments to make them more compatible with their statutory duties. These departments oversee public information and education on the one hand, and public records and repositories on the other hand. I have appointed an Associate Register to head the former and an experienced business leader to head the latter.

As stated, the Copyright Office has a particularly acute need for experienced copyright lawyers and technology professionals, but it also needs to attract qualified registration and recordation specialists who can be trained and promoted over time. Our legal and policy

³ These FTE usage, ceiling, and budget numbers reflect the Copyright Basic portion of the total Copyright Office budget and FTE usage/ceiling. Excluded are FTE usage, ceiling, and budget for the Copyright Office's Licensing Division and Copyright Royalty Board.

⁴ This excludes twenty-four employees in the Licensing Division and the Copyright Royalty Board, both of which are supported by separated funding.

staffs have fewer than twenty lawyers, even though they are responsible for studies, rulemakings, litigation, international negotiations, and policy advice on every conceivable topic of copyright law. Aside from these general staffing challenges, the Office does not have a sufficient number of positions at the senior level pay scale, for example deputies or specialists, to match the volume and complexity of the workload. We will continue our efforts in this regard, working with the Library.

The registration staff is among our immediate concerns. The registration program has been decimated by budget cuts and early retirement packages and has forty-eight vacancies out of a staff of 180 experts. Moreover, about 25% of the registration specialists remaining are approaching retirement. The pendency time for processing registration claims is a source of constant concern. At present it is 8.2 months for paper applications and 3.3 months for electronic applications. However, as discussed above, the level of backlog at any particular point in time is not the only measure of progress with respect to how the Office is performing and whether it is sufficiently poised to absorb the challenges of the future.

The recordation division is operating with only nine employees. This section receives approximately 12,000 new documents for recordation annually, and the current average processing time is around seventeen months. As stated above, the issues relating to recordation are systemic and cannot be significantly ameliorated until we redesign the recordation system and bring it online.

The Copyright Office has a very limited technology shop that addresses application-level support for the existing registration system (twenty-three FTEs and a limited number of contractors). For example, it develops tests and releases software modifications on an iterative schedule. The Copyright Office uses the technical infrastructure of the Library, including its network, servers, telecommunications and security operations. Under this model, there are both synergies and resource challenges. Departments across the Library compete for services and equipment. However, these services do not always support the fact that the Copyright Office is a twenty-four-hour business with a distinct mission. The Copyright Office intersects with a dynamic global marketplace and affects the legal rights and economic interests of those who rely on the provisions of Title 17. In the long run, decisions about technology will not only inform, but also decide the success of the Copyright Office and its ability to interact with and support a modern copyright system. This may mean that the Office will need to absorb more direct responsibility for its needs.

OTHER DEVELOPMENTS

Government Accountability Office Reports

As the Committee and Subcommittee are aware, the Senate Appropriations Committee has in the report accompanying its FY 2015 legislative branch appropriations bill directed the Government Accountability Office (GAO) to examine the Copyright Office's information technology infrastructure. The relevant language is as follows:

The Committee recognizes that the digital revolution has transformed the copyright marketplace and, as a result, the role of the Copyright Office in our economy. The Committee finds that [the] Copyright Office will also need to evolve and adapt to the challenge of these new realities. In fact, the Committee notes that public comments submitted recently by the copyright community indicate that the Copyright Office is currently in need of significant IT and related upgrades in order to be fully interoperable with the digital economy it serves. For example, as the Register of Copyrights has testified, the copyright recordation system is still administered using a paper-based process.

The Committee finds that a modern and efficient copyright process is [an] important component of protecting and promoting creative works and includes \$1,000,000 for modernizing the Copyright Office's information technology infrastructure. However, the Committee wishes to ensure that taxpayer investments in modernizing the Copyright Office will be used efficiently and effectively, and that existing infrastructure and resources will be used to the fullest extent possible. Therefore, the Committee directs the [GAO] to examine the Copyright Office's current information technology infrastructure and identify any deficiencies or obstacles to serving the copyright community in a modernized environment. GAO shall provide an evaluation on how the Copyright Office can best [take] advantage of existing resources, including commercial off-the-shelf technology, to modernize its current capabilities. Finally, GAO shall also provide a legal and technical evaluation of the information technology infrastructure that the Copyright Office shares with the Library of Congress. The Committee directs GAO to submit a report summarizing these findings to the Committee within 60 days of enactment.⁵

The GAO is also conducting an audit of the Library's overall technology enterprises pursuant to a request made by the House Appropriations Committee as part of its FY 2015 legislative branch appropriations bill.⁶ GAO staff are at work on both of these audits, and the Copyright Office is assisting them in both contexts.

Intercollegiate Broadcasting System v. Copyright Royalty Board

The Committee may be aware that, in 2012, the U.S. Court of Appeals for the D.C. Circuit addressed the constitutionality of the Librarian of Congress's role in the appointment of officials responsible for administering the copyright laws in a case called *Intercollegiate Broadcasting System, Inc. v. Copyright Royalty Board* ("IBS").⁷ Because the court's decision addresses the disposition of copyright functions generally, parts of the decision are applicable to the Copyright Office as well as the Copyright Royalty Board.

In the case, a company challenged a decision of the Copyright Royalty Board (CRB), arguing in part that the Librarian's appointment of the CRB's judges violated the Appointments Clause. The Appointments Clause requires principal officers of the United States to be appointed pursuant to presidential nomination and Senate confirmation, and

⁵ S. Rep. 113-196, at 40-41 (2014).

⁶ H. Rep. 113-417, at 14 (2014).

⁷ 684 F.3d 1332 (D.C. Cir. 2012).

requires inferior officers to be appointed only by the heads of executive departments. Previously, the kind of work performed by the CRB (involving rate-setting and the distribution of royalties) was performed by specially appointed arbitration panels and before that, by a free-standing administrative tribunal. In 2004, Congress replaced the arbitration system (the Copyright Arbitration Royalty Panels) with the current system of Copyright Royalty Judges, placing the Judges under the Librarian.

In the *IBS* case, the D.C. Circuit held that the Copyright Royalty Judges were acting as principal officers, and that their appointments thus violated the Appointments Clause. However, the court resolved the problem by invalidating certain language in the CRB statute to make clear that the Librarian could remove the Judges at will, thus rendering the Judges inferior officers within the meaning of the Clause.

The decision also provides that for purposes of the appointment of inferior officers under the Appointments Clause, the Librarian is the head of an executive department because he is appointed by the President, confirmed by the Senate, and removable at will by the President.⁸ As the court explained, “the powers in the Library and the [CRB] to promulgate copyright regulations, to apply the statute to affected parties, and to set rates and terms case by case are ones generally associated in modern times with executive agencies rather than legislators.”⁹ In considering the rather unique constitutional structure of the Library as an agency, the court held that “[i]n this role, the Library is undoubtedly a ‘component of the Executive Branch.’”¹⁰

CONCLUSION

Thank you, Mr. Chairman, for your attention to the Copyright Office and our overall copyright system. As always, the Copyright Office is available and willing to assist the Congress with further questions or assignments.

⁸ The Librarian was not originally a principal officer of the United States subject to appointment by and with the advice and consent of the Senate. But in 1897, Congress provided that the Copyright Office should be a separate department of the Library of Congress and created for the first time the position of Register of Copyrights to head it. In doing so, Congress was aware of the importance of the copyright system and related questions of constitutional law. Accordingly, as part of that legislation, Congress specified that the Librarian would henceforth need to be subject to Senate confirmation. Act of Feb. 19, 1897, ch. 265, 29 Stat. 544. The Librarian has been subject to this method of appointment ever since. 2 U.S.C. § 136.

⁹ 684 F.3d at 1341-42.

¹⁰ *Id.* at 1342 (quoting *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 130 S. Ct. 3138, 3163 (2010)). *Cf.* 2 U.S.C. § 166(d)(5) (functions of Congressional Research Service are to prepare and provide information to Members of Congress and committees “to assist them in their legislative and representative functions”).