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## Hearing on: THE U.S. COPYRIGHT OFFICE: ITS FUNCTIONS AND RESOURCES

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House Judiciary Committee

Thursday, February 26, 2015

2141 Rayburn House Office Building

### **Summary:**

On February 26, the House Judiciary Committee held a hearing regarding the modernization of the US Copyright Office. Currently, the Copyright Office is located within the Library of Congress and the Register of Copyrights reports to the Librarian of Congress. The hearing, which is part of the House Judiciary Committee's ongoing review of U.S. copyright law examined the merits and vulnerabilities of this dependent structure. There was consensus among the Members and the witnesses that the Copyright Office is suffering from a lack of funding, needs more autonomy and modernized IT systems. All the witnesses stated the Copyright Office would benefit more from being an independent office and that it was a major concern for the Office not to control its own IT systems. There was a difference of opinion, however, about whether the Office should become an independent agency or part of the Executive Branch and whether further study was needed or Congress should make certain limited but immediate reforms.

Throughout the hearing, the Members mentioned the importance the Copyright Office has to the economy and that its ability to operate should reflect that importance. Members were concerned with which issues should be prioritized, and which issues could be addressed without major reforms.

Only one member of Congress, Rep. Lofgren, expressed hostility toward the Copyright Office (calling some of its decisions "bone-headed" mistakes). She specifically expressed concern that any modernized Copyright Office reflect a "diversity of views" from the copyright stakeholders, and she referenced SOPA/PIPA and the more recent Copyright Office rulemaking on cellphone unlocking as "mistakes" that could have been thwarted by having the internet/technology stakeholders hold greater sway with the agency. No other member or witness echoed her views. In addition to the witness testimony, Reps. Collins and Nadler both asked that work by Sandra Aistars, CEO of the Copyright Alliance, be entered into the record.

**Witness List:**

**Mr. Keith Kupferschmid**  
General Counsel  
Software & Information Industry Association

**Ms. Lisa Dunner**  
Partner, Dunner Law PLLC  
on behalf of the American Bar Association

**Ms. Nancy Mertzel**  
Partner, Schoeman Updike Kaufman & Stern LLP  
on behalf of the American Intellectual Property Law Association

**Mr. Bob Brauneis**  
Professor  
George Washington University Law School

**Summary of Opening Remarks:**

***Full Committee Chairman Goodlatte (R-VA)***

Many have highlighted the fact that one cannot have a Copyright Office whose technologies and processes are of the analog era when the economy has become a digital one. Burdened by a lack of funds and dependent upon the vastly different technology needs of the Library of Congress, the Copyright Office has been unable to respond to the needs of the copyright community, harming copyright owners and users alike.

One possible solution would be to give the Office more authority to promulgate regulations that can more quickly interpret fundamental copyright principles set by Congress, rather than wait for Congress to act. I am also interested in learning of the potential constitutional concerns that might result by adding more regulatory powers to the Copyright Office or creating new programs such as a small copyright claims remedies system as some have suggested.

**Summary of Testimony:**

***Mr. Keith Kupferschmid***  
General Counsel  
Software & Information Industry Association (SILA)

The Copyright Office's customers are demanding more innovative services. 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.

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:

- Decreased staffing has caused a backlog of copyright applications;
- The Library of Congress' demands for deposit copies in certain formats causes friction with the copyright office and copyright applicants;
- The functionality of the copyright office registry is outdated; the copyright office needs increased regulatory authority.

SIIA recommends Congress to 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 should be a Presidential appointee. Congress should increase the Copyright Office funding to enable the Office to make immediate critical improvements to its operations staffing and IT. Congress should pass legislation immediately that gives the Copyright Office the same type of autonomy that Congress has granted to the CRS, which also resides in the Library

*Ms. Lisa Dunner*

*Partner, Dunner Law PLLC*

*on behalf of the American Bar Association*

It is essential to digitize pre-1978 records and make them available to the public in a searchable, user-friendly manner. The copyright registration database currently contains records from January 1, 1978 (the effective date of the 1976 Act) to the present. The Copyright Office is in the process of digitizing some of these records, but what is lacking is an easily searchable online database of them. A complete database would be an important tool in identifying these public domain works for the benefit of those who wish to make use of them.

The Copyright Office records should include unique identifiers, which have become standard in many creative industries, such as International Standard Recording Code (ISRC), to assist users in seeking information about copyrighted works maintained in other databases. Ideally, the Copyright Office system would link to other trusted databases that contain such information.

The Copyright Office database was developed largely as a text-based tool. There is no practical way to search the database for visual artworks or musical works, unless one knows the title under which it was registered.

*Ms. Nancy Mertzel*

*Partner, Schoeman Updike Kaufman & Stern LLP*

*on behalf of the American Intellectual Property Law Association*

The Copyright Office's technology is controlled by the Library of Congress, and housed on the Library's servers. In fact, even equipment purchased by the Copyright Office with its appropriated funds, is controlled by the Library.

The Copyright Office's first effort at online filing is its Electronic Copyright Office Registration System ("eCO"). While the eCO system has been tweaked, it has not been substantially updated, and it remains far behind state-of-the art technology. Further, eCO applicants may only submit electronic deposit for certain classes of works, and physical deposit is required for all other types. At this time, documents for recordation may not be submitted using the eCO system, and instead must be submitted by mail or by hand delivery. The current Copyright Office system to find rightful copyright owners is cumbersome, which is particularly an issue in the context of mass digitization.

AIPLA has advocated for the inclusion of some basic improvements to functionality, including the ability to save draft applications, to print, view, and forward them outside of the system, and the ability for signature by a claimant other than the same person who prepared the application, such as the client of a law firm or creative agency. AIPLA would like to see improved access to deposit material and would support providing public access to a preview portion or representation of the deposit to allow members of the public to know what was actually registered.

*Mr. Bob Brauneis*

*Professor*

*George Washington University Law School*

Unfortunately, the Copyright Office has remained constrained by those fee-setting and appropriations models as it has entered the capital-intensive information technology era. There is no provision for accumulating funds to finance major computer system improvements that do not qualify as the costs of current services, but that are necessary to provide future, enhanced services.

To give the Copyright Office any chance of solving the funding problems, Congress should grant more flexibility to the Copyright Office to set fees that would generate funds for capital improvements. When it does so, it should also be empowered to build a reserve fund that is not depleted on an annual basis through an offsetting adjustment to the Office's appropriation from taxpayer revenues. Only with such a reserve fund can the Copyright Office budget responsibly for multi-year projects, while at the same avoiding service quality degeneration or interruption when unpredictable fluctuations in incoming fee receipts impose funding constraints.

Thus, to preserve the valuable roles that both the Library and the Copyright Office continue to play, Congress may want to consider restructuring the Copyright Office as a separate agency, and, as I will suggest, as an independent agency.

## **Question and Answer:**

### ***Chairman Goodlatte (R-VA)***

*The Chairman's questions focused on which issues affecting the Copyright Office need to be addressed first, how to fix those problems through monetary means, and whether employee morale at the Office is high?*

- Due to the significant effort to modernize the Copyright Office, which problem should be addressed first: Digitalization, Recordation, and Registration?
  - **Mr. Kupferschmid** – Digitalization
  - **Ms. Dunner** – Recordation
  - **Ms. Mertzel** – Registration
  - **Mr. Brauneis** – Recordation
- In order to handle the resources shortage, which would you recommend as the most sufficient action for the Copyright Office to receive additional funding, through Appropriations or through increased user fees?
  - **Mr. Kupferschmid** – Both
  - **Ms. Dunner** – Appropriations
  - **Ms. Mertzel** – Unsure
  - **Mr. Brauneis** – Both
- How would you describe the employee morale at the Copyright Office?
  - **Mr. Brauneis** – Challenging, not enough personnel

### ***Ranking Member Conyers (D-MI)***

*Rep. Conyers asked questions concerning the Office status quo and when autonomy should be granted to the Office in order to better itself.*

- Why the status quo of the Copyright Office will not work in the 21<sup>st</sup> Century?
  - **Mr. Kupferschmid** - Needs more funding, and more autonomy. One without the other would not be able to accomplish what it needs too.
  - **Ms. Dunner** – The IT systems are out of date, can't keep up with the community
- Would an increased operational autonomy, and budget autonomy better the office ecosystem?
  - **Ms. Mertzel** – Allows the office to purchase equipment, without being
- Do you have an idea of a timeline for how long it would take to update the Office?
  - **Mr. Brauneis** – Immediate action is necessary

### ***Rep. Issa (R-CA)***

*Rep. Issa sought consensus to why the structure of the Copyright was flawed and what would need to be done for the modernization of the Office to reflect an independent, self-governing, and customer-centric operation.*

- How many think the Office currently lacks the structure to be modernized effectively?
  - **Everyone agrees**
- Independent commission, in a perfect world, major restructuring, would you agree the PTO would be independent, legislative and executive branch to oversight, stakeholders having a seat at the table. Each of the two: independent, self-governing, customer looking responsibility
  - **Everyone agrees**

- Would you agree that this committee should have the goal to set up the executive branch input, and that the focus of the changes on
  - **Everyone agrees**

### **Rep. Nadler (D-NY)**

*Rep. Nadler mentioned the forth coming Sandra M. Aistars article. His questions concerned how to improve the Copyright Office, in ways that weren't necessarily monetary.*

- Without additional resources, make the biggest improvement to the Office, as is?
  - **Mr. Brauneis** – Control over IT, putting the office on a sound constitutional base
  - **Ms. Mertzel** – More autonomy, control over rule and regulations
- Should the Register, to improve autonomy, be a Presidential appointee?
  - **Ms. Dunner** – Yes
  - **Ms. Mertzel** – No opinion
  - **Mr. Brauneis** – Yes

### **Rep. Marino (R-PA)**

*Rep. Marino did not ask any questions, but stated that it is a shame the Office does not have enough resources; Ms. Pallante should be made an independent director immediately.*

### **Rep. Lofgren (D-CA)**

*Rep. Lofgren made statements regarding the Office's misjudgments regarding technology availabilities to the blind, piracy issues, conflicts between technology and content, and how the Office should mold its structure to incorporate a diverse range of constituent voices.*

- Do you have ideas on how the Office can restructure so broader voices are heard?
  - **Mr. Kupferschmid** – Make the Register of the Office a presidential appointee
  - **Ms. Dunner** – Advocating for autonomy, do not want the Copyright Office to be moved into the PTO
  - **Ms. Mertzel** – Don't know the best way
  - **Mr. Brauneis** – Individuals have found ways to be heard, getting inside office hearings. The movement comes from outside the organization

### **Rep. Collins (R-GA)**

*Rep. Collins spoke about the importance of the Copyright Office has to our economy and to the future creative in American society and stressed the importance of a long-term solution that would create certainty within the office. Rep. Collins asked for an op-ed by Sandra Aistars to be entered into the record. In addition, he openly questioned the conundrum of the Modernization of the Act or Modernization of the Office?*

- Regarding the small claims court pilot program, can the Office handle the pilot program today?
  - **Mr. Kupferschmid** – It would further drain the resources
  - **Ms. Dunner** – A virtual small claims court pilot would be more affordable and use fewer resources
  - **Ms. Mertzel** – A virtual small claims court pilot would be more affordable and use fewer Anything new program would lessen the resources
  - **Mr. Brauneis** – A virtual small claims court pilot would be more affordable and use fewer Anything new program would lessen the resources

- If the Office were more efficient, what type of effect would that have?
  - **Mr. Kupferschmid** – It would be huge boom to the economy and the creative community
  - **Ms. Dunner** – Simply would increase registration, led to better databases, and happier employees
  - **Ms. Mertzel** – More licensed projects that are under the radar would be found and approved
  - **Mr. Brauneis** – Would lead to a large number of new copyright transactions

### ***Rep. Deutch (D-FL)***

*Rep. Deutch stated that the Office needs the stature to reflect its real world impact that allows America to compete at a global market place. The Office needs reform and modernization. His questions focused on what internally is important to fixing the Office, rather, which is the greater threat or new directors for making tough decisions.*

- Should there be specific positions to lead the office for an economist, a technology director, etc?
  - **Mr. Kupferschmid** – Absolutely, essential for an improved Office
  - **Ms. Dunner** – I don't think those would be a bad idea
  - **Ms. Mertzel** – The office actually just appointed a new technology position
  - **Mr. Brauneis** – a chief economist, could be beneficial
- Is it more important to address the threats of copyright crime and piracy issues before the modernization of the Copyright Office?
  - **Mr. Kupferschmid** – Most important issue is to fix the Office first
  - **Ms. Dunner** – Protecting copyright works
  - **Ms. Mertzel** – Protecting copyright works
  - **Mr. Brauneis** – They can proceed under a parallel track

### ***Rep. Jefferies (D-NY)***

*Rep. Jefferies asked questions on what differentiates the Library of Congress from the Copyright Office and why those are not compatible given the advances of technology. In addition, he questioned the panel on why the Office would be better off as an independent office than it would as part of the Patent and Trademark Office.*

- Fundamental mission of the Library and Copyright office and how those conflict?
  - **Mr. Brauneis** – The Library is more of a cultural archive. While the Copyright Office is meant for the licensed use of works.
- Does the digital era accelerate the differences between the offices?
  - **Mr. Brauneis** – It would facilitate operations if the computers worked together, opposed to how they are currently operating – the Copyright Offices' computers stored at the Library of Congress
- Is it best for the Register to be presidential appointee, to make it independent or does the Copyright Office need to be a solely independent office. Would putting the Copyright office in the PTO or the Dept. of Commerce office have potential conflicts?
  - **Ms. Dunner** – The Copyright Office needs its own independent attention, placing it the PTO would, again, have the Office fighting for resources.