

**U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON THE JUDICIARY**

**Statement of Mary Rasenberger on Behalf of the Authors Guild  
In Response to the February 26, 2015 Hearing on  
“The U.S. Copyright Office: Its Functions and Resources”  
Submitted March 9, 2015**

The Authors Guild submits this Statement in response to the Committee’s recent Hearing on the Functions and Resources of the U.S. Copyright Office (the “Hearing”). The Guild and its predecessor organization, the Authors League of America, have a 100-year history of contributing to debates before Congress on the proper scope and function of copyright law. With a membership of over 9,000, the Authors Guild is the nation’s largest and oldest professional authors’ organization.

The Hearing’s centrality to the Committee’s broader goal of copyright reform was reflected throughout the testimony and in many of the Members’ questions. The Authors Guild submits these comments in response to issues raised at the Hearing on Copyright Office autonomy, funding for Copyright Office modernization, and a Small Copyright Claims Court. These comments are intended to supplement the statement The Authors Guild submitted to the Subcommittee on Courts, Intellectual Property, and the Internet on November 12, 2014, attached here as Appendix A.

As Chairman Goodlatte said in his statement at the hearing: “America’s creativity is the envy of the world and the Copyright Office is at the center of it.” American authors and the American people need and deserve a Copyright Office that can keep pace with their remarkable creative output. As the witnesses described at the hearing, copyright is an important part of our economy; and it is also essential to our evolving culture and progress as a nation.

**1. Copyright Office Autonomy**

Both Members and witnesses at the Hearing agreed that the Copyright Office needs greater operational, financial, technological and rule-making autonomy from the Library of Congress. We agree fully. The most immediate concern perhaps is to separate the Office’s technology from the Library’s IT systems and upgrade it to create a flexible, interactive, user-friendly system required for a 21<sup>st</sup> century Copyright Office. As a 24/7 e-service platform, which is trusted to keep digital deposit

copies secure, the Copyright Office's has unique IT needs within the Library, and those needs are not being adequately met.

The Copyright Office also needs autonomy and authority to promulgate regulations on its own. Copyright law has become increasingly complex in recent years due to the rapidly evolving technologies used to create, distribute and enjoy copyrightable works. Congress cannot legislate for each new technology; they change too fast. Like the Section 1201 exceptions that are reviewed by the Copyright Office every 3 years, many parts of the copyright law could use updating on a more regular basis than Congress could do in the best of circumstances. The Copyright Office is far better equipped than Congress to handle technical copyright issues that require deep copyright expertise and study to fully understand. Moreover, the Copyright Office should have the authority to issue its own regulations; they should not be issued by the Librarian of Congress, who is not a copyright expert and not required to be a copyright expert. It might have made sense to have the Librarian sign off on copyright regulations a hundred years ago when copyright law was a relatively simple matter, but that is not true today. Copyright law has become a highly complex field requiring years if not decades of practice to master, and even then it is constantly changing, requiring continuous learning. Aside from the potential conflict of interest noted in our November statement and by the witnesses, the Librarian of Congress simply cannot be asked to fully understand and keep abreast of all of the copyright issues that might come before him or her.

It is also crucial for the Office to have autonomy with respect to its budget. Its needs, which have increased due to years of neglect, should not have to compete with the very different priorities of the rest of the Library.

#### *Approaches for Achieving Autonomy*

At the hearing there was no consensus as to the best way for the Office to achieve autonomy. Because this is such a complex issue, involving constitutional issues with no single, clear solution, the Authors Guild believes the Register of Copyrights should be given time to solicit recommendations from stakeholders and experts on the Office's most fitting place in the government structure.

Of the proposals discussed at the hearing, the Authors Guild believes that the independent agency model is the best. Most importantly, the Copyright Office must be given independence. It should not be moved to another existing agency where the same or similar issues will arise. Specifically, the Authors Guild urges Congress not to move the Copyright Office to the United States Patent and Trademark Office ("USPTO") simply because, like patents and trademarks, it is a

form of intellectual property. Copyright is a very different kind of intellectual property, with different constituents and different concerns. Copyright does not belong in the USPTO or anywhere in the Department of Commerce. The USPTO serves industry and corporate entities; its users' interests largely relate to business and commerce. The Copyright Office, on the other hand, primarily serves individual creators and users of copyrights whose interests primarily are in the arts and humanities. It is true that the copyright industries contribute significantly to the nation's economy, as the witnesses testified; we are a nation that excels in the creative arts and sciences. But copyrighted works provide far more than measurable dollars to the economy and culture. Copyrighted works provide learning in the form of textbooks, literature, motion picture, and computer software; and they provide culture, entertainment and joy through music, film, arts and novels. These benefits are immeasurable. If the Copyright Office were placed in the Commerce Department, these important cultural and educational aspects of copyright law risk getting buried.

Moreover, moving the Copyright Office to the USPTO would merely replicate the current structural challenge the Copyright Office faces as part of the Library of Congress; namely, the Office's lack of authority to issue its own regulations about the interpretation of copyright law, an essential policy function of the Copyright Office. A Copyright Office with independence and increased regulatory authority would help ensure that our copyright law keeps pace with technological developments. Placing the Office within the PTO would undermine this goal and merely reproduce the circumstances that warranted the Hearing in the first place.

Copyright cannot compete financially with the trademark and patent community. Again, because copyright production is as much about promoting learning and culture as economics. Most of our members struggle financially. They do not become authors to get rich; rather they are compelled to write because they want to contribute to learning and culture. Our members and the Copyright Office's user base as a whole would not be well served if forced to compete with the commercial interests of trademark and patent owners.

## **2. Funding for Copyright Office Modernization**

There was equally strong consensus at the Hearing that the Copyright Office suffers from a lack of funding, and as a result, its services have failed to keep pace with technology and with the marketplace. Members and witnesses agreed that the Office needs an immediate injection of funds in order to hire the staff necessary to meet the increasing demands of its workload and to build an

IT infrastructure capable of serving its technologically sophisticated twenty-first century customer base.

To appropriately serve creators, copyright owners, and users in the digital age and to provide the nation with a robust, public, searchable record of copyright works that includes chain of title, it is imperative that the Office have greater resources to improve its technology to bring it into the 21st century and to hire more staff. The current staff is extremely hard-working, but there are simply too few. Hence, there are delays of up to two years to obtain a record of a simple change of ownership or release of a security interest. This can severely hamper business. It can also take 8-12 weeks to obtain deposit materials which are an integral part of the registration. The certificate of registration alone does not describe the registered work; only a review of the deposit copy together with the certificate shows what was actually registered. The wait for this part of the registration record robs victims of infringement from prompt enforcement of their rights, and it can delay defendants' ability to bring a fair defense.

Members at the Hearing were rightfully concerned about *how* to allocate sufficient funds for Copyright Office modernization. Recognizing the Office's shortage of resources, Chairman Goodlatte asked the witnesses whether the funding gap should be addressed through increased appropriations, increased user fees, or a combination of both. There was no consensus among the witnesses, and the Authors Guild takes no position on how exactly the necessary funds should be secured.

What must be avoided, however, is a simple increase in Copyright Office user fees across the board. Nearly everyone in the country is a copyright owner and a potential customer of the Copyright Office; its services must remain affordable for all. Raising fees for individual customers would burden the copyright owners who choose to utilize the Office's services and disincentivize other individuals from using those services; it's a blueprint for making the Copyright Office irrelevant to individuals.

Ideally, modernization could be achieved exclusively through increased appropriations, but understanding we do not live in an ideal world, if fee increases must be part of the solution, the Authors Guild recommends instituting a tiered fee structure that allows fees for individual creators to remain relatively affordable. For instance, the fees could differentiate between rates for individuals and for corporations, apportioning more of the burden to corporate customers who use the Office in their daily business practices—such as publishing houses, record companies and motion picture studios.

The Authors Guild also favors instituting a separate, reduced-cost tier of registration for individuals wishing to register their copyright simply for documentation purposes. This type of registration would not carry with it the presumption of copyright ownership that standard registration does, because it would not be carefully examined by Copyright Office staff. It would allow individuals to record their works cheaply and efficiently and would have the added benefits of increasing the thoroughness of Copyright Office databases, improving search results for users, and further chipping away at the “orphan works” problem. It would not, however, provide the same presumption of copyrightability and ownership accorded to regular registration.

### **3. Small Copyright Claims Court**

At the Hearing, Representative Collins asked the witnesses about the effect a small claims pilot program would have on the current Copyright Office budget. The witnesses agreed such a pilot program was key to the eventual adoption of a small claims court, but that it would further drain the already paltry resources of the Copyright Office.

One of the most pressing issues for individual creators is the need for a small copyright claims court, and this project needs to be properly funded. For a copyright to mean anything, there must be an accessible enforcement mechanism. Without a real potential for enforcement, it is a right without a remedy. The cost of obtaining counsel and maintaining a copyright cause of action in federal court effectively precludes many individual authors facing clear instances of infringement from vindicating their rights and deterring continuing violations. On an individual level, the inability to enforce one’s rights undermines the economic incentive to continue investing in the creation of new works; on a collective level, the inability to enforce rights corrodes respect for the rule of law and deprives society of the benefit of new and expressive works of authorship.

If created with care, a small claims court for copyright infringement would allow individual authors much greater access to the courts to protect their property rights, appreciably enhancing market incentives to create the literary works that the public values. Frivolous, harassing claims could be avoided by routine, automatic rejection of claims that do not raise a prima facie case of infringement. Dismissal without prejudice of claims in which a substantial fair use defense is raised would greatly speed and simplify the court’s proceedings, as would permitting the proceedings to be conducted by mail and phone. Affiliation with the Copyright Office would assure the court’s competence in copyright law. Finally, granting the court limited power to issue injunctions would greatly and reasonably strengthen the court.

## **Conclusion**

It was clear from the Hearing that copyright stakeholders and Members of Congress recognize Copyright Office modernization to be an integral part of copyright reform, and that there is consensus that the Office needs much greater independence and greater resources for staffing and improved technology infrastructure. Such a consensus is encouraging. We would simply ask the Committee to bear in mind that any meaningful efforts at Copyright Office modernization must take full account of the individual authors and creators who are its core customers.

The Authors Guild is grateful to the Committee for the opportunity to submit this Statement, and for acknowledging that a modernized Copyright Office can be the cornerstone of lasting copyright reform.