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**Before the Copyright Office**

**Library of Congress**

In the Matter of )

**Information Technology Upgrades for a  
Twenty-First Century Copyright Office** )

**Notice of Inquiry**

Docket No. 2016-2

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**Comments of the Authors Guild, Inc.**

The Authors Guild submits this statement on behalf of its over 9,000 members in response to the Copyright Office’s notice of inquiry on information technology upgrades for a twenty-first century Copyright Office.

As we have stated in two previous statements<sup>1</sup> submitted to the House Judiciary Committee concerning the necessity of modernizing the Copyright Office, the Authors Guild believes that the Copyright Office should be granted independence from the Library of Congress, where it currently resides, and should be granted the authority and autonomy of an expert agency, so that it may provide guidance on complex copyright issues and issue its own regulations. At the same time, the Copyright Office should have its own budget request authority and the funding necessary to build an independent IT system that meets the unique needs of its users.

We appreciate the Office’s willingness to consider the viewpoints of individual authors when it comes to information technology upgrades within the Copyright Office, and we appreciate its commitment—demonstrated by the solicitation of these comments—to a transparent and public conversation about the Office’s future and how that future will be funded.

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<sup>1</sup> Prepared Statement of Mary Rasenberger, Executive Director, The Authors Guild, Inc., Hearing Before the Subcommittee of Courts, Intellectual Property, and the Internet of the Committee on the Judiciary, Oversight of the U.S. Copyright Office, Sept. 18, 2014, available at <https://judiciary.house.gov/wp-content/uploads/2016/02/113-116-89810-1.pdf>; Prepared Statement of Mary Rasenberger on behalf of the Authors Guild, Hearing Before the Committee on the Judiciary, U.S. Copyright Office: Its Functions and Resources, Feb. 26, 2015, available at [https://judiciary.house.gov/wp-content/uploads/2016/02/114-4\\_93529.pdf](https://judiciary.house.gov/wp-content/uploads/2016/02/114-4_93529.pdf).

**1. Please comment on the proposed five-year timeline for IT modernization based on the phases set forth in detail in the IT Plan, which incorporate best practices of the federal government.**

The proposed five-year timeline for IT modernization, with the phases described in the plan, seems reasonable and sound. The Copyright Office has clearly conducted a great deal of diligence and study of the implementation of the IT Plan in light of federal government best practices, and the recommended time-line seems workable. Five years is not an excessive amount of time for a project this important.

**2. Should the modernization be funded from fees, appropriated dollars, or a combination of both, and, if both, is there an ideal formula or ratio?**

Ideally, we would like to see the IT modernization funded with appropriated dollars since copyright owners and potential users now includes almost all tax payers, and the copyright industries are now one of the most important sectors in our country. Copyright registrants should not bear the brunt of the years of underfunding and overdue upgrade to the Copyright Office's. Upgrading the Copyright Office's IT is a one-time capital expenditure, and it serves the public broadly.

That said, we understand the political and economic realities and that appropriated dollars are not likely to cover all of the costs, but that the users of the Copyright Office's users will have to pay for part of the modernization of its technology. We have no opinion on the appropriate ratio, except that the costs to copyright owners must be kept reasonable; otherwise the number of registrants will decrease dramatically, and the total fees collected by the Office will remain flat at best. In any event, copyright owners who use the registration and recordation and other current "fee-based" services should not bear the full brunt of the unappropriated dollars; many of the upgrades will benefit those seeking information on registered works or recorded documents. For instance, high volume users of the records should bear part of the costs.

**3. What authorities or flexibilities, if any, should be included in 17 U.S.C. 708 regarding whether and how the Office may recover its reasonable costs of operation (including in the aggregate as opposed to based upon individual services), differentiate between customers or users, and/or fund future investments, not only as to the five-year plan but on an ongoing basis?**

We broadly agree with the proposals laid out by the Copyright Office in its 2016-2020 Strategic Plan and in its Provisional Information Technology Modernization Plan, but we would like to weigh in on the importance to individual authors of a flexible, tiered fee schedule.

The Copyright Office serves the entire breadth of the creative community, from large, corporate copyright holders to individual creators struggling to make ends meet as writers, musicians and photographers. Individual creators have always been an important constituent of the Copyright Office and the Office has served them well, and has managed to keep fees affordable for most. In the case of books, traditionally the publisher of the book registered it with the Copyright Office. But with the Internet age, we are finding more authors self-publishing or re-publishing at least some of their books themselves. As more and more works of independent authorship make their way to the creative marketplaces in the 21<sup>st</sup> century (and they undoubtedly will), we ask the Copyright Office to continue to serve this most essential segment of the creative community.

Accordingly, if the Copyright Office finds it necessary to raise fees to help pay for technological improvements, the Authors Guild—whose membership consists of writers—strongly favors a tiered fee schedule under which corporate copyright holders (who use the Copyright Office’s services in much greater volume than individuals) might pay a higher fee rate than independent creators. The higher fee could even entitle those who pay it to certain services, such as expedited execution of requests.

A tiered fee schedule would account for the unique position of individual authors, who we believe will be using (and needing) Copyright Office services more than ever in the near future, particularly as more and more authors self-publish. The goal would be to ensure that individual authors can still afford to register and record assignments or other documents. Once fees get too high for individual authors to easily afford, the number of registrations, recordations and deposits will inevitably shrink, exactly when we want to incentivize more registration and recordation in order to improve records. With reliance on online research and transactions, and the increasing disintermediation of content distribution and access, it is more important than ever to encourage creators to register so that their contact and other copyright information can easily be found online and the use of their work more easily licensed.

The Authors Guild also would support a recordation system that allowed different levels of examination. For instance, the facts pertaining to a work, as submitted, could be recorded for a lower fee with no examination. If the applicant wanted the work examined for copyrightability, he or she would have to pay a higher fee. The presumption of validity of copyright would only attach to those works that received full examination. To avoid abuse by those claiming registration based on fuller examination than paid for, the level at which any work was registered must be fully transparent to the public

#### **4. Should the Copyright Office fund capital and operating expenses differently? If so, how?**

As noted above, we believe that ideally the capital expenses of upgrading the Copyright Office’s IT would be paid for with appropriated dollars. Much of the ongoing operational increased operational expenses related to registration and recordation, however, could be paid out of fees.

We also believe that the Office should have the ability to carry its own reserve fund over from year to year. This will help pay for improved technology.

**5. Please identify anything else that the Copyright Office should consider in relation to the funding strategy, benefits, or implementation of IT modernization.**

It is important to authors—and individual rightsholders generally—that copyright documentation be processed more quickly and retrieved more easily. Moreover, it is essential that the information retrieved be more thorough and be accurate and reliable. Copyright holders and users alike will benefit from an authoritative, dependable, secure and *integrated* database containing all copyright information relating to a given work—both registration and recordation information. The current, bifurcated registration/recordation system is an impediment to businesses seeking to sell, buy or collateralize copyrights, as well as to users seeking permissions from current owners or trying to determine copyright status. So we applaud the Copyright Office’s plan to build a fully integrated and automated system providing for a more fluid chain of title. An integrated system will incentivize more transactions in the copyright marketplaces, promoting the goals of copyright at the same time.

The Copyright Office’s underlying IT systems must be kept under Copyright Office control, not that of the Library of Congress, which currently runs the IT infrastructure and database administration for the Office. The Library’s IT systems and services, however, were built to serve different users with different needs. The Copyright Office needs its own, independent server for registration and recordation purposes. From an IT security perspective, the services the Copyright Office and Library of Congress provide are fundamentally at odds when it comes to digital works. The fact that the Copyright Office must process its digital deposits on a server shared and even operated by the Library of Congress enhances apprehensions of a security breach. Accordingly, the Copyright Office should be entrusted with the responsibility of overseeing the security of digital works for the benefit of their copyright holders—and this should happen on its own dedicated and independent servers.

Thank you for the opportunity to contribute to this conversation.

Sincerely,

Mary Rasenberger  
Executive Director  
The Authors Guild