

Motion Picture Association of America

Submission for the Record

**Feb. 26, 2015, House Judiciary Committee Hearing
“The U.S. Copyright Office: Its Functions and Resources”**

March 5, 2015

In administering U.S. copyright law and advising the federal government on copyright matters, the Copyright Office plays a vital role in support of the copyright system and the constitutionally recognized function of copyright as a driver of American intellectual, cultural, and economic prosperity. The economic and cultural significance of copyright is hard to overstate. Copyright now contributes more than \$1 trillion to the country’s gross domestic product, representing 6.7 percent of the U.S. economy.¹ Our nation’s core copyright industries—those primarily engaged in creating, producing, distributing and/or exhibiting copyrighted works—employ nearly 5.5 million workers, representing 4 percent of the entire U.S. workforce and 4.8 percent of total U.S. private employment.² And those industries are growing 70 percent faster than the overall U.S. economy, with an aggregate annual growth rate of 3.9 percent from 2009 to 2013.³ Copyright also continues to drive unparalleled cultural exports and a tradition of creativity and innovation that makes America unique among nations.

The tremendous success and growth of our nation’s copyright industries is evidence that our copyright laws are advancing their intended objective of promoting the production and dissemination of creative works. A significant part of that success is attributable to the Copyright Office, which administers aspects of the copyright law and helps guide copyright policy on both

¹ STEPHEN E. SIWEK, INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE, COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY: THE 2014 REPORT 1.n1, 2 (2014), *available at* <http://www.iipa.com/pdf/2014CpyrtRptFull.PDF>.

² *Id.*, at 2.

³ *Id.*

the domestic and international stage. But this success and the rise of the digital economy means that the Copyright Office's responsibility is growing both in complexity and importance. Meeting that responsibility demands robust tools and a level of authority commensurate with the significance of the issues the Office addresses.

The Motion Picture Association of America applauds the Committee's attention to the functions and resources of the Copyright Office. Dealing with the demands of a 21st century creative economy requires a Copyright Office that stands firmly on a 21st century footing. The Committee is right to be asking questions not only about the resources and technology infrastructure of the Copyright Office, but also about the structure and authority of the office and how it might best be equipped to serve the needs of the copyright community, both copyright owners and users alike.

A number of questions deserve consideration. For example, the Copyright Office is currently located within the Library of Congress and is overseen by the Librarian of Congress.⁴ While the Register of Copyrights leads the Office, the Register remains subordinate to the Librarian on matters involving not only the Office budget and infrastructure, but also on substantive copyright policy and regulatory matters. The Office is also dependent on the Library's information technology resources, which are stretched to meet the dual and perhaps impossibly disparate needs of a national library and a modern copyright registration system. While issues involving registration and Library deposits led to the decision to house the Copyright Office in the Library, it is worthwhile to consider whether that arrangement continues to make sense today.

⁴ See 17 U.S.C. § 701(a) ("The Register of Copyrights, together with the subordinate officers and employees of the Copyright Office, shall be appointed by the Librarian of Congress, and shall act under the Librarian's general direction and supervision.").

Without question, the Office has benefitted from the able stewardship of Dr. James Billington, the Librarian of Congress since 1987. Over the course of his tenure the share of copyright's contribution to GDP has grown more than six-fold, and the number of people employed by the core copyright industries has more than doubled.⁵ The growth in importance of copyright as an economic and cultural sector warrants considering whether the current arrangement properly reflects the national significance of the functions delegated to the Copyright Office.

Are those functions accorded proper weight by vesting them in the Librarian of Congress, for whom copyright is not a full-time job, but just one issue in a broader portfolio that itself has tremendous national significance? Is there sufficient intersection of interest that it makes sense to vest ultimate policy and regulatory authority for administration of the copyright system in the official whose primary responsibility is the operation of the national library? Does sharing administration of the information technology systems of the Library and the Copyright Office create efficiencies, or would granting the Register the pen over a designated budget help the Office assign resources where needed, rather than compete with the other important needs of the Library? Would putting influence over copyright policy closer to the locus of copyright expertise and giving the Register decision-making power over copyright policy issues better serve the copyright system? And would allowing the Register to design and implement the Office's own IT infrastructure produce more facile systems for gathering, organizing, parsing, and making available to the public data regarding copyright ownership?

The objective of such inquiry should be enabling a more nimble agency, better able to serve both owners and users of copyrighted works in today's rapidly growing digital economy.

⁵ STEPHEN E. SIWEK AND HAROLD W. FURCHTGOTT-ROTH, INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY ii (1990) (stating that in 1989 the core copyright industries' contribution to GDB was \$173 billion and employed 2.6 million people).

The purpose of copyright is, after all, to encourage creation, facilitate market-based transactions, and promote distribution. As the trade association representing some of the leading producers and distributors of filmed entertainment in the theatrical, television, and home-entertainment markets, the Motion Picture Association of America believes the time has come to consider granting the Copyright Office not only increased resources, but a greater degree of autonomy, so that it can better fulfill its mandate.

Granting the Office more autonomy with enhanced resources would make it better equipped to facilitate transactions between owners and users. Registration and recordation, for example, are instrumental in ensuring creators and owners can secure and exercise their rights, and in assisting users in finding owners and obtaining licenses. Strengthening the Copyright Office would address issues the Committee's copyright review hearings have examined. Improving the tracking and public availability of registration and recordation information with a stronger and more accessible IT system, for example, could help potential licensees identify and locate the proper licensor, resulting in market-based transactions and thus reducing the population of "orphan" works. Many other proposals made in the course of the review process have similarly involved enhanced rulemaking and other involvement by the Copyright Office.

Legislation addressing these sorts of autonomy and resource issues could garner consensus that might be much harder to find in other copyright debates. At the same time, updating the Copyright Office's structure and autonomy could have significant and overarching benefits to copyright policy. This is a worthwhile endeavor in which the Committee should be willing to invest serious attention and thought.

We thank the Committee for calling this hearing, engaging in this discussion, and allowing us the opportunity to submit these comments.