

**MOTION PICTURE ASSOCIATION OF AMERICA, INC.**

**SUBMISSION FOR THE RECORD**

**BEFORE THE HOUSE JUDICIARY COMMITTEE SUBCOMMITTEE ON COURTS,  
INTELLECTUAL PROPERTY, AND THE INTERNET**

**HEARING ON COPYRIGHT OFFICE OVERSIGHT**

**NOVEMBER 14, 2014**

The Motion Picture Association of America, Inc. (“MPAA”) is pleased to provide this statement as part of the record of the Subcommittee’s hearing on Copyright Office Oversight, held September 18, 2014. The MPAA is a not-for-profit trade association founded in 1922 to address issues of concern to the motion picture industry. The MPAA’s member companies are: Paramount Pictures Corp., Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corp., Universal City Studios LLC, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment Inc. These companies and their affiliates are the leading producers and distributors of filmed entertainment in the theatrical, television, and home-entertainment markets.

The motion picture and television industries support 1.9 million jobs across all 50 states and contributed \$111 billion in total wages in 2012, the most recent year for which data is available. The protections afforded by copyright law enable the MPAA’s member studios to tell the stories that audiences enjoy both in the United States and around the world. The U.S. Copyright Office plays a vital role in administering that law and in ensuring that both the legislative and other branches of the federal government receive the best possible advice on copyright matters.

The MPAA greatly appreciates the hard work and dedication of the Copyright Office, from Register Pallante down through its staff. It has become increasingly clear in recent years,

however, that the Office is not optimally funded and positioned to address its increased workload and the challenges it faces in this era of rapid change, both in technology and in the business practices in the industries it serves.<sup>1</sup> Below we briefly set forth two broad areas that we urge the Subcommittee to further examine as it seeks to maintain the Copyright Office's ability to meet the challenges of the twenty-first century.

### **REGISTRATION AND RECORDATION**

The MPAA's members are large-volume users of the Copyright Office registration and recordation systems, which secure copyright protection for their content, and provide constructive notice of their rights, as well as priority between conflicting transfers of rights. Such protections are vital to the MPAA members' ability to, among other things, conduct transactions, secure financing, and to fight piracy. The MPAA member companies also rely heavily on the Office's hard-copy public records and online database in searching for and conducting business involving the copyrights of third parties. As such, we appreciate the Copyright Office's attention to improvements in the current registration and recordation systems for our members, and also for the general public who use or rely on them and their associated database.

However, it has become apparent that the Office does not currently have adequate resources to administer these systems in a timely and effective manner. As Register Pallante noted in her testimony before the Subcommittee, it currently takes the Office on average 8.2 months to process paper registration applications, and 3.3 months for electronic applications. Moreover, the Copyright Office's registration records are not fully digitized, and those electronic

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<sup>1</sup> The duties of the Copyright Office are many. In addition to administering the registration and recordation systems, it: undertakes major policy studies; administers rulemakings including the triennial rulemaking under § 1201 of the Digital Millennium Copyright Act; advises Congress on copyright issues; provides advice and assistance on copyright issues to other federal departments and agencies; and participates in meetings of international intergovernmental organizations and meetings with foreign government officials relating to copyright. *See generally* 17 U.S.C. § 701.

databases that it does maintain are relatively rudimentary, lacking the robust functionality that is typical of today's commercial database systems, and covering registrations only from 1978 forward.<sup>2</sup> The problem is more acute in the recordation system, where the current average processing time is around 17 months, and (with one minor, recent exception) documents must be submitted entirely on paper—more or less the same way as when the recordation system first launched in the late nineteenth century—and those documents are not searchable or accessible online.

Much could potentially be done to improve the registration and recordation systems and their associated databases. Basic web site functionality could be improved. Additional staff could be hired to reduce processing delays. The Office could implement application program interfaces (“APIs”) to facilitate direct, computer-to-computer communication between copyright owners and the Office, which would eliminate the need for data re-entry, thereby increasing efficiency and reducing the potential for error. APIs would also allow for the development of third-party applications that could interface seamlessly with the Copyright Office in much the same way that various tax preparation software tools enable communication with the Internal Revenue Service's e-file system. Such APIs could also potentially facilitate appropriate connections between the Copyright Office database and databases maintained by private registries, such as the performance rights organizations' databases of musical works. Among the many benefits that would flow from improved databases is a reduction in the population of orphan works, improved connectivity between potential licensees and copyright owners, greater accuracy of search results, faster and more efficient data recovery, and valuable digital preservation of older and historical data that might be lost as time passes.

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<sup>2</sup> See <http://cocatalog.loc.gov/cgi-bin/Pwebrecon.cgi?DB=local&PAGE=First>

The solution to the problems noted above is clear: The Copyright Office needs additional resources, both IT and examiner staff. As Register Pallante noted in her testimony, the Office's staff has shrunk significantly in recent years; the registration program alone currently has 48 vacancies out of a staff of 180, and a full one-quarter of the remaining staff is approaching retirement. On the IT side, the Office relies on the Library of Congress for its resources, and it must compete with other departments within the Library, many of which have widely differing interests. While we recognize that this Subcommittee does not itself appropriate funds, it does have an oversight role over the Office, and our hope is that highlighting these issues will give them additional prominence and lead all involved to advocate that the Copyright Office obtain the resources necessary to fulfill its many important duties.

### **STRUCTURAL ISSUES**

Some of the Office's challenges stem from a simple lack of resources. But others are the result of its unique position as an entity that administers the law—traditionally an executive branch function, *see Intercollegiate Broad. Sys., Inc. v. Copyright Royalty Board*, 684 F.3d 1332, 1341-42 (D.C. Cir. 2012)—yet is located within the legislative branch, as a division of the Library of Congress, operating under the supervision of the Librarian of Congress. *See* 17 U.S.C. §§ 701-02. The time is now ripe for a serious discussion about whether the Copyright Office should remain housed within the Library, or whether it would be more appropriately placed within executive branch, or made an independent agency. MPAA takes no position at this early stage whether such a move is warranted, or, if so, where within the government the Copyright Office should land. But we do believe that Congress would benefit from taking a close look at these issues, and, with input from the Copyright Office and other stakeholders as to the pros and cons of various potential scenarios, arrive at a conclusion that best serves the Office's various

mandates, which include: administering the copyright law; creating and maintaining public records of copyright ownership through registration of claims and recordation of documents pertaining to those claims; providing technical assistance to the Congress and to executive branch agencies; and serving as a resource to the domestic and international copyright communities.<sup>3</sup>

There are various potential benefits to relocating the Copyright Office within the government's administrative structure, including increasing its prominence and stature; providing it with an independent budget adequate to meet its staffing and IT requirements; and eliminating some of the inherent tension between an agency that administers a copyright system and yet is overseen by a library, which has a very different mission that includes making copyrighted works available to the public.<sup>4</sup>

### **CONCLUSION**

We thank the Subcommittee for the opportunity to provide this statement, and welcome the opportunity to examine issues related to modernization of the Copyright Office in the next Congress.

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<sup>3</sup> See <http://www.copyright.gov/circs/circ1a.html>

<sup>4</sup> One example of such tension is the process by which registrants must submit "deposit copies" of their works. The Copyright Office requires deposit copies so that examiners can review works to determine whether they qualify to be registered. See 17 U.S.C. § 408. The Library, on the other hand, desires deposit copies for traditional library/archive purposes. *Id.* § 407. Because the two categories of deposits are used for such different purposes, it may make sense to have different standards for each, especially in the digital environment; for example, examiners reviewing a work simply to see whether it qualifies to be registered likely do not need access to the "best edition" of such work. See *id.* §408(b). An examination of the deposit copy issue is particularly timely for the motion picture industry, which is rapidly shifting from distributing its works to theatrical exhibitors on 35 millimeter film to "Digital Cinema Packages," digital copies of movies stored on hard drives.