

Statement of Maria A. Pallante
United States Register of Copyrights
Before the
Subcommittee on Legislative Branch Appropriations
United States Senate
Fiscal 2016 Budget Request
March 17, 2015

Madame Chairman, Ranking Member Schatz, and Members of the Subcommittee:

Thank you for the opportunity to present written testimony in support of the budgetary needs of the United States Copyright Office.

As always, I am grateful to the Librarian for putting forward the request detailed below. While it does not reflect the entirety of Copyright Office needs, it is a reasonable request put forward in a difficult budget environment, and one of many that the Librarian has sought to balance. As stated in more detail in the Librarian's written request, the agency is also seeking funding for library acquisitions, storage, preservation, and staffing relating to the singularly important national collection.

The Copyright Office is a congressionally-created department within the Library of Congress and is vested with the statutory responsibility of administering the Copyright Act and other provisions of Title 17, including the national copyright registration and recordation systems and several statutory licenses. Today, the Copyright Office sits at the center of a complex and dynamic legal and regulatory system. Its work is vital to all types of businesses, the Congress, courts, and the digital economy.

Copyright industries create jobs, invest in content, and bring to market important works of authorship, from films to video games to business software to books to musical works. The technology companies with whom they partner also create jobs, drive innovation, and bring to market a variety of platforms and mobile devices that have defined the digital economy. It is no surprise that copyright issues are so essential to trade agreements and the global marketplace.

In past couple of years, the House Judiciary Committee has held extensive hearings on the copyright law, including, for example, the exclusive rights of authors, enforcement issues, fair use, and voluntary agreements. The Copyright Office has supported Congress in these efforts, including by testifying, assisting with interpretation of the law, and conducting major policy studies. Last year, the Copyright Office issued a major report recommending the creation of a small claims system. This year, the Copyright Office

published a comprehensive report on the music marketplace and is finalizing additional reports on orphan works and the “making available” right.

Congress is also reviewing the Copyright Office. On September 18, 2014, the House Judiciary Committee held an oversight hearing on the Copyright Office, at which I testified. On February 26, 2015, it held a hearing entitled, “The U.S. Copyright Office: Its Functions and Resources,” at which external witnesses testified.¹ During these hearings, Members of Congress covered a range of questions including budgetary and resource needs, efforts to upgrade and improve Copyright Office services, and the Copyright Office’s current statutory and Constitutional structure within the Library. We are respectful of these proceedings and are ready to respond to inquiries or otherwise participate, as appropriate.

Since I was appointed Register in June, 2011, I have focused the Copyright Office on projects that are self-evaluative, including how to upgrade our current practices and whether to create entirely new paradigms for certain processes. This might include, for example, the ways in which we register works of authorship or record documents such as assignments, licenses, security interests, and other forms of ownership. Most would agree that the Copyright Office must be more interoperable with the technology of its customers, and must offer timelier and more innovative services, including business-to-business data exchange and applications that work on mobile devices.

As I explain further below, the Copyright Office has spent the past few years engrossed in foundational work, including rebuilding and rethinking staff positions, updating registration practices, assessing legal and business issues related to recordation, and conducting a variety of public-facing projects to engage our customers as to the future Copyright Office. We have undertaken this work to ensure that we make plans that will have a meaningful impact on our customers, and make IT and staffing investments that are both responsible and prudent. We are now at the point where we are compiling research, coordinating conclusions from reports, and engaging in cost and other business analysis. This work will proceed in accordance with available funding.

This Committee—the Senate Subcommittee on Legislative Branch Appropriations—is also interested in the ability of the Copyright Office to evolve. In 2014, the Report language that accompanied the fiscal year 2015 appropriation stated:

¹ Witnesses included Keith Kupferschmid (General Counsel for the Software & Information Industry Association), Lisa Dunner (Partner at Dunner Law PLLC, on behalf of the American Bar Association’s Section on Intellectual Property Law), Nancy Mertz (Partner at Schoeman Updike Kaufman & Stern LLP, on behalf of the American Intellectual Property Law Association), and Robert Brauneis (Professor at the George Washington University Law School).

The Committee recognizes that the digital revolution has transformed the copyright marketplace and, as a result, the role of the Copyright Office in our economy. The Committee finds that Copyright Office will also need to evolve and adapt to the challenges of these new realities. In fact, the Committee notes that public comments recently submitted by the copyright community indicate that the Copyright Office is currently in need of significant IT and related upgrades in order to be fully interoperable with the digital economy it serves.

The Report also included a directive to the Government Accountability Office (GAO) “to examine the Copyright Office’s current information technology infrastructure and identify any deficiencies or obstacles to serving the copyright community in a modernized environment.” We have responded to GAO’s questions regarding IT management during the past several months and hope the Committee will find this information helpful.

I would also note that on February 18, 2015, we released a report of the Technical Upgrades Special Project Team. This team was charged with assessing the concerns and suggestions of the Copyright Office’s customers during the past few years, and has made a number of recommendations regarding future services that would require sound enterprise architecture and a robust IT infrastructure. I am grateful to the Project Team for this valuable contribution, which will serve as an important resource for the Copyright Office, the Library, and the Congress. The Report, notice of public inquiry, and public comments are available at http://copyright.gov/docs/technical_upgrades/.

Thank you for your support of the Copyright Office and for considering the appropriations request put forward today.

Fiscal 2016 Budget Request

The Copyright Office is funded through a combination of fees for services and dedicated appropriated dollars. The Copyright Office administers funds through three separate budgets or program areas: (1) Basic Budget, (2) Licensing Budget,² and (3) Copyright Royalty Judges Budget.³ Together, the requests for these total \$58.875 million for fiscal year 2016.

² The Licensing Budget request is \$5.388 million, all of which derives from licensing royalty and filing fee collections paid by private parties (copyright owners as well as cable and satellite licensees) pursuant to statutory licenses administered by the Copyright Office. The requested increase is for mandatory pay and price-related increases.

³ The Copyright Royalty Judges report by statute to the Librarian, but the Register administers their budget as an administrative courtesy. The budget request for the Copyright Royalty Judges is \$1.584 million to support mandatory pay-related and price level increases, of which \$389,000 (for non-personnel-related expenses) derives from licensing collections. The remainder, \$1.195 million in appropriated dollars, is to cover the personnel-related expenses of the Judges and their staff.

The focus of this statement, however, is the Basic Budget, which funds most of the Copyright Office's core work and operations. The Basic Budget request this year is \$51.9 million. Approximately \$30 million of this is derived from fees for which the Copyright Office is seeking spending authority. The Copyright Office is also requesting \$21.9 million in appropriated dollars.

This request calls for an increase of \$2.705 million dollars and the reinstatement of 25 FTEs. Fees would fund about \$2.029 million of the total; we would use the fees to backfill 20 vacant positions in our registration program. As discussed below, the Copyright Office implemented a revised schedule of fees on May 1, 2014, following an extensive public process. Putting this money back into registration services is a fitting investment.

The remaining \$675,825 is a request for appropriated dollars; we would use this funding to add five new hires to our recordation staff.

It should be understood that some of the Copyright Office's operational costs are offset by services provided by the Library of Congress through appropriations it receives as the parent agency. These costs are not itemized or tracked, and they are not taken into account when the Copyright Office analyzes and implements its fee schedules.

Administering the Copyright Law

Registration

If the Committee approves our request for additional spending authority, most of the two million dollars would go to strengthening the registration staff under the expert guidance of Robert Kasunic, Associate Register and Director of Registration Policy and Practice. In fiscal year 2014, the Copyright Office approved and registered claims in approximately 476,000 creative works, including 219,000 literary works and 65,000 sound recordings. Since fiscal year 2012, however, the Copyright Office has been experiencing an upward trend in the backlog of claims and average processing time for applications. In 2012, the average processing time for claims filed on paper applications was 4.8 months; the current processing time is 13.5 months. The average processing time for claims filed online electronically has also increased, rising from 3.1 months to 4.4 months over the same period. These increases are mostly attributable to the loss of registration staff, which has declined by approximately 50 FTEs.⁴ (In the case of electronic claims, some of the delay stems from ongoing problems with technology systems, as well.)

⁴ This number tracks losses since 2010. The Copyright Office today has 76 professionally trained examiners to handle approximately half a million copyright claims involving millions of works of authorship; we had close to 130 examiners in 2010. Assuming we can hire 12-32 examiners in 2015 and 2016, the Copyright Office will still be below capacity, particularly given the increasing complexity of addressing digital works and new practices.

As we hire new registration experts, the Copyright Office must train them in the copyright law, regulations and practices, and prepare them to address a constantly changing world of content and business models. The lengthy training schedule, coupled with the fact that the backlog continues to grow, provides a sense of urgency to reverse staff losses in this critical division. It is also the case that practices are becoming more complex than before, as authors, publishers, and producers continue to change the ways in which they create and disseminate works of authorship.

In December 2014, we completed a major, multi-year special project by releasing the *Compendium of Copyright Office Practices, Third Edition*. The first major revision in two decades, the *Compendium* is a comprehensive guidebook regarding registration and other Copyright Office practices. It is relied upon by Copyright Office staff but also serves as a recognized authority consulted by copyright owners, legal practitioners, and the courts, which frequently give the Copyright Office deference in registration policy and related issues. This was an important and necessary accomplishment for the Copyright Office, and one that we announced publicly in our 2011-2013 work plan, entitled *Priorities and Special Projects of the U.S. Copyright Office*.

Notably, the *Compendium* is just the beginning of a digital makeover for registration. It provides the necessary legal foundation by which the Copyright Office may now pursue regulations and practices that recognize and serve the digital economy. For example, the Copyright Office will need to determine the rules and standards by which it registers: works that change routinely (like news websites); works that are disseminated by streaming instead of copies (like on-demand film, television, and sports programming); works that contain valuable and proprietary source code (like business software); and works that contain copy controls and other anticircumvention measures (like video games).

Recording Assignments, Security Interests, and Other Copyright Documents

Regarding the recordation provisions of the Copyright Act, the Copyright Office also needs resources. The requested increase of \$675,825 in appropriated dollars for fiscal 2016 would fund five new hires in the Recordation section. The Copyright Office has a very lean permanent staff of 13 dedicated to this function at the moment. In 2014, this staff recorded 8,146 documents pertaining to copyright interests in more than 144,376 identified works. This function remains a paper process, however, in which staff manually index the materials received.

In fiscal 2015, the Congress allocated \$1.5 million to the Copyright Office to conduct planning and business analysis related to updating the recordation function. The long-

term objective is to automate the document submission and review process to include an online filing capability for customers. Significant changes are also contemplated regarding service options and the content and format of the public record. As noted below, the business analysis we are now engaged in follows two years of research regarding the overall technology of the Copyright Office (relevant to its customer base) as well as the relevant legal and business issues related to recording documents in the online environment. The additional FTEs we are requesting for Recordation represent new positions with skills that will be more appropriate to an online function.

The future of the document recordation function has been an intense focus of the Copyright Office for several years, and it too was publicly announced in the 2011-2013 *Priorities* work plan. In the past two years, the Copyright Office engaged stakeholders through multiple public roundtables on potential changes to the legal and administrative aspects of document recordation and published a major report. We were able to staff this work by making targeted appointments and leveraging research partners.

In 2014, with the Librarian's support, I established a dedicated Office of Public Records and Repositories. For the first time, as of March 2014, these functions are now headed by Ms. Elizabeth Scheffler, a senior level officer reporting directly to the Register. (As of January, 2015, Ms. Scheffler has been temporarily reassigned to the Librarian's Office where she is serving as the Interim CIO for the Library until a permanent CIO can be recruited.)

I also appointed the first Abraham L. Kaminstein Scholar in Residence, Professor Robert Brauneis of George Washington University. In addition to his own independent research, Professor Brauneis completed an in-depth study of the relevant legal issues related to updating the business and legal issues related to recording copyright documents. Similarly, through Jacqueline Charlesworth, the Copyright Office General Counsel, the Copyright Office engaged with Stanford University Law School in an academic partnership. Working with Professor Paul Goldstein, the Copyright Office considered recordation questions from the perspective of students in Silicon Valley. In January 2015, we released the report of the Kaminstein Scholar, entitled *Transforming Document Recordation at the U.S. Copyright Office*, which in turn references the work of the Stanford students.

Statutory Licenses

The Copyright Office administers several statutory licenses that require the Copyright Office to manage and distribute royalties, including those collected on behalf of copyright owners of broadcast television programming that is retransmitted by cable and satellite operators. The disposition of these private monies is determined by the Copyright

Royalty Judges (together, the Copyright Royalty Board or “CRB”) in distribution proceedings. The work of the CRB is reviewable by the Register for legal error, but for constitutional reasons the CRB reports to the Librarian as head of the agency. In fiscal year 2014, the Copyright Office collected approximately \$318 million in royalties and made disbursements in accordance with CRB’s decisions.

In fiscal 2014, the Copyright Office completed a second pilot of an electronic licensing system to facilitate its administration of statutory licenses. The end goal is to launch a system that supports online filing and processing of statements of account by statutory licensees. As with all Licensing Division operations, this administrative initiative is being funded by private funds collected under the relevant licenses.

Supporting the Congress and Federal Agencies

Copyright Policy and the Digital Economy

With respect to policy, the Copyright Office has been at the center of discussions regarding potential updates to the Copyright Act, working closely with Members of Congress and, in particular, the House Committee on the Judiciary. As mentioned above, the House Judiciary Chairman convened twenty copyright hearings in the past two years, with the clear mission of comprehensively reviewing the law to assess how well it is working in the digital age. As Register, I have both testified on these issues and lent the impartial expertise of my Office to assist the process. Associate Register Karyn Temple Claggett, and her policy and international affairs staff, were of particular assistance during these proceedings.

It would be an understatement to say that the copyright law is complex. Indeed, in the context of the digital economy, the entire copyright ecosystem is in a state of ongoing transformation and innovation. While challenging, this is also an exciting development for the United States, which has long championed a strong but balanced intellectual property framework to the benefit of both the content and technology industries.

In addition to its service to the Congress, the Copyright Office supports the work of the U.S. Trade Representative, the U.S. Department of Justice, the U.S. Department of State, and the U.S. Department of Commerce. This work involves major trade agreements, treaty negotiations, Supreme Court briefs, and other interagency and intergovernmental matters. The Copyright Office has relationships with copyright and other intellectual property offices around the world, and is frequently involved in intergovernmental and bilateral meetings, as well.

Policy Reports of the Copyright Office

In February 2015, the Copyright Office published an in-depth study and legislative recommendations entitled *Copyright and the Music Marketplace*. This report, which analyzes the statutory framework and business environment of the music industry, is indicative of the Copyright Office's policy role. The report has been recognized by Members of Congress, songwriters and composers, music publishers, performing rights organizations, record labels, and digital delivery services. The expertise comes from the Copyright Office's daily role in administering the Copyright Act, and the legal and cultural significance of issues such as these is an important factor we use to recruit talented lawyers. Nonetheless, the lack of resources, including insufficient staff and travel budgets, makes for a challenging environment for even the most dedicated of public servants.

In addition to the music study mentioned above, the Copyright Office is currently preparing to issue reports on orphan works and mass digitization issues, as well as the application of authors' "making available" rights in the online environment under U.S. law. Beyond studies, the Copyright Office works closely with congressional offices every day to provide assistance on complex issues.

Through its work with the Intellectual Property Enforcement Coordinator, the Copyright Office is also nearing completion of an online index of fair use cases to serve as a resource for authors and others.

Challenges of the Current Fiscal Environment

The Copyright Office carries out a significant workload for the benefit of the Nation. It is doing so, however, with reduced staffing and technology deficiencies. These challenges are part of broader discussions throughout the Library, but I will note them here briefly.

Staffing and Appointments

The Copyright Office's total staff is smaller than it should be to perform its complex and important statutory assignments. We currently have approximately 360 filled positions under the Copyright Basic Budget, a number that will improve somewhat if fees remain steady and we can make the 25 requested hires in Registration and Recordation in fiscal 2016, as described on page 4. Internally, staff reductions are felt as a workload distribution increase on already over-burdened employees. And over time the Copyright Office will be at a disadvantage if it cannot attract and retain experts, particularly in the legal and technology fields.

To compound the stress, our authorized FTE ceiling will be reduced to 411 (for the Copyright Basic Budget including the 25 FTEs mentioned above) following recent congressional direction to the Library to reconcile and eliminate unfunded positions. This is a considerable reduction at a time when the Copyright Office needs staff and would in fact hire them if it had funding. In 2005, by comparison, the FTE ceiling was 492 (again, for the Copyright Basic Budget).

On a positive note, the Copyright Office completed the first phase of reorganizing its departments and resources in 2014 and has begun filling senior-level positions as a foundational step toward a fully modernized Copyright Office. Among other things, with the Librarian's support, I established the first Copyright Office Chief Information Officer (CIO). Doug Ament was appointed to the position in March 2014, after serving several years of heading the Copyright Office's small technology office. As CIO, Mr. Ament advises the Register on strategic IT issues and engages regularly with our customers, as well as technology experts in the government and private sector. He, in turn, appointed a new Director of the Copyright Technology Office, who reported for duty this January, and is responsible for managing day-to-day activities of the Copyright Office's IT team and overseeing compliance issues with federal law, regulations, information technology standards, and best practices.

Although these are positive first steps, the reality is that Copyright Office has a very small technology office that as of this writing has approximately 23 FTEs. This office has always functioned as a liaison office to the parent agency, which manages the agency IT resources and has more than 200 IT staff. I believe that engaging in the kind of IT development activities the Copyright Office needs to achieve in the coming years—including building the next generation online registration system, achieving interoperability with private databases, accommodating mobile technologies, and more—will require the agency to reassess this management paradigm.

As noted on page 6 the Copyright Office also has a new Office of Public Records and Repositories, headed by an experienced senior-level official who reports directly to the Register. Similarly, I appointed William Roberts, an experienced copyright lawyer and long-time public servant, as the first Associate Register and Director Public Information and Education. As with other positions mentioned here, this position carries out significant responsibilities, including managing the substantive content and protocols of www.copyright.gov, the portal through which customers access legal materials, participate in rulemakings, register claims to copyright, and record licenses and other copyright documents.

Government Accountability Office

The agency's IT systems and infrastructure are of paramount concern for the Copyright Office, and it has been working with the Library, the public, and the Government Accountability Office ("GAO") to assess IT-related issues in the past year. Last year, the House Appropriations Committee directed the GAO to conduct a Library-wide audit of IT management and governance. Copyright Office staff provided information for the audit and were interviewed by the auditors.

Moreover, this Committee directed the GAO to review the technology issues relating specifically to the Copyright Office. GAO was instructed to identify "any deficiencies or obstacles to serving the copyright community in a modernized environment." The Committee also directed the GAO to "provide a legal and technical evaluation of the information technology infrastructure that the Copyright Office shares with the Library of Congress." These directives followed from the Committee's recognition that "the digital revolution has transformed the copyright marketplace and, as a result, the role of the Copyright Office in our economy." The Committee report also cited comments and concerns submitted by a variety of actors throughout the copyright community indicating that the Copyright Office needs significant IT upgrades to become fully interoperable with the digital economy that it serves.

Copyright Office staff has been responsive to GAO's team, which included some of the same auditors assigned to the Library audit. We appreciate the work of the auditors and look forward to their findings. Having completed several years of core foundational research, the Copyright Office remains extremely concerned about recommending major IT investments while continuing to utilize the singular enterprise architecture and IT infrastructure of the Library, which is under considerable strain. Service from the Library has been inconsistent at best, as the Library's IT staff manages multiple projects and systems from across the agency. Indeed, although the Library has more than two hundred IT staff, none are devoted exclusively to the Copyright Office. It is difficult to see how this kind of paradigm is sustainable. In short, the Library is faced with multiple missions and an array of equally important but competing concerns, in some ways adding up to an impossible job.

Technical Upgrades Special Project

During the past few years, the Director of the Copyright Technology Office, who has served as the Copyright Office's first CIO since last February, chaired a special project designed to assess the areas in which the Copyright Office needs to modernize, which included soliciting the talent and expertise of the Copyright Office's customers and stakeholders. In February 2015, the project team delivered its findings and

recommendations to me, and I have in turn released them to the public. This document, *Report and Recommendations of the Technical Upgrade Special Project Team*, will be a very helpful resource as we consider future strategies for the Copyright Office. The report acknowledges challenges with the current user experience and with access to the public record, while offering recommendations for improvement, such as developing a more dedicated IT infrastructure to support the registration and recordation functions, and deploying Application Programming Interfaces (“APIs”) to provide for data exchange with the rich data of private copyright databases. The Report is available on the Copyright Office website.

Statutory Authority to Set Fees

The Copyright Office appreciates the Committee’s dedicated appropriation in fiscal 2015 of \$2.25 million, with \$750,000 to fund backlog reduction in registration and \$1.5 million for year one planning and analysis for the reengineering the document recordation process.

More globally, as Register I have concluded that we should reconsider the funding process for the Copyright Office as it relates to fees. For business planning, including expenditures for IT and related issues involving multi-year contracts, the Copyright Office is constrained by the inability to spend across multi-year budget cycles. In addition, the Copyright Office would benefit from more flexibility in both its retention and spending of fee revenues, particularly in relation to longer-term capital improvements. This would require a review of the statutory provisions for fees in Chapter 7 of the Copyright Act.

I would like to thank the Subcommittee Members for your support of the Copyright Office and national copyright system. Our fiscal 2016 budget request, if approved, would address some immediate, high-priority needs, primarily through the authority to hire staff and use fee revenues received for services rendered.