



The Register of Copyrights of the United States of America

United States Copyright Office · 101 Independence Avenue SE · Washington, DC 20559-6000 · (202) 707-8350

May 9, 2012

The Honorable Phil Gingrey
U.S. House of Representatives
1309 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Gingrey:

Thank you for inviting me to testify on April 18, 2012 before the Committee on House Administration, Subcommittee on Oversight Hearing on “Library of Congress: Ensuring Continuity and Efficiency During Leadership Transitions.” I was pleased to appear at the hearing and provide an overview of the Copyright Office (the “Office”) and how it has transitioned since my appointment as Register on June 1, 2011.

This letter is in response to the Subcommittee’s April 25, 2012 formal written questions, the answers to which are provided below. I also direct your attention to my submission on May 2, 2012 in response to questions raised by Ranking Member Lofgren during the hearing. *See Attachment A.*

1. *The Library has been undergoing a comprehensive institution-wide IT review. How has each service unit sought to enhance its IT capabilities? Can your service unit point to current or future realized efficiencies or cost savings because of collaborative IT-related efforts?*

A robust information technology infrastructure is an essential foundation for a twenty-first century copyright registration and recordation system. The Office successfully transitioned to an electronic processing system as part of a broader business process reengineering effort that was implemented in 2007. Today, more than eighty percent of incoming registration claims are processed through the Office’s primary electronic registration system. This requires a system that is sufficiently nimble to accommodate, ingest, and maintain (on a twenty-four hour basis) a variety of new forms of digital authorship, whether websites, databases, electronic books, or other digital files, and one that meets contemporary standards for data security and information assurance. While cost efficiency will always be an important aspect of the Office’s operations, it is critical that our system meet the demands and expectations of the copyright community and the American consumer. Moreover, the system cannot be static. To run the business of copyright registration and related services properly, we must expect to constantly migrate and improve our IT system.

The Office recently began a comprehensive evaluation of its electronic processing capability across several divisions as described in my October 25, 2011 *Priorities and Special Projects of the U.S. Copyright Office* document (available at <http://www.copyright.gov/docs/priorities.pdf>). Many of these projects were developed in response to public demands for a better and more up-to-date system that accurately reflects how consumers currently use Office services. Specifically, the following five Office priorities and/or special projects relate to enhancement of the Office's IT capabilities: (1) electronic administration of statutory licenses; (2) technical upgrades to the electronic registration system; (3) revision of the Office website; (4) business process reengineering of the recordation division; and (5) enhanced public access to historical records.

The Office's business process reengineering for the recordation division is in the early stages of what will be a multiyear project designed to decrease processing times for statements of account, implement an online filing process, and improve public access to Office records. Moreover, since November 2011, staff from across Office divisions have held a series of targeted meetings with business and information technology experts in the copyright industries to discuss overall enhancements and improvements to the electronic registration and recordation services. The Office is also engaging with the technology sector and consumer groups to gain insight into how to improve the nature, accuracy, and searchability of the Office's public databases. Through outreach with a diverse array of stakeholders and organizations that also operate digital asset management systems similar to ours, the Office will develop a comprehensive and technologically driven plan for the future of the registration and recordation systems.

The Office is also proud to participate in information technology projects with other Library departments, where appropriate, to create efficiencies and cost savings. In fiscal 2011, for example, the Office led a Library-wide initiative to evaluate possible mechanisms by which to demand, receive, process, and store born-digital serials (journals that exist only online) under the mandatory deposit provisions found in Section 407 of the Copyright Act. The "proof of concept" pilot system was launched successfully in early fiscal 2012 and represents the first in a series of collaborative projects to enhance and grow the Library's digital collections.

Another "proof of concept" pilot, the Television Program Project, will be launched this fall in cooperation with the Library's Motion Picture, Broadcast and Recorded Sound Division ("MBRS"). Trusted pilot partners will submit deposit copies of digital files of television shows directly to a shared MBRS server rather than as a separate file to the Office. A copyright specialist will then access the file internally through a link provided by MBRS for the purpose of examining the work for registration. An automated method for submission of moving image copyright content directly to the Library will substantially reduce manual processing by both Office and Library staff and will ensure a higher-quality deposit for these born-digital works.

2. At the end of 2009, the number of workable copyright claims to be processed reached a peak of over 450,000. Today, what is the status of the backlog? If the backlog is indeed gone, what preventative steps are necessary to keep it from returning?

The Office reached a significant milestone in fiscal 2011 by eliminating its backlog of copyright claims. The backlog was an expected result of the Office's transition to electronic processing in 2007. The Office ended fiscal 2011 with a normal workload of approximately 185,000 claims on hand, of which approximately half were awaiting further action from the claimants and half were awaiting Office action. The Office now processes online claims in the working queue within two to four months, on average, depending on the complexity of the claim. Because the electronic filing system allows for hybrid submissions (when the application and fee, submitted online, are followed by a hard-copy deposit mailed or hand-delivered separately), and because some claims require the Office to correspond with the applicant, the Office will always have categories of work that take longer to process. These claims are an anticipated and routine part of the Office's business operations.

The current fiscal environment, however, continues to present challenges for the Office. We have fewer staff and less funding at a time when registration is increasingly important and the system requires more resources. While the Office has developed training programs and other tracking measures to ensure the accuracy of its claims process, reduced funding and low staffing levels affect both the speed of review and quality of the Office's claims process. Moreover, aging information technology infrastructure could lead to increased system downtime, which, in turn, could lead to process inefficiencies and declining productivity, including a reemergence of a backlog. In addition, registration claims are at a historic low, but they are expected to increase as the economy improves. As this happens, and without corresponding increases in both funding and staff, the likelihood of another backlog becomes greater. Thus, the Office is committed to increasing efficiencies at current funding levels wherever possible and to working with Congress to ensure adequate funding levels for required technical upgrades and staffing needs.

3. Right now the standard registration fees established in 2009 are \$35 and \$65, respectively, for electronic and paper submissions. What can we anticipate in your new report to be submitted to Congress either next month or later this year?

The Office is funded through a combination of fees for services (collected on a partial cost-recovery basis) and federal appropriations. The Office revisits its fee schedule approximately every three years in accordance with procedures specified in Title 17 U.S.C. § 708(b). Moreover, in the fiscal year 2012 budget process, language in the House Appropriations Committee Report directed the Office to review the current fee structure and analyze whether registration fees cover the entire cost, including overhead, associated with the registration process.

Determining the relationship between the cost of services and pricing is a sophisticated process that must take into account both the cost of delivering services and the objectives of the national copyright system. Although copyright registration and the recordation of copyright assignments and licenses provide a significant benefit for the public record, neither is required of authors or other copyright owners as a prerequisite for copyright protection. Moreover, while there are certain legal and evidentiary benefits for copyright owners who register or record in a timely manner, pricing is a key factor in whether they will choose to do so — particularly for independent creators. Thus, the Office's goal in setting fees is to establish a schedule designed to recover reasonable costs at a level that will support the registration system's continued growth.

The Office announced the initiation of its current fee study in the October 2011 *Priorities and Special Projects* document. As part of the study, the Office published an initial Notice of Inquiry on January 24, 2012 seeking comments from the public on key issues (*see also* Response to Question 4). After review and analysis of the public comments, on March 28 the Office published its proposed fee schedule for registration and other services. The preliminary proposed fee schedule includes an increase for registration of copyright claims from \$35 to \$65 for a claim filed online and an increase from \$65 to \$100 for a paper application. Additionally, the Office proposed a new lower fee of \$45 for online registration claims made by a single author of a single work that is not a work for hire.

When the comment period closes on May 14, the Office will reexamine its proposed fee schedule with due consideration for concerns expressed by the public. Once the Office has completed its analysis, a final report will be issued for Congressional review. The Office's final report will contain a recommended fee schedule that could vary from the proposed schedule based upon cost determinations as well as policy and economic factors such as fairness and equity, the objectives of the copyright system, projected inflation, elasticity relating to fees, and public comments.

4. As part of the upcoming fee report and recent notice in the Federal Register, how did you seek input from those who file claims with you on how fee increases would affect them? Are there filers who account for a disproportionate amount of the fees paid? If so, please specify.

Because public comments are an important part of the fee adjustment process, the Office sought such comments at multiple points throughout its fee study. At each point, the Office provided the public an opportunity to comment on a number of topics, including fees for expedited services and fee structures that accommodate large and small claimants. For example, the Office sought input from the public informally in a variety of fora, including individual meetings with stakeholders, bar association events, and other dialogues with the copyright community. The Office also sought formal public comments on two occasions. First, on January 24, 2012, the Office published a Notice of Inquiry requesting public comment on two fee-related issues: (1) whether special

consideration should be provided to individual author-claimants registering a single work; and (2) whether there are special services and corresponding fees the Office should expand, improve, or add to its offerings. The Office requested comments on these issues to gain insight into new areas not covered by the current fee schedule. Based on comments received in response to this Notice, the Office proposed the new \$45 online registration fee for registration by a single author of a single work that is not a work for hire.

Second, on March 28, 2012, the Office published another Notice requesting public comment on its proposed fee schedule. This Notice of Proposed Rulemaking explains the fundamentals of the rate setting process, discusses the reasons for certain fee adjustments, and requests comments from the public on any of the proposed fees. Comments are due on May 14, 2012.

The filers who utilize Office services represent a broad spectrum of authors and creators, from poets to film companies to major aggregators, and cover multiple genres and subjects. In our experience, the most frequent filers are those who perform services and bundle claims, as with dissertations and databases. These kinds of business-to-business functions are part of our current evaluation of the registration and recordation systems.

5. *How do you measure satisfaction of the copyright community?*

It is unclear whether this question is about satisfaction regarding policy or the law in general, or satisfaction regarding our own public services (*e.g.*, registration). However, in all cases the Office takes very seriously the views of all members of the copyright community, including copyright owners, users, and the public at large (each a diverse and complex group of stakeholders). The Office often holds meetings and roundtables with a wide range of stakeholders, and senior members of the staff regularly participate in discussions across the country in venues like bar association meetings and intellectual property related public events. In addition, the Office frequently publishes notices in the Federal Register and on the Office's website requesting public comment on numerous topics. The Office also has a blog and issues requests for information. These outreach activities provide the Office insight into the copyright community's views on issues and an opportunity to receive feedback about the Office and its procedures. The Office also uses information it receives from the public and copyright stakeholders to inform its views for reports and studies for Congress, as well as in preparing for testimony before Congress and issuing regulations.

For example, as part of one recent study for Congress – the Office's report on market-based alternatives to statutory licensing (available at <http://www.copyright.gov/reports/section302-report.pdf>) – the Office requested formal public comments through a notice in the Federal Register, engaged in direct meetings with key stakeholders, and conducted public roundtables. Similarly, as part of its

ongoing study of the obstacles facing small copyright claims, the Office requested formal public comments through the Federal Register, will participate in a public symposium on the issue at George Washington University School of Law, and plans to hold public roundtables and stakeholder meetings over the next several months.

Several items included in the Office's *Priorities and Special Projects* document are focused specifically on outreach and engagement with the copyright community. The Office plans to meet regularly with participants in the marketplace (including, for example, individual creators of all types of works, publishers, producers of audiovisual works and sound recordings, Internet service providers, distributors and aggregators, educators, libraries, archives, museums, and end-users, such as consumers and bar associations). The purpose of these meetings is to discuss developments in business and technology and the role of copyright law in facilitating the creation and dissemination of creative works. The Office's other outreach activities for the benefit of the public and copyright community include revision of the Office website and development of a business plan for copyright education, including opportunities for on-site exhibitions, events, and collaborations. Through these types of outreach events and activities, the Office maintains a close relationship with the communities that it serves, and is better able to address changing demands and needs for improved services.

6. *In June of this year, your office is scheduled to participate in the Diplomatic Conference on the Protection of Audiovisual Performances in Beijing. What resources does this require of your office? How closely do you work with the Office of the United States Trade Representative?*

These questions address both the Office's international policy work in support of the development and implementation of treaties administered by the World Intellectual Property Organization ("WIPO"), and its specific work with the United States Trade Representative ("USTR"), which are two distinct Office functions. Section 701 of Title 17 tasks the Office with a variety of responsibilities, including "[a]dvis[ing] Congress on national and international issues relating to copyright, other matters arising under this title, and related matters," and "[p]rovid[ing] information and assistance to Federal departments and agencies and the Judiciary on national and international issues relating to copyright, other matters arising under this title, and related matters." Section 701 also requires the Office to "[p]articipate in meetings of international intergovernmental organizations and meetings with foreign government officials relating to copyright, other matters arising under this title, and related matters, including as a member of United States delegations as authorized by the appropriate Executive branch authority." The Office's international work and involvement in the development of multilateral intellectual property agreements are thus very important parts of what we do to serve the copyright community and the American public at large.

As part of this mandate, the Office will assist the goals of the United States by participating in the Diplomatic Conference on the Protection of Audiovisual Performances in Beijing in June to review proposals and provide expert technical analysis on copyright matters. The United States delegation, which is headed by the Office of the Under Secretary of Commerce for Intellectual Property, requires necessary resources for travel and hotel expenses, and applicable per diem reimbursements from the cross section of agencies that will participate in the negotiations. In preparation for the Beijing conference, the Office will continue to work closely with the Patent and Trademark Office and the interagency team on copyright issues relating to the audiovisual treaty. If a treaty is adopted by the WIPO member states, the Office will work with Congress and other agencies on ratification and implementation, including an analysis of how the treaty corresponds with U.S. copyright law.

With respect to the question about USTR, the Office provides technical expertise to U.S. negotiators in multilateral trade and treaty deliberations. *See* 17 U.S.C. § 701. The Office works closely with USTR on official delegations and negotiating teams, including negotiations for the proposed Trans-Pacific Partnership, the implementation of existing and pending Free Trade Agreements, and various bilateral trade initiatives. The Office also serves on the “Special 301” Subcommittee, which is part of the Trade Policy Staff Committee that provides recommendations for USTR’s annual Special 301 review of the global state of intellectual property rights protection and enforcement.

7. In terms of the Copyright Royalty Judges (CRJs), do they have full independence in setting royalty rates and determining the distribution of royalty fees? Other than the matters of royalty rates and royalty fees, the Copyright Royalty Judges are supposed to consult with you on novel questions of copyright law and on determinations that impose operational responsibilities on the Copyright Office. Do they?

Under Chapter 8 of Title 17 of the United States Code, and subject to subparagraph (B) and clause (ii) of Section 802(f)(1), the Copyright Royalty Judges have “full independence in making determinations concerning adjustments and determinations of copyright royalty rates and terms, [and] the distribution of copyright royalties . . . except that the Copyright Royalty Judges may consult with the Register of Copyrights on any matter other than a question of fact.”

Copyright Royalty Judges are given the discretion to seek interpretations from the Register of Copyrights on “any material questions of substantive law that relate to the construction of provisions of [title 17] and arise in the course of a proceedings” and are required to do so in the case of a “novel material question of substantive law.” *See* 17 U.S.C. § 802(f)(1).

Consistent with this statutory construct, the Copyright Royalty Judges have referred questions to the Register of Copyrights on four occasions.¹ In each case, the Register provided a written determination to the Copyright Royalty Judges within the statutory timeframe.

Title 17 requires the Copyright Royalty Judges to apply the legal conclusions of the Register in their ratemaking and distribution determinations. The Register may also review all final determinations by the Copyright Royalty Judges for legal error and may correct any such legal errors in the Judges' reasoning or conclusions. These corrections are binding legal precedent on the Judges in future cases. 17 U.S.C. § 802(f)(1)(D). Under this structure, Congress reserved to the Register the authority to interpret the copyright law while providing the Copyright Royalty Judges with full authority to establish rates and terms for the statutory licenses and make allocations of royalty fees based upon the factual record and the applicable law.

¹ The four questions were:

(a) Does a ringtone, made available for use on a cellular telephone or similar device, constitute a delivery of a digital phonorecord that is subject to statutory licensing under 17 U.S.C. § 115, irrespective of whether the ringtone is monophonic (having only a single melodic line), polyphonic (having both melody and harmony), or a mastertone (a digital sound recording or excerpt thereof)? If so, what are the legal conditions and/or limitations on such statutory licensing? *See Mech. and Digital Phonorecord Delivery Rate Adjustment Proceeding*, 71 Fed. Reg. 64,303 (Nov. 1, 2006).

(b) Is the Judges' authority to adopt terms under the section 115 license solely limited to late payment, notice of use, and recordkeeping regulations? If the answer is no, what other categories or types of terms may the Judges' prescribe by regulation? *See Division of Authority Between the Copyright Royalty Judges and the Register of Copyrights under the Section 115 Statutory License*, 73 Fed. Reg. 48,396 (Aug. 19, 2008).

(c) Do the Copyright Royalty Judges have authority under the Copyright Act to subpoena a nonparticipant to appear and give testimony or to produce and permit inspection of documents or tangible things? *See Copyright Royalty Judges' Authority to Subpoena a Nonparticipant to Appear and Give Testimony or to Produce and Permit Inspection of Documents or Tangible Things*, 75 Fed. Reg. 13,307 (Mar. 19, 2010).

(d) Does the Register of Copyrights have the authority under Chapter 7, or any other provisions of the Copyright Act, to determine the constitutionality of 17 U.S.C. 114(f)(5)? Do the Copyright Royalty Judges have the authority under Chapter 8, or any other provisions of the Copyright Act, to determine the constitutionality of 17 U.S.C. 114(f)(5)? *See The Register of Copyrights' and the Copyright Royalty Judges' Authority to Determine the Constitutionality of 17 U.S.C. 114(f)(5)*, 75 Fed. Reg. 26,278 (May 11, 2010).

8. *Do you think the Copyright Royalty Board process has been effective in determining royalty rate levels and distributions? Are there things that could be done to make it more efficient or effective?*

From the Office's perspective, the current system appears to be operating as intended, although the Office has only a limited role in the process of establishing rates and allocating royalty fees to copyright owners, as discussed above. Chapter 8 of Title 17 sets forth a two-step process for setting rates and distributing royalty fees. First, participants negotiate to try to reach a mutually acceptable settlement without the need for a formal hearing. This process has been successful for some participants who have been able to reach agreement on certain rates and distribution allocations. *See, e.g.,* Rate Adjustment for the Satellite Carrier Compulsory License, 75 Fed. Reg. 53,198 (Aug. 31, 2010). Rates and distribution allocations determined in this manner are both efficient and effective because they do not incur the high costs associated with formal hearings and they conform to participants' expectations.

Second, if participants cannot negotiate an agreement, the Copyright Royalty Judges will hold a formal hearing and consider the written and oral hearing evidence. Although hearings are likely to be more expensive than negotiations, they do provide participants with a full hearing on the record in accordance with a strict timeline set forth in the law. Moreover, participants can appeal any Copyright Royalty Judge determination to the United States Court of Appeals for the District of Columbia. This process provides all participants an opportunity for review by another neutral judicial body.

Advantages to having a sitting administrative body of experts to establish rates and distribute royalties include maintenance of institutional expertise and consistency in decision-making practices. Section 802 of Title 17 requires each judge to have expertise in one of three areas: adjudications, arbitrations, or court trials; economics; or copyright. This ensures that the panel has the requisite knowledge to make informed determinations. Moreover, terms for the judges are staggered so there will always be two judges who have served for a considerable time, which helps to ensure consistency in the decision-making process.

9. *What steps is the Copyright Office taking to preserve electronic copyright deposits? Is the Office properly invested in appropriate preservation technology to access those claims if necessary decades from now?*

This is a point of primary concern for me as the new Register. The Office's current electronic platform, implemented in 2007, represents the first generation of the Office's digital processing and storage systems. Like any system based on information technology, ours will require perpetual attention. In recent months, I have confirmed that upgrades are necessary. Moreover, it is critical that the Office develop long-term

solutions to address the complex needs of the registration and recordation systems in the twenty-first century. This requires Office systems that are able to adequately maintain, preserve, and protect public data as technology develops. The Office thus recently commenced an in-depth evaluation of its current information technology platform by holding targeted meetings with business and information technology experts in the copyright industries to discuss enhancements and improvements to the Office's electronic processing and storage systems. The Office is also looking to the technology sector and consumer groups for guidance on how to improve the nature, accuracy, and searchability of the Office's public databases.

During these discussions, the Office will explore a wide range of questions. For example, what kind of interface is optimal for applicants who apply for registration through a portal on the Office website? What kind of information should be captured on the application and made searchable? What are the repository standards for acquiring and migrating electronic copyright deposits? How long should the Office retain deposits and under what practices and cost structure? What security measures are necessary? What kind of metadata capture, optical character recognition, and crowdsourcing should the Office pursue? The Office also will explore the feasibility of connecting its registration and recordation database to private sector data to facilitate the further licensing and use of copyrighted materials.

10. Please provide a list of all travel conducted on behalf of the Copyright Office by you since your appointment as Register. Furthermore, please provide the itinerary of each trip, including meeting participants. Finally, please provide the cost for each individual trip and a total cost of all trips taken on behalf of the Copyright Office.

The total cost of my travel since appointment as Register of Copyrights in June 2011 was \$13,564.15. Additional information responsive to this question is included in the attached chart. *See Attachment B.*

11. Please provide a full list of all attendees and issues discussed during your November 2011 meeting in Los Angeles, California, with motion picture studio lawyers. Please provide a full list of all attendees and issues discussed during your meeting in New York, New York on March 14, 2012, with the Authors Guild and business staff of the Association of American Publishers.

Per an earlier request from Ranking Member Lofgren, I provided my answer to this question in a letter on May 2, 2012. A copy of this letter is attached for your reference. *See Attachment A.*

12. In August 2007, the Copyright Office implemented a digital online system of registering copyright claims. This transition was probably a little rockier than expected. Can you give us an update on the current status of the registration of claims and what effect the change has had on the public and on your staff?

As the new Register, evaluating the Office's 2007 transition to electronic processing is a major priority. Built within responsible budget constraints using commercial, off-the-shelf software, the system is a first generation success. It is also the subject of a twenty-four month work plan addressing a host of information technology issues as described above. My staff and I are currently six months into that project.

Although the transition to electronic processing has not been without its challenges, public response to the new system has been positive. Today, more than 80% of the Office's claims are filed electronically and those who file through our online system enjoy a lower processing fee. Our staff has enjoyed the benefits of the electronic system as well, and through increased use of telework we have enhanced morale and improved productivity.

Despite its successes, as noted previously, there remains much work to be done on our electronic processing platform. The 2007 system represents just the beginning of a long-term, ongoing project to continually evaluate our systems and migrate and upgrade them when necessary. We understand that the system must grow and adapt to accommodate the next generation of digital authorship. As creative standards and practices for dissemination evolve over time, so too must the Office's systems and processes. To succeed, the Office will need to attract, grow, and retain a highly skilled and experienced staff to help build, migrate, and evolve the systems that support the national registration system.

13. Recently, there was a notice in the Federal Register on proposed fee increases. What feedback have you received on the idea of a fee increase and how would the proposal affect small authors?

As discussed in response to Question 3, the Office is currently conducting a study of costs it incurs and the fees it charges with respect to the registration of claims, recordation of documents, and other public services. As part of that process, the Office published a Notice of Inquiry on January 24, 2012, to elicit public comment on two specific fee related issues: (1) whether special consideration should be provide to individual author-claimants registering a single work; and (2) whether there are special services and corresponding fees the Office should expand, improve, or add to its offerings at this time.

After reviewing public comments, the Office published a proposed schedule of fees for services, including a new, separate fee for a single author for online registration

Chairman Gingrey

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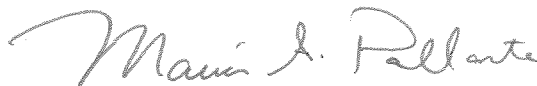
claims in a single work that is a work not made for hire. The schedule also includes two basic fees, one for online claims and another for paper applications. The new proposed fee for a single author filing online is set at \$45, a moderate increase over the current fee that is well below the \$65 proposed fee for all other basic online registrations.

Commenters to the January Notice of Inquiry fully supported a lower fee for single authors of single works. They noted that such applications are easier to process, that registration provides important remedies for the author, and that registration benefits the public by creating a more robust public record. Moreover, the Office is cognizant of the need to set fees at a level that will continue to serve as an incentive to authors to register their works.

The comments received in response to the January Notice of Inquiry were only the first opportunity for the public to engage in the fee adjustment process. Subsequently, the Office published a second notice on March 28, 2012 for the purpose of eliciting public comment on any of the proposed fees. These comments are due on May 14, 2012. Once the Office has received the comments, it will evaluate the proposed fees in light of the public comments, the statutory guidelines and policy considerations for establishing these fees, and make any necessary adjustments before submitting the proposed fee schedule to Congress.

I trust that my responses above answer your questions. If you have any further questions, however, please feel to contact me.

Respectfully submitted,



Maria A. Pallante
Register of Copyrights

Enclosures



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May 2, 2012

The Honorable Phil Gingrey
The Honorable Zoe Lofgren
U.S. House of Representatives
1309 Longworth House Office Building
Washington, D.C. 20515

Re: Hearing of the Subcommittee on Oversight,
Committee on House Administration

Dear Chairman Gingrey and Ranking Member Lofgren:

This letter is in response to the questions raised by Ranking Member Lofgren during the course of the Subcommittee's hearing on April 18, 2012, entitled "Library of Congress: Ensuring Continuity and Efficiency During Leadership Transitions."

At the request of the Committee's minority staff, we are responding to these oral questions earlier than, and separately from, the written questions that followed the hearing, for which you requested a response by May 9, 2012. We do note, however, that although the oral and written questions overlap to some degree, their wording is not identical. Therefore, to avoid any confusion, we are providing comprehensive answers in our response today.

During the hearing, Representative Lofgren asked questions about travel information that I had submitted upon request in advance of the hearing. Representative Lofgren highlighted trips that I had taken to Los Angeles and New York in November and December 2011, and asked me to identify the topics and names of attendees from certain stakeholder meetings. She also asked whether I had discussed the Stop Online Piracy Act (SOPA) with these stakeholders. We have fully addressed these questions below, and in an effort to be as responsive as possible, have also listed the meetings we held in Washington, D.C. and discussions we had by phone during this time period in which SOPA was a topic of discussion.

As the Register of Copyrights, I interact with copyright stakeholders on a routine basis. This is an important part of my job and part of the responsibilities vested in the staff of the Copyright Office under Title 17 of the U.S. Code. Congress has by statute charged the Office with certain legal and policy functions, including administering the national copyright registration system, conducting copyright studies and public programs, and advising Congress on matters of national and international copyright policy. The Office carries out this work in many ways. We organize public roundtables, request

public comments, and meet with a wide variety of stakeholders such as authors, publishers, producers, libraries, consumer groups, and technology companies on a routine basis. For example, we are currently preparing a study on small claims mechanisms and we are engaged in outreach regarding measures that might improve the public availability of copyright ownership records. In all, the Office is focused on twenty-seven work priorities at this time (from upgrades in copyright registration to legislative policy). In the interest of transparency, the Office publicly announced these work priorities on October 25, 2011 in *Priorities and Special Projects of the United States Copyright Office*, a document available at <http://www.copyright.gov/docs/priorities.pdf>.

When Congress specifies a particular copyright priority, as it has done with the subject of online piracy and enforcement measures, that subject naturally becomes a major focus for the U.S. Copyright Office as well. Indeed, these issues have been the subject of discussion within the U.S. Senate and the U.S. House of Representatives and among the public for more than a year. My colleagues and I therefore questioned interested stakeholders on these issues throughout 2011, making a point to meet with many groups and companies with diverse and often opposing views. This information informed my congressional testimony on three occasions last year, and helped us to serve the Congressional offices that called upon us throughout the legislative process, asking for impartial technical assistance on related questions, both general and specific. I previously submitted for the record (following Representative Lofgren's request at the March 14, 2011 Hearing of the Subcommittee on Intellectual Property, Competition, and the Internet, House Judiciary Committee) a list of the more than fifty stakeholder meetings that the Office held earlier in 2011, prior to the introduction of legislation in either the House or the Senate.

Once the SOPA bill was introduced (October 26, 2011) my Office had some follow-up discussions with stakeholders, focusing specifically on the language and operation of both SOPA and the Senate's pending bill, PIPA (the Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act). These discussions took place in November 2011 and were as follows:

Date: November 4, 2011
Meeting with NetCoalition and Google:
Jonathan Band, Erik Stallman, and (by phone) Fred von Lohmann

Date: November 8, 2011
Meeting with Public Knowledge and the Center for Democracy and Technology:
Sherwin Siy and David Sohn

Date: November 8, 2011
Conference call with the Business Software Alliance:
Emery Simon and Jesse Feder

November 10, 2011
Conference call with Microsoft:
Thomas Rubin and Jule Sigall

As Representative Lofgren noted at the hearing, I was also in California for several days in November 2011, but SOPA was neither the impetus nor the focus of my trip. The primary point of the trip was to speak to members of the California State Bar Association on November 11, 2011 about the activities of the Copyright Office, along with the Copyright Office General Counsel, David Carson, and the Associate Register for Policy and International Affairs, Michele Woods. Once the trip was planned, I requested an opportunity to meet some of the staff attorneys who work at U.S. motion picture companies. This meeting took place on November 10, 2011. Both meetings in California were planned months in advance of the trip.

As I stated during the hearing, I made a decision when I was appointed to my position (based on advice that I received from experienced policy experts) to engage in meetings outside of Washington from time to time, in order to make connections with those who have on-the-ground experience within the many diverse industries that form the copyright community. In other words, my November meeting with the motion picture companies was part of a more general commitment on my part to meet with stakeholders across the country, but for budgetary purposes it was scheduled to coincide with the bar association event. Similarly, I reached out to Microsoft while I was in Seattle for a meeting concerning copyright and print disabilities last July, and I met with representatives of the independent film and television industry while I was in Los Angeles for a Copyright Society meeting last February. I should note that all of my travel (and the travel of all staff of the Copyright Office) is governed by the Federal Travel Regulations and therefore reviewed in advance by appropriate Library personnel for compliance with applicable fiscal and ethical policies.

In the case of both meetings in California, the focus of my remarks, and those of the Office's General Counsel and Associate Register, were the same: the *Priorities and Special Projects* document mentioned above. Thus, topics covered in the meetings are as follows:

- (1) The three studies the Office is conducting or has recently conducted for Congress (*i.e.*, small claims, legal treatment of pre-1972 sound recordings, and mass book digitization, discussed at page 5 of the *Priorities* document);
- (2) The six policy issues that relate to copyright legislation (*i.e.*, rogue websites, illegal streaming, public performance right in sound recordings, orphan works, copyright exceptions for libraries, and market-based licensing for cable and satellite retransmission, discussed at pages 6-8 of the *Priorities* document);

(3) Our international work in support of the Patent and Trademark Office and Office of the U.S. Trade Representative (*i.e.*, intergovernmental work at the World Intellectual Property Organization and trade agreements, discussed at pages 8-10 of the *Priorities* document);

(4) The six priorities in administrative practice (*i.e.*, section 1201 rulemaking, DMCA agents, group registration option, registration and deposit of digital authorship, electronic upgrades to the Office's administration of statutory licenses, and technical recordation of terminations of copyright transfers, discussed at pages 10-12 of the *Priorities* document); and

(5) The ten special projects I mentioned in my oral statement during the hearing (*i.e.*, a fee evaluation, upgrades to the registration and recordation programs, revision of the Compendium of Copyright Office Practices, dialogues regarding the copyright marketplace, partnerships with the academic community, revision of the Copyright Office website, copyright education, public access to historical (and sometimes fragile) copyright records, and skills training for Copyright Office staff, discussed at pages 12-16 of the *Priorities* document).

I do not know the names of those who attended the California State Bar's conference, as that is a multiday, state event at which I was one speaker of many. We have confirmed that participants in the motion picture meeting were as follows: Jeremy Williams, Dean Marks, Dale Nelson, and David Kaplan of Warner Brothers; Catherine Bridge, Steve Ackerman, Gary Lim, and Jonathan Whitehead of Disney; Tom Kennedy, Mary McGuire, and Elizabeth Valentina of Fox; Dan Cooper of Paramount; Aimee Wolfson, Keith Weaver, and Gayle McDonald of Sony; Stacey Byrnes, Larry Liu, and Ian Slotin of Universal; and Karen Thorland of the MPAA. As I was meeting all but two of these individuals for the first time, the discussion was wide-ranging and questions flowed in both directions. Given the active legislative focus and impending hearing on rogue websites and online piracy enforcement measures, we received a number of questions about SOPA and PIPA, and we asked a number of questions of the participants. But, in fact, the discussion was briefer and less focused on SOPA and piracy than the meetings and calls we held during that same period with NetCoalition, Google, the Center for Democracy and Technology, Public Knowledge, the Business Software Alliance, and Microsoft.

Representative Lofgren also asked about my trip to New York in December. From December 8 to 11, I was in New York to accept an invitation to speak to a group of publishing lawyers, called informally the Publishers Lawyer Committee. While there, in the interest of maximizing the usefulness of the trip, I scheduled meetings to talk with some of the business staff (the publishers) of the member companies of the Association of American Publishers (AAP) and with the staff of the Authors Guild.

The AAP meeting was held on the afternoon of December 8, 2011, with the following attendees: Tom Allen of AAP, Allan Adler of AAP; Kyran Cassidy of HarperCollins Publishing Worldwide, Inc.; YS Chi of Reed Elsevier (via telephone); Brian Crawford of the American Chemical Society; Angela D'Agostino of the Cambridge Information Group; Ron Dunn of Cengage Learning, AAP Vice Chair; John Isley of Pearson Education North America; Susan King of the American Chemical Society; Carolyn Reidy of Simon & Schuster; Mark Seeley of Elsevier; Kathy Trager of Random House; and David Young of Hachette Book Group, AAP Chair. Again, we had a general discussion regarding the active work of the Copyright Office and an informal exchange of questions and answers.

On the morning of December 9, 2011, I met with Paul Aiken and Jan Constantine of the Authors Guild. I questioned them about the pressing concerns of authors, and they asked me questions about the small claims study, pending SOPA and PIPA legislation, orphan works solutions, and copyright registration fees.

On the afternoon of December 9, 2011, I delivered remarks to members of the Publishers Lawyer Committee, again focusing on the *Priorities and Special Projects* of the Office. The Committee, which includes many in-house lawyers, had reached out to me many months before, and this again was a long-scheduled event. We have confirmed that the following individuals attended: Benjamin Marks of Weil; Michael Bamberger of SNR Denton; Victor A. Kovner of Davis Wright Tremaine LLP; Elizabeth McNamara of Davis Wright Tremaine LLP; Elise Solomon of Hachette Book Group; Leslie Steinau of Wilk Auslander LLP; Paul Slevin of Macmillan; Audrey Feinberg of Macmillan; Rick Kurnit of Frankfurt Kurnit Klein & Selz PC; Trina Hunn of HarperCollins Publishers; Kyran Cassidy of HarperCollins Publishers; Barbara Cohen of Oxford University Press; William Adams of Random House; Steven Weissman of Time Inc.; Roy Kaufman of Wiley-Blackwell; Jonathan Bloom of Weil; Mark Seidenfeld of Scholastic; Gloria Phares of Patterson Belknap Webb & Tyler; Richard Dannay of Cowan Liebowitz & Latman; Robert Solomon for Health Communications; Jeremy Goldman of Frankfurt Kurnit Klein & Selz; Linda Steinman of Davis Wright Tremaine LLP; Edward Rosenthal of Frankfurt Kurnit Klein & Selz; and Tricia Kallett of Abrams Books. Once again, this was my first time meeting all but a few of the attendees and I found the informal discussion that followed my remarks very useful.

In the written questions submitted to my office following the hearing, there are references to meetings with the Authors Guild and the Association of American Publishers on March 14, 2012. Although I presented a keynote address at the Association of American Publishers' annual meeting on March 14, at which hundreds of people and the press attended, I did not have any private meetings with the association or its member companies and I did not meet with the Authors Guild on that date.

Accepting invitations to speak about current copyright topics is of course part of my responsibilities as the Register of Copyrights and topics can be as varied as the

workload of the Copyright Office. For example, my speech for the publishers traced the origins of copyright protection from the birth of the nation to the Supreme Court's recent opinion in *Golan v. Holder*, discussed the importance of fair use and freedom of expression, and noted the importance of public participation in policy debates. As another example, last month I delivered a conference keynote address at the Berkeley Center for Technology, in which I spoke about the need for a balanced legal framework for mass digitization, including orphan works solutions and updated exceptions to copyright law for libraries. As with the California State Bar Association event, we were not the organizers of these events and I was but one invited speaker of many. We are therefore unable to provide names for the hundreds of people who may have attended. These engagements, and the speaking engagements of my colleagues in the Office, are an expected and important part of our public outreach.

Respectfully submitted,

A handwritten signature in cursive script that reads "Maria A. Pallante". The signature is written in black ink and is positioned above the printed name and title.

Maria A. Pallante
Register of Copyrights

Travel Dates	Location(s)	Itinerary and Participants	Copyright Office Costs
6/4/2011 to 6/8/2011	Bolton Landing, NY	6/6: Speaker at the annual meeting of the Copyright Society of the USA	\$ 657.08
7/10/2011 to 7/12/2011	Seattle, WA	7/10 to 7/12: Meeting of the Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities 7/11: "Meet and greet" with Microsoft while in Seattle to touch base about legal and business issues	\$ 851.09
10/10/2011 to 10/15/2011	London, England	10/11: Co-panelist with EU government official on legal and business issues in music	\$ 6,028.98
	London, England	10/11: Meeting with UK Intellectual Property Office	
	Brussels, Belgium	10/12: Meeting with Intellectual Property Directorate, European Commission	
	Geneva, Switzerland	10/13 to 10/14: Speaker at the World Intellectual Property Organization's conference on the importance of copyright registration systems (two panels)	
10/21/2011	Philadelphia, PA	Speaker at the New York State Bar Association Intellectual Property Law Section's Fall Meeting	\$ 338.82
10/30/2011 to 11/1/2011	Santa Monica, CA	10/31: Speaker at the 10 th American German Copyright Law Summit	\$ 748.86
11/10/2011 to 11/15/2011	Los Angeles, CA	11/10: "Meet and greet" with motion picture companies while in Los Angeles to touch base about legal and business issues 11/11: Speaker at the California Bar's 36 th Annual Intellectual Property Institute	\$ 593.56
12/7/2011 to 12/9/2011	New York, NY	12/8: "Meet and greet" with book publishers while in New York to touch base about legal and business issues 12/9: Meeting with Authors Guild while in New York to touch base about legal and business issues 12/9: Remarks to the Publishers Lawyers Committee	\$ 1,971.82

Travel Dates	Location(s)	Itinerary and Participants	Copyright Office Costs
2/2/2012 to 2/5/2012	Los Angeles, CA	2/4: Keynote address at the Copyright Society of the United States' Midwinter Meeting	\$ 1,072.20
		2/4: Meeting while in Los Angeles with Independent Film and Television Alliance to touch base and legal and business issues	
3/14/2012	New York, NY	Keynote address at the Association of American Publishers Annual Meeting of members	\$ 814.53
		Meeting while in New York with BMI staff to touch base and legal and business issues	
4/9/2012 to 4/13/2012	San Francisco and Berkeley, CA	4/10: Speaker at the Copyright Society of the United States' Northern California Chapter Meeting	\$ 487.21
		4/11: Meeting while in Berkley with Professor Pamela Samuelson	
		4/12: Keynote address at the Berkeley Law and Technology Symposium on Orphan Works and Mass Digitization	

Total: \$ 13,564.15