

# OVERSIGHT OF THE U.S. COPYRIGHT OFFICE

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## HEARING BEFORE THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

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JUNE 26, 2019  
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## OVERSIGHT OF THE U.S. COPYRIGHT OFFICE

WEDNESDAY, JUNE 26, 2019

HOUSE OF REPRESENTATIVES  
COMMITTEE ON THE JUDICIARY  
*Washington, DC.*

The committee met, pursuant to call, at 10:03 a.m., in Room 2141, Rayburn Office Building, Hon. Jerrold Nadler [chairman of the committee] presiding.

Present: Representatives Nadler, Lofgren, Jackson Lee, Cohen, Johnson of Georgia, Deutch, Bass, Jeffries, Lieu, Demings, Correa, Garcia, Stanton, Dean, Murcarse-Powell, Escobar, Collins, Chabot, Gohmert, Jordan, Buck, Roby, Lesko, Reschenthaler, Cline, Armstrong, and Steube.

Staff present: David Greengrass, Senior Counsel; John Doty, Senior Advisor; Madeline Strasser, Chief Clerk; Jamie Simpson, Chief Counsel, Courts and IP Subcommittee; Danielle Johnson, Counsel, Courts and IP Subcommittee; Matthew Robinson, Counsel, Courts & IP Subcommittee; Rosalind Jackson, Professional Staff Member, Courts and IP Subcommittee; Brendan Belair, Minority Staff Director; Bobby Parmiter, Minority Deputy Staff Director/Chief Counsel; Jon Ferro, Minority Parliamentarian/General Counsel; Sally Rose Barnes, Minority Judiciary Policy Adviser; and Erica Barker, Minority Chief Legislative Clerk.

Chairman NADLER. The Judiciary Committee will come to order.

Without objection, the Chair is authorized to declare a recess of the committee at any time.

We welcome everyone to today's hearing on oversight of the U.S. Copyright Office. I will now recognize myself for an opening statement.

Today's hearing will allow us to assess the current state of the Copyright Office and the U.S. copyright system. Each year core copyright industries employ 5.5 million workers who produce \$1.2 trillion in economic activity and generate roughly \$180 billion in foreign sales. These industries also promote a wide range of artistic expression and intellectual thought.

The Copyright Office plays a vital role in helping to uphold this system and in helping to ensure that works are effectively protected by copyright. Maintaining this vibrant copyright ecosystem depends on having an effective copyright office to oversee it. And, we are pleased to be joined today by Karyn Temple, the Register of Copyrights and Director of the U.S. Copyright Office.

This committee held its last Copyright Office oversight hearing in 2015, 4 years ago, and a lot has changed since then. Notably, last fall, Congress passed the Orrin Hatch-Bob Goodlatte Music Modernization Act, which provides critical updates to modernize the musical licensing system and better serve both creators and digital music providers. This historic legislation, which I was proud to help author along with the Ranking Member, Mr. Collins, and Mr. Jeffries, assists digital music providers with the licensing of musical works, while ensuring that performers, songwriters, and other music creators receive fair market value for their work.

The Copyright Office is responsible for implementing several features of the Music Modernization Act, or MMA, including aspects of the blanket license established in Title I of the act. The office's July 8th deadline to designate the mechanical licensing collective and the digital licensee coordinator created by the MMA is fast approaching, and so I look forward to hearing more about the status of the Copyright Office's work in implementing these and other provisions.

The Committee is also closely monitoring the Copyright Office's much-needed efforts to modernize its IT systems. In recent years, we have heard a consistent message with respect to the Copyright Office, that the Office must be modernized to meet the needs of the public and the copyright community and to reduce the backlog of pending registrations. The Supreme Court's decision in *Fourth Estate Public Benefit Corporation v. Wall-Street.com*, which held that registration, and not merely the filing of an application for registration, is necessary before a copyright owner can sue for infringement, further underscores the need for modernization of the office's IT system.

Following the Fourth Estate ruling, I wrote a letter, along with Ranking Member Collins, asking Ms. Temple about the office's plans for reducing registration processing times in light of that decision. I appreciated the thorough response and her testimony on the same topic today on the Office's plans to speed up the registration process. These efforts should remain a top priority for the office.

Another timely issue is the upcoming expiration of the Distant-Signal Satellite Television License at the end of this year and whether Congress should reauthorize it. Ranking Member Collins and I also recently wrote Ms. Temple a letter on this topic. Again, I appreciate the thorough response, and I hope we will be able to explore more of the Office's rationale for recommending that the license be allowed to expire in light of the changing media landscape.

In addition, the Office has been studying the effectiveness of the Digital Millennium Copyright Act, Section 512, safe harbor provision. This issue exemplifies the critical role that copyright law plays in balancing the needs of right holders to receive value for their works and the interest of the public in having access to information. I look forward to learning more about the insights the Office has gained over the past years and the forthcoming report.

I thank Ms. Temple for being here today. I congratulate her on her recent permanent appointment as register, and I look forward to her testimony on the important work of the Copyright Office.

The gentleman from Virginia. Excuse me. The gentleman from Georgia, Mr. Collins—not that there is anything wrong with Virginia. The gentleman from Georgia, Mr. Collins, has been a good partner and an important leader on many copyright issues, and it is now my pleasure to recognize the distinguished Ranking Member of the Judiciary Committee for his opening statement.

Mr. COLLINS. Thank you, Mr. Chairman, and just for anybody out there who may have gotten any wrong impression, “Go Dawgs.” Okay.

Mr. Chairman, thanks for having this hearing today. There are many ongoing copyright issues that deserve our attention, and you and I have a history of working on these issues together in a bipartisan way. I would like to see this committee focus more on issues like copyright that are critical to our economy and represent areas where we can actually legislate and get things rather than redoing a lot of what we have been redoing recently.

I also want to thank Ms. Temple for appearing before us today. It is good to see you, it is good to have you here, and it is good that you are permanently there, and I am glad to have that. It is her first time appearing before us as the officially-appointed register of copyrights, but she is by no means a stranger to this committee or to copyright law.

Copyright is a right provided for by the U.S. Constitution. Strong copyright protections are critical to promoting innovation and creativity, and they are critical to our economy. According to the International Intellectual Property Alliance, core copyright industries contribute more than \$1 trillion to the U.S. GDP and make up almost 7 percent of the U.S. economy. The Copyright Office plays a key role in this system, and we in Congress are fortunate to have their advice and analysis on numerous policy matters.

Last year, the Music Modernization Act was signed into law. This bill is a culmination of years of work and the first major update of the music licensing system in a generation. The Copyright Office provided its expertise throughout the process and is now in the process of implementing the law. We look forward to hearing how that implementation is proceeding and to continue to work with the Copyright Office to ensure that this law is functioning as intended.

In addition to the Music Modernization Act, there are numerous other copyright-related matters that deserve our attention. Copyright modernization remains a priority, and as the Copyright Office moves to a new IT system, we must ensure that it has all the resources that it needs to fulfill its requirement. I am still believing that it needs further change and needs to be continued in this, and I would hope that actually the Librarian would actually join in this and not hold us on this because this is something that needs to happen.

The committee has jurisdiction over the Satellite Compulsory License for Distant Signals, as the Chairman had mentioned, Section 119. We have heard from the Copyright Office about its belief that the license should be allowed to expire consistent with their historic opposition to the statutory license. While not all expiring provisions are in the jurisdiction of this committee. This committee should review those that are.

We must also ensure the copyright system functions well for content creators and content users who rely on it. Too often today we are seeing small creators effectively sidelined from enforcing their rights. That is why I am glad to see that the team is back, and Congressman Jeffries and I are again with the CASE Act. And for those in here who see the shirts, that is something important to me.

And just a moment. If we forget the creators, if this body forgets that is the original idea, that spark, that hope, that dream, that idea, that music, that poem, that verse, whatever it may be, it comes from within someone. If we ever get to the point where that is not valued in our system, when we ever come to the point where a creative spark in whatever genius it may appear is not protected under our system, our basic civilization goes down because it is those moments of spark and creation and hope that the CASE Act would allow for people to enforce their rights. But it is also that spark that keeps us going, and it is not for us in this room. It is for those who are going to have that next spark tomorrow, that next film, that next stream, that next book, that next moment that will literally change the world. That is why I love being a part of this committee on most days. [Laughter.]

But we will continue. [Laughter.]

Piracy also continues to be a problem. While registration pendency times have gone down, questions still persist about how to protect property rights properly as works are registered. Piracy can happen in seconds, but registration can take months. I commend the Copyright Office's efforts to shorten pendency, but these are questions that we must consider. We must also work to ensure copyright laws, many of which are decades old, reflect the needs and realities of today's digital world. They are not in competition. They are in a mutual symbiotic relationship if we allow them to be, and we need that.

Many challenges remain in the copyright ecosystem, but I am committed to finding solutions. I look forward to hearing from the Register today and to continue the bipartisan work to strengthen our copyright system and ensure it is working for all creators and content users alike. And with that, Mr. Chairman, I yield back.

Chairman NADLER. I thank the gentleman. I will now introduce today's witness. Karyn Temple was appointed Register of Copyrights and Director of the U.S. Copyright Office on March 27th, 2019 after having served as acting register since October 21st, 2016. Previously she served as Associate Register of Copyrights and Director of Policy and International Affairs for the Copyright Office.

Before joining the Copyright Office in 2011, Ms. Temple served as Senior Counsel to the Deputy Attorney General of the United States. She earned her J.D. from Columbia University Law School, in my district, and her B.A. from the University of Michigan. We welcome our distinguished witness, and we thank you for participating in today's hearing. And if you would please, I will begin by swearing you in.

Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

Ms. TEMPLE. I do.

Chairman NADLER. Thank you very much. Let the record show the witness answered in the affirmative.

Please note that your written statement will be entered into the record in its entirety. Accordingly, I ask that you summarize your testimony in 5 minutes. To help you stay within that time, there is a timing light on your table. When the light switches from green to yellow, you have 1 minute to conclude your testimony. When the light turns red, it signals your 5 minutes have expired.

Ms. Temple, you may begin.

**TESTIMONY OF KARYN A. TEMPLE, REGISTER OF COPYRIGHTS  
AND DIRECTOR OF THE U.S. COPYRIGHT OFFICE, LIBRARY  
OF CONGRESS.**

**TESTIMONY OF KARYN A. TEMPLE**

Ms. TEMPLE. Good morning, Chairman Nadler, Ranking Member Collins, and members of the committee. Thank you for the opportunity to appear before you today to provide important updates on the operational and policy activities of the United States Copyright Office.

For nearly 150 years, the U.S. Copyright Office has been at the very center of a thriving copyright ecosystem, serving as the primary Federal agency administering the Nation's copyright law. During that time, the U.S. Copyright Office has registered over 38 million claims to copyright, representing even more individual copyrighted works. We have provided crucial advice on copyright law to executive agencies and courts, engaged in a wide variety of public educational outreach, and answered almost 200,000 public inquiries just last year. We manage over \$1 billion annually in statutory license fiduciary assets.

Importantly, through our traditional role as the key advisor to Congress on copyright policy matters, the Copyright Office has participated in every major update to U.S. copyright law, from the development of the 1909 and 1976 acts to the recent Music Modernization Act. The Copyright Office's legal policy and regulatory activities support our cultural and economic wellbeing. As recognized by the U.S. Supreme Court, copyright is intended to be the "engine of free expression," and U.S. copyright law ably fulfills that intent.

Congress developed a thoughtful balance of rights, exceptions, and limitations which promote the progress of our Nation's culture through traditional creative industries to the flourishing tech landscape. With this robust framework of rights and limitations, it is not surprising then that the United States leads the world in both entertainment and technology. Indeed, according to recent estimates, core copyright industries represent nearly 7 percent of the total U.S. economy and add more than a \$1 trillion to the U.S. GDP. The Copyright Office is honored to be a critical part of this copyright ecosystem.

Since the Copyright Office last appeared before this committee for an oversight hearing, we have made tremendous progress on a variety of initiatives, including in operations, law and policy, out-

reach, financial management, and modernization efforts, which are described in more detail in my written testimony.

The Copyright Office's work supports all affected by copyright. When many think of copyright, they often think of major corporations and large businesses, but those are not the only ones who are supported and who benefit from copyright law. What is often overlooked is that copyright also supports and sustains small businesses, individual photographers and artists, first-time novelists and bloggers, garage bands, and independent filmmakers. By providing a way for these creators to make a living doing what they do best, copyright enriches our culture and enhances our daily lives.

Every time I hear from an individual creator about the first time they registered a copyright with our office or the first time they actually were able to make a living doing what they do best, I am inspired. It reinforces in a real-world and practical way the important work we, and the entire copyright law, do for our Nation. This includes, of course, an essential framework of exceptions and limitations, like fair use, that also helps support and sustain a vibrant and flexible creative culture.

The importance of copyright to individuals and smaller businesses is one of the many reasons that the Copyright Office strongly supports a voluntary small claims tribunal. The Copyright Office has studied this issue for well over a decade, listening to the views from all sides, and has come to the conclusion that many simply do not have the ability to enforce their rights or contest claims of infringement. A small claims tribunal would go far in ensuring that those granted certain legal rights under the Copyright Act actually have the ability to enforce them.

I look forward to continuing the Copyright Office's progress and service to the country. To help guide the way, the Copyright Office released a new strategic plan just 2 months ago. It identifies critical focus areas that will chart our course over the next 4 years.

None of this work, of course, would be possible without the dedicated staff of the United States Copyright Office. During my tenure heading the office over the past 2-and-a-half years, I have been continually amazed and inspired by their resilience, flexibility, and support during a time of tremendous Copyright Office growth and change. Copyright Office staff often work long hours with limited resources. Their efforts have resulted in the recent elimination of our backlog of pending claims and significant reduction in the processing time for registration applications. So I would like to take this opportunity to thank the exceptional Copyright Office staff for their contributions to the U.S. copyright system and the American people.

I would also like to thank Congress for your ongoing support of the Copyright Office. I look forward to working with you closely as we continue to modernize and update the Office and the copyright law for the benefit of all. Thank you.

[The statement of Ms. Temple follows:]

**Statement of Karyn A. Temple  
United States Register of Copyrights**

**Before the  
Committee on the Judiciary  
United States House of Representatives  
June 26, 2019**

Chairman Nadler, Ranking Member Collins, and Members of the Committee,

Thank you for the opportunity to appear before you today to provide important updates on the operational and policy activities of the United States Copyright Office.

For nearly 150 years, the Copyright Office has been at the very center of the nation's thriving copyright ecosystem, serving as the primary federal agency administering the U.S. copyright law.<sup>1</sup> During that time, the Copyright Office has registered over thirty-eight million claims to copyright representing an even greater number of individual copyrighted works,<sup>2</sup> and now has the largest compilation of registered works and copyright ownership information in the world. The Copyright Office has provided crucial advice on copyright law to executive agencies and the courts; engaged in a wide variety of educational and outreach programs, answering almost 200,000 public inquiries just last year, including more than 2,000 walk-in requests; and managed over \$1.3 billion dollars annually in statutory license fiduciary assets.

Importantly, through its traditional role as the leading advisor to Congress on copyright policy matters, the Copyright Office has participated in every major update to U.S. copyright law, from the development of the comprehensive 1909 and 1976 Acts to the recent Music Modernization Act ("MMA").<sup>3</sup> As part of its role, the Copyright Office provided assistance with the Committee's multi-year review of title 17, including by testifying at the first and last

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<sup>1</sup> 17 U.S.C. § 101 *et seq.*

<sup>2</sup> The Copyright Office's group registration option allows registration of multiple works in one "claim." *See generally* 37 C.F.R. §§ 202.3(b)(5)–(6), (9), 202.4 (2018).

<sup>3</sup> Beginning with studies in the 1950s, the Copyright Office worked extensively to support Congress during the major revision of copyright law resulting in the 1976 Copyright Act. *See* H.R. REP. NO. 94-1476, 47–48 (1976) (chronicling the Copyright Office's work for Congress on that revision process). The Copyright Office also assisted the U.S. House Committee on the Judiciary in its consideration of the landmark Orrin G. Hatch-Bob Goodlatte Music Modernization Act ("MMA"), as well as its 2013–2015 comprehensive copyright law review. *See Congressional Hearings and Statements to Congress: Copyright Review Hearings, 2013–2015*, U.S. COPYRIGHT OFFICE, <https://www.copyright.gov/laws/hearings/>.

review hearings: *The Register's Call for Updates to U.S. Copyright Law*<sup>4</sup> and *The Register's Perspective on Copyright Review*.<sup>5</sup>

The Copyright Office's legal, policy, and regulatory activities support a copyright ecosystem that is critical to our cultural and economic well-being. As recognized by the U.S. Supreme Court, copyright is intended itself to be the "engine of free expression,"<sup>6</sup> and the United States copyright law ably fulfills that intent. Congress developed a thoughtful balance of rights, exceptions, and limitations, which promotes the progress of our nation's culture, from traditional creative industries to the flourishing tech landscape. With its robust framework of rights and limitations, it is not surprising then that the United States leads the world in *both* entertainment and technology. Indeed, according to recent estimates, core copyright industries represent nearly seven percent of the total U.S. economy and add more than a trillion dollars to the U.S. annual gross domestic product.<sup>7</sup>

The Copyright Office is honored to be a critical part of this copyright ecosystem. Since the Copyright Office last appeared before this Committee for an oversight hearing,<sup>8</sup> the Office has made tremendous progress on a variety of initiatives, including in operations, law and policy, outreach, financial management, and modernization efforts. For example, the Copyright Office began a comprehensive modernization effort targeting technology and operations, including the launch of the Copyright Modernization Office ("CMO") in January 2018. The Copyright Office also worked diligently on modernizing registration procedures and updating business practices and regulations,<sup>9</sup> resulting in a forty percent improvement in overall average processing times within the past two years as well as the complete elimination of the Office's

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<sup>4</sup> See *The Register's Call for Updates to U.S. Copyright Law: Hearing Before the Subcomm. on Courts, Intellectual Prop., & the Internet of the H. Comm. on the Judiciary*, 113th Cong. (2013).

<sup>5</sup> See *The Register's Perspective on Copyright Review: Hearing Before the H. Comm. on the Judiciary*, 114th Cong. (2015).

<sup>6</sup> *Harper & Row, Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 558 (1985).

<sup>7</sup> In 2017, core copyright industries added more than \$1.3 trillion to the U.S. gross domestic product, or 6.85 percent of the U.S. economy. STEPHEN E. SIWEK, *prepared for INT'L INTELLECTUAL PROP. ALL., COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY: THE 2018 REPORT 3* (2018). Core copyright industries also employed almost 5.7 million workers, who were paid an average of thirty-nine percent more than the average U.S. annual wage. *Id.* According to statistics released by the Bureau of Economic Analysis, the digital economy is estimated to have accounted for 6.9 percent of the U.S. gross domestic product, or \$1.35 trillion, in 2017. NAT'L TELECOMMS. AND INFO. ADMIN. ("NTIA"), *Digital Economy Accounted for 6.9 Percent of GDP in 2017*, NTIA BLOG (Apr. 5, 2019), <https://www.ntia.doc.gov/blog/2019/digital-economy-accounted-69-percent-gdp-2017>.

<sup>8</sup> See *U.S. Copyright Office: Hearing Before the Subcomm. on Courts, Intellectual Prop., & the Internet of the H. Comm. on the Judiciary*, 113th Cong. (2014).

<sup>9</sup> Including issuing almost thirty final rules since 2014 and publishing updates to the *Compendium of U.S. Copyright Office Practices (Third Edition)*, which is the administrative manual of the Office that serves as a guidebook for authors, copyright owners, practitioners, the courts, and others.

“backlog” of workable claims.<sup>10</sup> In fiscal year 2018, the Copyright Office transferred to the Library’s collections more than 736,000 published works worth over \$47.5 million.<sup>11</sup>

The Copyright Office also leveraged its expertise in copyright law and policy to advise Congress on legislation such as the MMA and small claims, and to provide a number of comprehensive policy reports and discussion documents on a variety of subjects such as moral rights, software-enabled consumer devices, and visual works.<sup>12</sup> The Copyright Office responded immediately when the MMA was enacted, creating a webpage dedicated to the bill literally overnight and promptly initiating the public notices and regulations needed to implement various aspects of the landmark law.<sup>13</sup>

Additionally, since 2015, the Copyright Office has participated in the preparation of seven briefs on behalf of the U.S. government for Supreme Court cases such as *Rimini Street v. Oracle* and *Star Athletica, LLC v. Varsity Brands, Inc.* Throughout this time, the Copyright Office maintained its focus on its other core administrative services for the public, registering more than 560,000 claims to copyright, recording more than 21,000 documents containing the titles of more than 757,000 works, and distributing over \$102 million in royalty fees to copyright owners in fiscal year 2018 alone.<sup>14</sup>

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<sup>10</sup> Letter from Karyn A. Temple, Register of Copyrights and Dir., U.S. Copyright Office, to Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, and Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives (May 31, 2019), available at <https://www.copyright.gov/laws/hearings/response-to-april-3-2019-house-letter.pdf>.

<sup>11</sup> See U.S. COPYRIGHT OFFICE, ANNUAL REPORT FOR FISCAL 2018, at 14 (2019). The Copyright Acquisitions Division (“CAD”) is responsible for administering the Copyright Act’s mandatory deposit requirements, as well as encouraging publishers to consider registering their works under 17 U.S.C. § 408 in order to fulfill mandatory deposit requirements. In conjunction with the Office of Registration Policy and Practice, CAD extends grants of special relief where mandatory deposit is not possible in part or full. Special relief has been used to permit publishers to deposit electronic copies of works instead of print (primarily serial and book content); in return, these publishers have provided access to the materials for Congress and Library patrons via their own online services.

<sup>12</sup> Since this Committee’s last oversight hearing in 2014, the Copyright Office has completed eleven policy studies. See Appendix 2. Copyright Office policy studies and reports from 1961 to present are available at <https://www.copyright.gov/policy/>, and the thirty-four Copyright Law Revision Studies, completed between 1955 and 1960 in preparation for drafting the 1976 Act, are available at <https://www.copyright.gov/history/studies/>. The Copyright Office serves as a primary copyright advisor to Congress, with a longstanding history of providing expert analysis on all copyright policy matters since its creation. See, e.g., H.R. REP. NO. 105-796, at 77–78 (1998) (Conf. Rep.) (directing the Office to continue its “longstanding role as advisor to Congress” by, among other things, providing “testimony [on] pending legislation,” conducting “studies [that] have often included specific policy recommendations,” and responding to “specific requests by Committees for studies and recommendations on subjects within the Copyright Office’s area of competence.”).

<sup>13</sup> See *Orrin G. Hatch-Bob Goodlatte Music Modernization Act*, U.S. COPYRIGHT OFFICE, <https://www.copyright.gov/music-modernization/>.

<sup>14</sup> U.S. COPYRIGHT OFFICE, ANNUAL REPORT FOR FISCAL 2018, at 13, 26 (2019).

None of this work would be possible without the dedicated staff of the U.S. Copyright Office. During my tenure heading the Copyright Office over the past two and a half years, I have been amazed and inspired by the continued resilience, flexibility, and support of the Office's talented employees during a time of tremendous growth and change. Copyright Office staff routinely work late hours with limited resources to support the Office's mission. I would like to take the opportunity to thank the exceptional Copyright Office staff for their significant contributions to the U.S. copyright system and the American people.

### Looking Forward

The coming years will bring with them even more complex work for the Copyright Office. To guide these activities, the Copyright Office issued a Strategic Plan this spring identifying the Office's strategic framework for the five years covering 2019–2023. The Plan's six focus areas are: (i) Information Technology Modernization; (ii) Optimizing Business Processes; (iii) Organizational Change Management; (iv) Education and Engagement; (v) Impartial Expertise on Copyright Law and Policy; and (vi) Measuring Success.

Along with developing the Strategic Plan focus areas, the Copyright Office updated both its mission statement and its vision statement. The new mission statement clearly reflects the Office's role in "promot[ing] creativity and free expression by administering the nation's copyright laws and by providing impartial, expert advice on copyright law and policy, for the benefit of all."<sup>15</sup> Similarly, the Copyright Office adopted a newly articulated vision statement of "enriching the nation's culture by empowering and connecting the global copyright community."<sup>16</sup> The vision statement recognizes the increasingly global nature of the copyright ecosystem, the need to ensure a continued robust framework that supports and sustains all of those relying on the system, and the importance of that system to our cultural heritage.

While the Copyright Office is engaging in a wide variety of initiatives, I would like to take an opportunity to provide more detail about several key areas.

### Office Modernization

Perhaps the most significant undertaking the Copyright Office faces in the near term is modernizing its antiquated IT systems and improving its complementary work processes. Modernization is a sweeping, multi-year, Copyright Office-wide initiative, the end result of which will be to re-imagine and reengineer how the public interacts with the Office, from submitting registration applications, to recording ownership and licensing information, to accessing Office data and records. The goal is to provide the copyright ecosystem with

<sup>15</sup> U.S. COPYRIGHT OFFICE, COPYRIGHT: THE ENGINE OF FREE EXPRESSION, UNITED STATES COPYRIGHT OFFICE STRATEGIC PLAN 2019–2023 (2019) ("STRATEGIC PLAN"), available at <https://www.copyright.gov/reports/strategic-plan/USCO-strategic2019-2023.pdf>.

<sup>16</sup> *Id.*

improved services that are more efficient and responsive to user needs. As currently envisioned, modernization will have the Copyright Office undertaking activity on several different fronts, all of which will dramatically reshape the Office and how we serve the public.

1. *Developing an Enterprise Copyright System.*

The Copyright Office requires a robust and modern enterprise copyright system (“ECS”) to carry out its duties and to serve the copyright ecosystem as a whole. The new ECS will integrate and improve currently disparate Office systems and functions by: (i) replacing the aging eCO registration system with a new, state-of-the-art registration system; (ii) developing a new, integrated electronic recordation system; (iii) improving access to historical records through digitization; and (iv) developing a robust, stable system for filing, processing, and searching data related to statutory licensing royalties that the Copyright Office manages on behalf of copyright owners.

As directed by Congress, the Copyright Office has extensively engaged with the Library’s Office of the Chief Information Officer (“OCIO”) “to achieve efficiencies in shared services, while allowing for mission-specific modernization to be the responsibility of the Copyright Office.”<sup>17</sup> In January 2018 the Office created the CMO, which is tasked with analyzing and documenting the Copyright Office’s modernization needs and serving as the Office liaison to inform OCIO’s development activities.<sup>18</sup> As part of the Library’s IT centralization initiative, the Copyright Office has transferred the bulk of the fiscal year 2019 IT modernization funding it received to OCIO through an intra-agency agreement, to enable OCIO to administer related development activities and contracts.

The Copyright Office and OCIO are poised to make progress on several IT development activities related to modernization, including development work on the new registration, recordation, and public records catalog systems. Based on extensive third-party user research, the Copyright Office designed wireframes for an early version of the new registration public user-interface. To assist with the process, the Copyright Office issued a Notice of Inquiry soliciting public input on a broad range of topics related to registration modernization, to which it received fifty-four comments; conducted sixty-eight in-depth interviews with copyright registration stakeholders and the public in four cities; and launched an extensive online survey. Likewise, the Copyright Office and OCIO continue development of a new, electronic recordation system to replace the Copyright Office’s current paper-based system. OCIO projects that it will be able to launch a limited pilot of the new recordation system by spring 2020. In support of its work, the Copyright Office conducted in-depth interviews with

<sup>17</sup> S. REP. NO. 115-274, at 43 (2018). *See also* H.R. REP. NO. 115-696, at 18 (2018).

<sup>18</sup> This follows the Library’s centralization of all IT services, and is in accordance with the *Modified IT Plan* issued by the Office in 2017. *See* U.S. COPYRIGHT OFFICE, MODIFIED U.S. COPYRIGHT OFFICE PROVISIONAL IT MODERNIZATION PLAN: ANALYSIS OF SHARED SERVICES, SUPPORT REQUIREMENTS, AND MODERNIZATION EFFORTS 4–5 (2017), *available at* <https://www.copyright.gov/reports/itplan/modified-modernization-plan.pdf>.

copyright recordation stakeholders and the public during the four-city tour, conducted twelve usability sessions with users of varying experience levels, and reviewed 207 survey responses from frequent users. Public feedback is contributing to the design of an intuitive and easy-to-use interface as well as dashboards for both Recordation Section staff examiners and supervisors. Further development work is also scheduled for the public records catalog, as discussed in more detail below.

The Copyright Office takes seriously the request by the House Committee on Appropriations to investigate innovative contracting methods, including possible no-cost contracting solutions, for modernization and development of the ECS. The Copyright Office, in coordination with OCIO, issued a public Request for Information ("RFI") in May 2018 that asked for comments on creative solutions, including possible no-cost options, for the development of a next-generation ECS. The Copyright Office also engaged General Services Administration's ("GSA") 18F for guidance on best practices in contracting for agile projects. As a follow-on to the RFI and the 18F engagement, the Copyright Office and OCIO are planning to work with GSA to leverage its IT contracting experts for future modernization contracting activities, and to have GSA coordinate new public requests for proposals for the development of the ECS.

The Copyright Office is committed to engaging with the entire copyright community, whether individual artists and creators, major corporations, or general users of the system to ensure that its modernization efforts accurately reflect the needs of the digital age. The Copyright Office has created a dedicated modernization webpage that is kept up-to-date with the current status of modernization efforts, and at the beginning of the year launched a new bimonthly webinar series to inform the public and highlight progress related to modernization. The Copyright Office has so far held three webinars, with the first webinar attracting more than 200 participants. The next modernization webinar is scheduled for July. The Copyright Office will also continue to meet regularly with stakeholders and conduct presentations for both internal Office audiences and external audiences to provide updates on modernization activities.

While still at the nascent stages of IT modernization, the Copyright Office is excited to continue this essential work.

## *2. Improving Access to Public Records.*

The Copyright Office is continuing its efforts to digitize and provide public access to all of our registration and recordation data, including data housed within legacy systems and historical records that are not currently online. Earlier this year, the Copyright Office released version 3 of its Virtual Card Catalog ("VCC"). The release marks the completion of a multi-year digitization process for *all* Copyright Card Catalog entries, beginning with the time copyright registration was centralized at the Library of Congress. Forty-one million images of these records from 1870 to 1977 are now accessible on the Copyright Office's website, and additional development work on enhanced browsing and filtering capabilities for these records is ongoing. In addition, the Copyright Office has contracted with a third party to convert the extensive,

paper-based pre-1978 entries from the Copyright Office Record Books into digital format, including the capture of related metadata and data perfection to facilitate online searching. Ultimately, a single, publicly accessible interface will include all of these historical records.

### 3. *Data Management Initiative.*

Modernization also includes data management, and the Copyright Office will continue work on its data management plan, which started in fiscal year 2018. The plan will serve all in the copyright community—from creators to users to the public at large—allowing them to reap additional benefits from Copyright Office data and information that will be authoritative, easily found, well described, high quality, secure, and managed across the entire enterprise. Ultimately, this project will provide for a federated search and Business Intelligence reporting technology to allow users to search across registration, recordation, and licensing databases, and to facilitate improved chain-of-title sequencing that can connect registrations to records of assignments and transfers or other documents.

### 4. *Organization, Business Processes, and Culture.*

As the Copyright Office overhauls its technological systems, it is important that we also evaluate and optimize the organizational structures and human resources that utilize these systems. Full modernization requires a multi-pronged approach to review and evaluate not only current processes and workflows in each division, but also the current organizational structure and culture of the Copyright Office itself. The Copyright Office has brought in outside experts to assist with these activities, and will continue to do so as modernization progresses.

In fiscal year 2018, the Copyright Office engaged the Office of Personnel Management’s (“OPM”) Human Resources Solutions division to conduct an organizational analysis and redesign. This process, which should be completed in early fiscal year 2020, will provide detailed findings and recommendations on how to achieve more effective operations, including recommendations for staffing levels, position management improvements, and organization restructuring options. The Copyright Office intends to use the resulting analysis to better align the Office with newly automated processes resulting from modernization. Going forward, this work will be helpful in building annual staffing plans, in justifying budget requests for staffing, and with succession planning.<sup>19</sup>

The Copyright Office will also contract with outside consultants to: (i) document current processes and workflows in each division, working with managers and staff to think creatively about how processes can be improved and shifted from the “as is” to the “to be”; and (ii) assist with developing and replicating an organizational change management process to help

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<sup>19</sup> The latter is especially important in light of the fact that nearly one-third of Copyright Office employees have at least twenty years of federal service, and are thus eligible for retirement over the next several years.

communication and staff buy-in for major modernization initiatives. The end goal is an engaged, results-oriented professional workforce that has the tools it needs and is organizationally empowered to provide efficient, high-quality services to stakeholders and the public.

#### Other Operational Initiatives

##### 1. *Registration.*

The Copyright Office recently provided the Committee with a comprehensive analysis and discussion of the Registration program and the steps that the Office has taken to improve registration processing times.<sup>20</sup> Registration processing times have always been important for the copyright community, and are even more so now because of the Supreme Court's recent decision in *Fourth Estate Public Benefit Corp. v. Wall-Street.com*. *Fourth Estate* confirmed that Copyright Office action on an application for registration must be complete before the owner of a U.S. work can seek redress for infringement of their rights in court.<sup>21</sup> It is important to note, however, that efforts to improve registration processing times must balance efficiency with the need to maintain the accuracy and quality of the examination process. The Copyright Office's examination process has a number of beneficial externalities, including facilitating predictability for private transactions and promoting efficiency in our judicial system.

As discussed in our letter to the Committee, long before *Fourth Estate*, the Copyright Office took extensive steps to address the registration backlog that developed as a result of legal and logistical changes over the previous several decades. These efforts include, with Congress' support, increasing the number of registration examiners by approximately thirty percent since 2014. The Copyright Office also engaged the services of the Smithsonian Organization and Audience Research ("SOAR") group to review registration workflows and processes and to provide recommendations for improvements, many of which have been implemented. These efforts, combined with the extensive review and overhaul of registration regulations and processes that the Copyright Office has undertaken in the past several years, have shown tremendous results. Since October 2017, we have reduced our overall average processing time for reviewing copyright claims from eight months to five—a decrease of almost forty percent within two years.<sup>22</sup> From January 2018 to May 2019, the Copyright Office reduced the number of applications pending for more than one year by ninety-six percent. And since the beginning

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<sup>20</sup> See Letter from Karyn A. Temple, Register of Copyrights and Dir., U.S. Copyright Office, to Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, and Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives (May 31, 2019), available at <https://www.copyright.gov/laws/hearings/response-to-april-3-2019-house-letter.pdf>.

<sup>21</sup> *Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881, 892 (2019).

<sup>22</sup> The average processing time for the seventy-three percent of claims that are received through the electronic registration system and do not require correspondence is even lower—four months, down from seven. And the average processing time for literary works has been reduced to three months.

of fiscal year 2018, the Copyright Office reduced the number of workable claims by fifty-nine percent.<sup>23</sup> Of note, these numbers represent nearly 120,000 more claims closed by the Copyright Office in fiscal year 2018 than in fiscal year 2017.<sup>24</sup>

The Copyright Office will continue its focus on improving the Registration Program. By the end of fiscal year 2019, we anticipate a return to 2010 pre-sequestration staffing levels of about 125 examiners. These talented individuals come from a wide variety of backgrounds, including lawyers, writers, teachers, musicians, journalists, and librarians. The musical talent in the group of recently-hired examiners includes a former professional viola player, a trombone player who taught music history and theory, a classical guitarist singer-songwriter, and an oboe player who received a Bachelor's of Music degree in music history. The Copyright Office is extremely proud of the multi-faceted talents of its registration workforce and is committed to developing their long-term professional growth to quickly evolve with the ever-changing copyright landscape.

## 2. Recordation.

As mentioned above, the Copyright Office and OCIO are developing a new recordation system to digitize the currently paper-based process. Concurrently, the Copyright Office is evaluating and updating its related business processes and workflows to ensure that the Office of Public Records and Recordation ("PRR") is well-positioned to take advantage of the capabilities of the new system. As with the Registration Program, the Copyright Office has contracted with SOAR to review current recordation workflows and processes and provide recommendations for improvements.

In addition to recording documents related to use and chain of title for copyrighted works, PRR also manages the database of registered agents for receipt of DMCA notices and the schedules of pre-1972 sound recordings under title II of the Music Modernization Act. Since the launch of the new directory in December 2016, over 20,500 service providers have designated a DMCA agent with the Copyright Office, which includes over 303,000 alternative names uses by these providers. As of today, the Copyright Office has received schedules listing more than 15,000 individual pre-1972 sound recordings.

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<sup>23</sup> The current number of workable claims is currently well under 150,000, which historically has been the threshold for determining the existence of a backlog.

<sup>24</sup> The number is particularly noteworthy because the Office examined the 520,086 claims it received in fiscal year 2018 with 118 registration examiners. In contrast, in fiscal year 2018 the U.S. Patent and Trademark Office had 579 trademark examining attorneys to examine the 468,926 trademark applications it received, and the average time between filing of a trademark application and the "examiner's first action" was 3.4 months, with 9.6 months as the average time for registration. See U.S. PATENT AND TRADEMARK OFFICE, FY 2018 PERFORMANCE AND ACCOUNTABILITY REPORT 193, 205 (2019), available at <https://www.uspto.gov/sites/default/files/documents/USPTOFY18PAR.pdf>.

### 3. *Outreach and Education.*

In addition to its outreach activities related to Copyright Office modernization and the MMA, the Office has committed additional resources to improve its overall public outreach and education activities. The Copyright Office recently appointed a new Associate Register and Director of Public Information and Education (“PIE”), restructured the department to add a new section for Outreach and Education, and added a number of staff, including public affairs specialists and a manager of Office communications. The Copyright Office plans to hire three additional staff members for PIE in fiscal year 2019, including a graphic design specialist, a writer/editor, and an attorney. PIE is currently revamping many of the Copyright Office’s communication functions, including by increasing the resources devoted to the Office’s social media channels, as well as creating new videos for the general public on topics such as *What is Copyright?*, *Copyright and the Internet*, and *Searching the Public Record*.

#### Legal and Policy

##### 1. *Music Modernization Act Implementation.*

In 2018, the Copyright Office provided extensive assistance on copyright legislation, including the landmark Orrin G. Hatch-Bob Goodlatte Music Modernization Act (“MMA”).<sup>25</sup> Congress recognized the Copyright Office’s extensive preparatory work on music licensing issues by delegating to the Office the responsibility to implement key features of the legislation and noting that the Office “has the knowledge and expertise regarding music licensing through its past rulemakings and recent assistance to the Committee during the drafting of this legislation.”<sup>26</sup>

The Copyright Office takes seriously its extensive responsibilities under the MMA. On October 11, 2018, the same day the President signed the MMA, the Copyright Office posted detailed information and FAQs about the historic legislation to educate and inform the general public and those directly affected by the new law. Less than a week later, the Copyright Office issued interim regulations establishing new filing mechanisms to onboard the protection and use of pre-1972 sound recordings into the federal scheme.<sup>27</sup> The Copyright Office also published a final rule regarding a new exception for the noncommercial-use of pre-1972 sound recordings by the statutory deadline of April 9, 2019.<sup>28</sup> Following multiple rounds of public comment, as of

<sup>25</sup> Pub. L. No. 115-264, 132 Stat. 3676 (2018).

<sup>26</sup> S. REP. NO. 115-339, at 15 (2018).

<sup>27</sup> 83 Fed. Reg. 52,150 (Oct. 16, 2018).

<sup>28</sup> 84 Fed. Reg. 14,242 (Apr. 9, 2019) (establishing a final rule in connection with the exception for certain noncommercial uses of pre-1972 sound recordings that are not being commercially exploited).

June 2019 all pre-1972 sound recording regulations and filing procedures required by title II of the MMA have been fully implemented.<sup>29</sup>

In December 2018, the Copyright Office issued interim regulation for the compulsory “mechanical” license under section 115 for making and distributing phonorecords of musical works to address changes related to title I of the MMA. These regulations set out requirements for digital music providers to limit their liability during the transition period before the blanket license is available and clarified that the song-by-song licensing system remains available for physical uses.<sup>30</sup>

The Copyright Office continues to implement provisions of title I, including ongoing work on designating the mechanical licensing collective (“MLC”) and the digital licensee coordinator (“DLC”) by July 8, 2019 as required by statute. The Copyright Office has committed to a fair, open, and transparent process leading up to the designations of the MLC and DLC. These entities are crucial to the overall success of the new licensing regime created by the MMA. Congress recognized that, to successfully manage its extensive duties, including locating artists throughout the world to ensure that they receive the royalties rightly due to them under the law, the MLC would need to be “endorsed by, and enjoy[] substantial support from, musical work copyright owners that together represent the greatest percentage of the licensor market for uses of such works” and that it would need to demonstrate that it will have the administrative and technological capabilities to perform its required functions prior to the license availability date.<sup>31</sup> On December 21, 2018, the Copyright Office released a Notice of Inquiry to solicit information to identify the appropriate entities to be designated as the MLC and DLC. As part of that process, two entities sought to be designated as the MLC, and the Copyright Office received more than 600 public comments in response to these proposals. The Copyright Office is carefully reviewing these submissions pursuant to the statutory criteria provided by Congress and is confident that an appropriate MLC can be designated by the July 8 statutory deadline.

After the designations of the MLC and DLC are complete, the Copyright Office will continue its MMA implementation activities. These activities include updating relevant publications to reflect changes to the law, such as publishing an updated circular 92 containing the entire federal copyright law as amended by the MMA; conducting further rulemakings by soliciting public comments on operation of the revamped blanket mechanical license and operation of the MLC,<sup>32</sup> among other issues; engaging in extensive outreach and educational activities to inform

<sup>29</sup> See 84 Fed. Reg. 10,679 (Mar. 22, 2019) (establishing as final a rule regarding the filing of schedules by rights owners listing their sound recordings fixed before February 15, 1972, and the filing of contact information by entities publicly performing these sound recordings by means of digital audio transmission).

<sup>30</sup> 84 Fed. Reg. 10,685 (Mar. 22, 2019).

<sup>31</sup> 17 U.S.C. § 115(d)(3)(A)(ii).

<sup>32</sup> Pursuant to the statute, the Register of Copyrights must promulgate regulations regarding *inter alia*, the form of the notices of license and notice of nonblanket activity, usage reports and adjustments, information to be included in the

songwriters about the process by which a copyright owner may claim ownership of musical works before the mechanical licensing collective; and undertaking a policy study regarding best practices that the mechanical licensing collective may implement in order to identify, locate, and pay out royalties to musical work copyright owners with unclaimed accrued royalties held by the collective.

*2. Additional Legal and Policy Work.*

In addition to the significant activities outlined above, the Copyright Office is working on a number of other important legal and policy matters. For example, the Copyright Office is working towards the completion of its study of the notice-and-takedown provisions in section 512 of title 17, a study for which the Office has received over 90,000 public comments and hosted three roundtables. The Copyright Office also continues to provide advice and assistance to the executive branch agencies about copyright developments around the world, and participates each year in the United States Trade Representative's Special 301 process. The Copyright Office also has a busy litigation docket, participating in the formulation and articulation of the U.S. government's position in a number of Supreme Court cases, as well as participating in the defense of several district court cases brought against the Office and the U.S. government.

On the regulatory side, the Copyright Office continues to work on additional rulemakings on a number of topics, including group registration of albums and short online literary works; registration of secure tests; a new fee schedule; reporting practices for the cable license; mandatory deposit of electronic-only books; and document recordation modernization. Overall, the Copyright Office has adopted fourteen final rules since the beginning of fiscal year 2018, and has nine open rulemakings and two open notices of inquiry. Next year, the Copyright Office will begin work on the eighth triennial section 1201 proceeding.<sup>33</sup> The proceeding will use the same streamlined process debuted during last year's section 1201 rulemaking, during which the Copyright Office recommended, and the Librarian of Congress adopted, the renewal of exemptions for all twenty-two types of uses covered by the 2015 rulemaking. The Copyright Office also supported the expansion of seven of those earlier exemptions and the adoption of two new exemptions.

The Copyright Office also remains ready to assist Congress with implementation of any of its prior policy recommendations, including updating the exceptions for libraries, archives, and

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musical works database, requirements for the usability, interoperability, and usage restrictions of that database, and the disclosure and use of confidential information.

<sup>33</sup> Section 1201 of title 17 directs the Librarian of Congress, upon the recommendation of the Register of Copyrights following a rulemaking proceeding, to determine whether any prohibitions on the circumvention of technological measures used to prevent unauthorized access to copyrighted works are having, or are likely to have, an adverse effect on users' ability to make noninfringing uses of particular classes of copyrighted works. Through the section 1201 rulemaking process, the Register can recommend, for adoption by the Librarian, certain limited temporary exemptions waiving the general prohibition against circumvention for such users for the ensuing three-year period.

museums in section 108; adopting a public performance right for sound recordings; improvements to copyright enforcement mechanisms; legislative changes to section 1201 or its rulemaking process; expiration of the section 119 license; and consideration of a resale royalty right for visual artists.

### Small Claims

I would also like to take the opportunity to discuss one policy issue for which the Copyright Office has provided legislative support to several Members over the past few years: the possibility of a small claims tribunal within the Copyright Office. The Copyright Office identified the creation of such a small claims tribunal as a topic worthy of further study as far back as 2006, during its participation in Congress' review of the orphan works problem.<sup>34</sup> As we discussed in our 2013 report, *Copyright Small Claims*, the costs and burdens of federal copyright litigation effectively prevent those who do not have extensive resources and the high-dollar cases from bringing suit to enforce their rights or to obtain a declaratory judgment of non-infringement.

In 2017, the median cost to litigate a copyright infringement suit with less than \$1 million at stake was estimated at \$200,000.<sup>35</sup> Given the complexity of complying with the Federal Rules of Civil Procedure and Federal Rules of Evidence, as well as the vigorous motion practice typical of infringement cases in district court, few parties would be capable of proceeding without an attorney. However, according to a survey conducted by the American Bar Association's section on intellectual property law, only thirty-two percent of the lawyers surveyed indicated that they would be willing to accept a case with less than \$30,000 at stake, which would exclude many individual artists and creators from representation.<sup>36</sup> Federal litigation is also a very time-consuming business, with the median time to trial in the Southern District of New York at 720 days.<sup>37</sup>

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<sup>34</sup> See, e.g., *Orphan Works: Proposals for a Legislative Solution: Hearing Before the Subcomm. on Intellectual Prop. of the S. Comm. on the Judiciary*, 109th Cong. 122 (2006) (written statement of Jule Sigall, Associate Register for Policy & International Affairs, U.S. Copyright Office) ("We are sympathetic to the concerns of individual authors about the high cost of litigation and how, in many cases, the individual creator may have little practical recourse in obtaining relief through the court system. We believe that consideration of new procedures to address this situation, such as establishment of a 'small claims' or other inexpensive dispute resolution procedure, would be an important issue for further study by Congress."); *Remedies for Small Copyright Claims: Hearing Before the Subcomm. on Courts, the Internet & Intellectual Prop. of the H. Comm. on the Judiciary*, 109th Cong. 46 (2006) (written statement of Marybeth Peters, Register of Copyrights) ("If the Subcommittee believes it would be helpful, the Office would be pleased to study the [small copyright claims] issue in a way similar to the way in which the Office studied the orphan works problem itself.").

<sup>35</sup> AIPLA, 2017 REPORT OF THE ECONOMIC SURVEY 44 (2017).

<sup>36</sup> See American Bar Association Section of Intellectual Property Law, Comments Submitted in Response to U.S. Copyright Office's Aug. 23, 2012 Notice of Inquiry at 6–7 (Oct. 19, 2012).

<sup>37</sup> See United States Courts, U.S. District Courts – Combined Civil and Federal Court Management Statistics (Mar. 31 2019), available at <https://www.uscourts.gov/statistics/table/na/federal-court-management-statistics/2019/03/31-1>.

Overall, this situation means that low-dollar but still valuable copyrighted works often may be infringed with impunity, with individual creators and small businesses often lacking an effective remedy. Similarly, these hurdles may be insurmountable for the majority of users who believe that they have a strong fair use defense or are otherwise using a copyrighted work pursuant to an exception or limitation that allows their use; such users would need to not only pay out of pocket for any but *pro bono* legal representation, but also could be opening themselves up to a judgement for statutory damages of up to \$30,000 per work at issue.

For this reason, the Copyright Office strongly supports a small claims tribunal structured along the lines of the proposal detailed in the Copyright Office's 2013 report. Specifically, such a tribunal should be situated in the Copyright Office, with officers recommended by the Register and appointed by the Librarian of Congress. Participation in the tribunal should be voluntary, and there should be a streamlined discovery process as well as a limit on the kind of evidence admitted. Hearing a claim in a small claims tribunal should be done remotely when possible, relying on written statements and participation through phone or internet by the parties. While a party may choose to use an attorney, *pro se* litigants should be not only allowed but encouraged and supported by the tribunal's staff attorneys. Damages, both actual and statutory, should be strictly capped at \$30,000 per claim, with a sub-limit of \$15,000 per work. A final determination should be reviewable by the Register and able to be challenged in district court for certain reasons. A final determination should not, however, serve as precedent. Many, if not most of the procedural rules of a small claims tribunal should be subject to regulation by the Register of Copyrights. I note that the CASE Act as introduced this Congress reflects many of these important priorities.<sup>38</sup>

#### **Update on Budget Matters and Fees**

The Copyright Office performs its important work on a relatively modest budget. As the Supreme Court noted earlier this year, changes in funding have real-world effects on the copyright community, and resulting processing delays can be "attributable, in large measure, to staffing and budgetary shortages that Congress can alleviate, but courts cannot cure."<sup>39</sup>

The Copyright Office greatly appreciates congressional support in fiscal year 2019, including support for its priority initiatives such as working towards fulfilling the *Modified IT Plan* goals, providing the public with online access to historical copyright records, and reducing registration and recordation processing times. As a result of Congress' support, the Copyright Office's staff levels have remained relatively steady between 416 and 433 full-time employees from fiscal year 2017 through the beginning of fiscal year 2019.<sup>40</sup>

<sup>38</sup> Copyright Alternative in Small-Claims Enforcement Act of 2019 ("CASE Act"), H.R. 2426, 116th Cong. (2019); Copyright Alternative in Small-Claims Enforcement Act of 2019 ("CASE Act"), S. 1272, 116th Cong. (2019).

<sup>39</sup> *Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC*. 139 S. Ct. 881, 892 (2019).

<sup>40</sup> Fluctuations during the period can largely be attributed to attrition and hiring associated with the budget requests for additional positions ("NEPRs").

As the fiscal year 2019 enacted budgets included recurring annual funding for several of the Copyright Office's most important ongoing initiatives, the Copyright Office's fiscal year 2020 request included only the mandatory pay-related and price level adjustments necessary to maintain the same level of funding support to continue the progress underway. With the loss of certain fees resulting from passage of the MMA, combined with the new statutory responsibilities for the Copyright Office pursuant to that legislation,<sup>41</sup> the Copyright Office will need to undertake greater responsibilities with fewer resources and will likely require additional funding resources from Congress in the coming years.

*More Flexible Fee Authority.*

As the Copyright Office continues to maximize its limited resources, it would benefit significantly from greater flexibility in the use of its prior-year unobligated fee balances. Such a change would allow the Copyright Office to continue providing services to the public in the event of a lapse in appropriations. Flexibility in management of prior-year balances across budget cycles also could provide for more efficient and cost-effective administration of large, non-recurring projects related to modernization and other capital expenditures. To that end, once authorized, the Copyright Office anticipates including in a future budget request a change in appropriations language to allow for twenty percent of the balance available in prior-year fees to be available each year, in addition to appropriated amounts, for obligation without fiscal year limitation, and to allow the Office to access prior-year balances to continue operations during a lapse in appropriations.

*Fee Study.*

The Copyright Office is nearing completion of its latest fee study. Fees for services outlined under section 708(a) are set forth in a proposed schedule that is sent to Congress 120 days before the adjusted fees can take effect. Before proposing new fees via the first mechanism, the Register must conduct a study of the Copyright Office's costs for registering claims, recording documents, and providing other services, and must consider the timing of any fee adjustments and the Office's authority to use the fees consistent with the Office's budget. When proposing a balance of user fees and taxpayer-funded monies to support its operations, the Copyright Office gives careful consideration not only to the public benefits of the national copyright system, but also to the impact of user fees on a copyright system that is dependent on voluntary copyright registration and recordation. To ensure that the Copyright Office's fees are "fair and equitable and give due consideration to the objectives of the copyright system,"<sup>42</sup> the Office conducts regular studies of its operating costs and fee structure. For its current fee proposal, the Copyright Office engaged a consulting firm for the first time in decades to formally and

<sup>41</sup> See H.R. 1551, 115th Cong. § 102(e) (2018) (as engrossed by the House of Representatives and Senate) (mandating that the "Register of Copyrights shall engage in public outreach and educational activities").

<sup>42</sup> 17 U.S.C. § 708(b)(4).

comprehensively assess the internal drivers of the Office's costs, as well as external factors such as an assessment of economic trends that affect stakeholder value, statutory restrictions, and policy goals. The Copyright Office issued a Notice of Proposed Rulemaking in May 2018, providing public notice of the Office's proposed fee schedule changes. The Copyright Office received a significant number of public comments regarding the Notice, and is currently reviewing those comments in anticipation of issuing a proposed fee structure to Congress in fiscal year 2019, intending that it will enter into force in fiscal year 2020.

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In closing, I wish to once again thank the dedicated employees of the Copyright Office for all that they do on behalf of the nation's copyright creators, owners, and users. The Copyright Office likewise appreciates the Committee's continued support as we continue to modernize both Office technology and services, and work to improve operation of the copyright system overall.

## Appendix 1

## Copyright Office by the Numbers

<b>Fiscal Year 2018 at a Glance</b>	
520,086	Claims to copyright received
643,518	Claims to copyright closed
560,013	Claims to copyright registered
252,235	Literary works
136,399	Performing arts
93,651	Visual arts
77,216	Sound recordings
512	Other
661	Number of preregistration applications received
21,668	Documents recorded containing titles of more than 757,400 works
195,750	Phone, email, and mail inquiries answered
2,100	In-person visitors assisted
\$221 million	Royalty fees collected for statutory licenses
\$2 million	Filing fees collected for statutory licenses
\$102 million	Fiduciary assets distributed to copyright owners for statutory licenses
\$1.3 billion	Statutory license fiduciary assets managed by the Office
17.5 million*	Number of records from 1955–77 made available through the VCC
	<small>* 24 million additional card images, covering 1870–1954, were added to the VCC in March 2019, bringing the total of all images to over 41 million.</small>
>736,800	Copies of works added to the Library's collections
\$47.5 million	Value of works added to the Library's collections
9	Number of rulemakings initiated
2	Number of interim rules issued
4	Number of final rules issued

## Appendix 2

### Law, Policy, and Regulatory Accomplishments Fall 2014 through June 2019

(Activity in all lists appears in reverse chronological order)

#### Policy Studies and Discussion Documents

Date	Title
April 2019	Authors, Attribution, and Integrity: Examining Moral Rights in the United States
Jan. 2019	Copyright and Visual Works: The Legal Landscape of Opportunities and Challenges
Sept. 2017	Mass Digitization Pilot Program
Sept. 2017	Section 108 Discussion Document
Aug. 2017	Fee Study
June 2017	Section 1201 Study
Dec. 2016	Software-Enabled Consumer Products Study
Feb. 2016	The Making Available Right in the United States
June 2015	Orphan Works and Mass Digitization
Feb. 2015	Copyright and the Music Marketplace
Jan. 2015	Transforming Document Recordation

#### Other Documents Shared With Congress

Date	Title
June 2019	View of the Copyright Office Concerning Section 119 Compulsory License
May 2019	Response to April 3, 2019 Letter from Chairman Nadler and Ranking Member Collins of the House Judiciary Committee Regarding Registration Processing Times
May 2019	Response to March 14, 2019 Letter from Chairman Tillis and Ranking Member Coons of the Senate IP Subcommittee Regarding Registration Processing Times
Aug. 2016	View of the Copyright Office Concerning FCC Set-Top Box Proposal
Jan. 2016	View of the Copyright Office Concerning Performing Rights Organizations (PRO) Licensing of Jointly Owned Works

**Closed Rulemakings**

(as of June 2019)

Docket	Final Rule
2018-13	Simplifying Copyright Registration for Architectural Works
2018-8	Noncommercial Use Exception to Unauthorized Uses of Pre-1972 Sound Recordings
2018-10	Technical Amendments to Section 115 Compulsory License Regulations
2018-7	Rules Regarding Schedules of Pre-1972 Sound Recordings and Notices of Contact Information by Transmitting Entities
2017-16	Final Rule Relating to Group Registration of Newspapers
2017-1	Freedom of Information Act Practices and Procedures
2017-15	Group Registration of Unpublished Works
2018-1	Final Rule Regarding the Single Application
2018-2, 2018-3	Group Registration of Newsletters and Serials
2017-10	Section 1201 Exemptions to Prohibition against Circumvention of Technological Measures Protecting Copyrighted Works
2018-6	Streamlining the Administration of DART Royalty Accounts and Electronic Royalty Payment Processes
2016-10	Group Registration of Photographs
2017-9	Simplifying Deposit Requirements for Certain Literary Works and Musical Compositions
2017-17	Fee for Recording Documents with Electronic Title Lists
2017-13	Affixation and Position of Copyright Notice
2016-8	Group Registration of Contributions to Periodicals
2016-9	Supplementary Registration
2013-5	Authentication of Electronic Signatures on Electronically Filed Statements of Accounting
2017-4	Regulations to Address the Disruption of Copyright Office Electronic Systems
2017-6	Technical Amendment to DMCA Designated Agent Rule
2016-5	Copyright Office Technical Amendments
2016-7	2017 Removal of Personally Identifiable Information from Registration Records
2011-6	Designation of Agent to Receive Notification of Claimed Infringement
2016-6	Copyright Office Adopts "Mailbox" Rule for Appeals to Refusals to Register

Docket	Final Rule
2014-7	Section 1201 Exemptions to Prohibition against Circumvention of Technological Measures Protecting Copyrighted Works
2012-5	Verification of Cable and Satellite Statements of Account
2014-8	Fees for Submitting Corrected Electronic Title Appendices
2012-7	Section 115 License Statements of Account
2014-4	Changes to Recordation Practices

**Open Rulemakings and Notices of Inquiry**

(as of June 2019)

Docket	Title
2019-4	Group Registration of Works on an Album of Music NPRM
2018-12	Group Registration for Short Online Literary Works NPRM
2018-11	Designation of Mechanical Licensing Collective NPRM
2018-9	Registration Modernization Notice of Inquiry
2018-4	Copyright Office Proposes New Fee Schedule NPRM
2016-3	Mandatory Deposit of Electronic-Only Books NPRM
2005-6	Proposed Amendments to Regulations Governing Cable, Satellite, and DART License Reporting Practices NPRM
2017-8	Secure Tests NPRM
2017-7	Modernizing Document Recordation NPRM
2017-5	Pilot Program for Bulk Submission of Claims to Copyright Notice of Inquiry
2012-3	Registration of Copyright: Definition of Claimant NPRM

Chairman NADLER. Thank you very much. We will now proceed under the 5-minute rule with questions. I will begin by recognizing myself for 5 minutes.

Ms. Temple, the Mechanical Licensing Collective will be authorized to distribute unclaimed royalties to rights holders. We have heard from some stakeholders with an interest in the process. For example, I received a letter from the Recording Academy on this topic, which I ask unanimous consent to place in the record.

Without objection.

[The information follows:]

**CHAIRMAN NADLER FOR THE  
OFFICIAL RECORD**

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June 26, 2019

The Hon. Jerry Nadler  
Chairman  
House Judiciary Committee  
2132 Rayburn House Office Building  
Washington, DC 20515

The Hon. Doug Collins  
Ranking Member  
House Judiciary Committee  
1504 Longworth House Office Building  
Washington, DC 20515

Chairman Nadler and Ranking Member Collins:

The Recording Academy, a member based organization representing more than 20,000 individual music creators, is grateful for your efforts during the 115<sup>th</sup> Congress to draft and pass the Music Modernization Act (MMA), a landmark law that has already impacted the livelihoods of so many American musicians, songwriters and producers. The House Judiciary Committee proved last Congress that patience, persistence, and strong convictions can yield consensus amongst even the most complex of industries, and the greater music community is forever indebted to your leadership.

The Recording Academy would also like to acknowledge and applaud the efforts of the Copyright Office in implementing the MMA. The Copyright Office has worked tirelessly to meet every statutory deadline, and has demonstrated exemplary objectivity and transparency over the last nine months.

On July 8, the Copyright Office is tasked with perhaps its most important MMA deadline—the designation of the Mechanical Licensing Collective (MLC). With two candidates vying to serve as the MLC, the Copyright Office must remember that success of the collective—and delivering on the promises of the MMA—is dependent on ensuring that every songwriter will be accurately paid for their work. On April 22 the Recording Academy submitted comments to the Copyright Office that reinforced this fact, and continues to advocate for the Copyright Office to conduct proper due diligence in making the designation.

During the upcoming hearing, Oversight of the U.S. Copyright Office, the committee should seek updates regarding the designation of the MLC, as well as confirm that the two candidates vying to run the MLC have demonstrated a commitment to serving the entire songwriter community. The Recording Academy recommended in its comments that the candidates demonstrate the following:

- Clear and effective strategies for outreach and education to the greater songwriter community
- Robust plans to match unmatched songs and reduce the potential pool of unclaimed royalties
- Commitment to delaying distribution of unclaimed royalties, as permitted by the MMA.

These simple commitments will help assuage concerns among many in the songwriting community and reinforce the MLC's ability to meet the expectations established by the MMA.

In conclusion, the Recording Academy requests that the House Judiciary Committee use the upcoming oversight hearing as a forum to inquire about the steps taken by the Copyright Office to ensure that the MLC will work for the benefit of all songwriters and make certain that every songwriter is properly paid for his or her work—just as Congress originally intended. The Recording Academy stands ready to do its part. As reflected in the Academy's comments, we are committed to working with the MLC, along with the Copyright Office, Congress, and other stakeholders, to help promote and raise awareness for the new collective.

Thank you for your consideration and your continued commitment to the rights of music makers.

Sincerely,

Harvey Mason, Jr.  
National Chair

Neil Portnow  
President and CEO

cc: House Judiciary Committee  
Register Karyn Temple

Chairman NADLER. Ms. Temple, what are the Copyright Office's views on how the MLC should handle the initial distribution of these funds? And in the Copyright Office's opinion, what are the best practices the MLC should employ to ensure that unclaimed royalties have a chance to reach the owners of works that are currently unmatched?

Ms. TEMPLE. Thank you very much for the question. As you know, we in the Copyright Office, and I know Congress, believe that the most important aspect of the Music Modernization Act is to ensure that songwriters and music work copyright owners are actually getting paid for their work. One of the issues with respect to the Music Modernization Act and the MLC will be distribution of those royalties to everyone who is entitled to them.

We were very pleased that both of the submissions by entities who have been requested to be designated as the MLC have made this one of the priorities in their submissions. We are also looking forward to working with Congress to ensure that those royalties are distributed appropriately. For example, under the MMA, we are required to do a study on best practices to ensure that matching is working appropriately and to reduce the amount of unclaimed royalties. So we will be beginning that report shortly after the designation, and that report will be given to Congress as well as to the designated MLC in July of 2021. And they are expected to follow the best practices that the Copyright Office actually provides in that report.

And additionally, we were pleased that both of the entities that wanted to be designated as the MLC have agreed that the first distribution of unclaimed royalties cannot occur until 2023. This will give them both an opportunity, or the designated entity an opportunity, to ensure that they have good practices in place to make sure that they are able to distribute to the most people and have the least amount of unclaimed funds.

Chairman NADLER. Thank you. And once the Mechanical Licensing Collective is designated, the Copyright Office will have to draft rules for how this entity will function and operate on a day-to-day basis. How does the Office plan to conduct the forthcoming rule-making proceedings, and how will you engage stakeholders, including the new mechanical licensing entity, in that process?

Ms. TEMPLE. Yes, we were very pleased at the amount of regulatory authority that was provided to us and the confidence that Congress provided to us in the implementation of the MMA. We are focusing, as you know, right now on the designation of the MLC, which we will do by July 8th. After that designation, we will immediately start working on the regulatory and other aspects of the MMA implementation. We have to provide regulations, for example, about the notices, the form of the notices of blanket license, notices with respect to usage. We have to provide regulatory information about privacy and confidential information. So we will be engaging in those rulemakings immediately.

And then we also have broader authority under the MMA to effectuate the statute by regulations. And so we will look into whether we need to do additional regulations once the MLC has been designated as well.

Chairman NADLER. Thank you, and I would like to ask you about the upcoming expiration of the Distant-Signal Satellite Television License under Section 119. One concern I frequently hear is that letting this statutory license expire will result in thousands of people losing access to television. Since the office supports letting the license expire, what is your response to this concern?

Ms. TEMPLE. Yes, we have studied this issue in the Copyright Office for several years. As you know, we issued two comprehensive reports several years ago recommending that Congress allow that Section 119 license to expire. Recently at your request, we reviewed and analyzed those issues again. We concluded that in the last 5 years between 2014 and 2019, the actual royalties that we received under the Section 119 license has dropped precipitously, so it has dropped between 85 percent to 99 percent in terms of the royalties that would come in. So that license is really not being utilized in the market.

Also we noted that the marketplace has risen up to address issues with respect to satellite transmission, and that those underserved markets are not being underserved in the way that they had been in the past. The Copyright Office has always said that we view compulsory licenses as only needed in market failure. And in this instance we have concluded that there is no market failure—

Chairman NADLER. No market failure. Thank you.

Ms. TEMPLE [continuing]. That justifies those licenses.

Chairman NADLER. Thank you. Let me get in one more question. I remain concerned about the pace of IT modernization at the Copyright Office, especially in light of the recent Supreme Court decision in *Fourth Estate Public Benefit Corporation v. Wall-Street.com*, which clarified that registration is precondition of filing an infringement lawsuit. In your view, what aspects of the Copyright Office are in most urgent need of modernization, and has the Office of Strategic Planning prioritized addressing those needs? My time has expired. The witness may answer the question.

Ms. TEMPLE. Thank you. Yes, we agree that IT modernization of the Copyright Office is one of the most critical priorities for the Office. It was listed as a primary and core key focus area in the recent strategic plan that I just released. In terms of which areas need to be prioritized with our IT modernization, I will have to say all of them because we desperately need to have a full enterprise copyright system that is an integrated system that addresses both our recordation aspect of the Copyright Office, our registration, and our public records.

So we are actually engaging in modernization efforts on all three of those different areas at the same time because they are such a priority.

Chairman NADLER. Thank you very much. My time has expired. I now call on the—I now recognize I should say—the Ranking Member, the gentleman from Georgia, Mr. Collins, for his questions.

Mr. COLLINS. Thank you, Mr. Chairman. In 2013, the Copyright Office recommended the creation of a small claims court and recommended legislative language that eventually resulted in the CASE Act that Mr. Jeffries has so eloquently, talked about and I have joined on with him, on that H.R. 2426. In your testimony, you

discussed some of the challenges faced by small creators and the Office's support for a small claims tribunal. Can you talk about this and your support and how we would go about that?

Ms. TEMPLE. Yes, the U.S. Copyright Office has supported developing some type of alternative forum for small individual creators and smaller businesses for some time. If you may recall, Representative Smith had a hearing in 2006 on this very issue in which the Copyright Office testified and said that this was a worthy issue to study. In 2013, we provided a full report after a public process where we received a number of comments looking at this issue.

We concluded that unfortunately with respect to the current system, due to the high cost of Federal litigation and the complexity, many individual creators and smaller business are essentially precluded from getting into Federal court to really protect their rights. And we have noted that having a right without a remedy really means that you have no right at all. And so it is our strong view that we have to provide some alternative forum to allow for those individual creators and smaller businesses to be able to protect their legal rights.

We noted and others have noted, for example, that the median cost of a litigation is over \$200,000 to be able to litigate that to a jury trial. And so that is something that is really just beyond the ability of most individual creators and smaller businesses. And so that is why we strongly support the creation of a copyright claims board.

Mr. COLLINS. And I think that, as asserted in this audience today, I think this is something that, again, we don't often go to the doable here many times. This is doable and should be as we go forward, and I think it is something that would really work. I want to go back. Let me switch gears, and I want to come back to the Office itself. The committee recently received information from you regarding registration processing times, and I read that letter to say that registration backlog was basically gone. Is that correct?

Ms. TEMPLE. Yes, we were very pleased that we were able to eliminate our historic backlog of pending claims.

Mr. COLLINS. What does that, you know, actually mean, and, you know, how do you avoid a return to a backlog?

Ms. TEMPLE. Well, that is a great question. We have typically counted our registration backlog of pending claims to be over 150,000 workable claims. Those are claims on hand that have all of the materials that we need to be able to process the actual registration application, including the fee and the deposit, and that are pending with-in the Office. So that is traditionally what we have identified as a backlog, and we have gone significantly under that in the last year.

But we do realize that most people aren't as concerned about our backlog. What they are most concerned about is the processing time itself. So we have really kind of switched away from focusing on the backlog to focus on what is the processing time for our claims. And we were very, very pleased this year to be able to say that we have within the last 2 years reduced the processing time by 40 percent. It is now not perfect, but it stands on average at 5 months, and we are working very, very hard to continue to improve that.

Mr. COLLINS. Elaborate on the pendency issue. What is a problem that would keep you from getting better at that under 5 months?

Ms. TEMPLE. Well, one thing that we identified, or I identified in my recent letter to the committee was resources. One of the issues that caused our backlog and caused us to have very high pendency times was that we actually had a reduction, I think, of more than 30 percent of our staff over the last 5 years, or before the last 5 years, between 2010 and 2014. We lost a significant number of our registration specialists.

We were very pleased that the committee has supported the Copyright Office getting more resources. So in Fiscal Year 2015, 2017, and 2018, and 2019, we did get additional resources from Congress to hire additional registration specialists. So having the resources to hire staff is one of the most critical aspects with us being able to continue to have that processing time go down. Obviously another key aspect is modernizing the office. Our system right now is not the most efficient, and we expect that once the IT system is modernized, we will be able to maintain and even reduce processing times further.

Mr. COLLINS. Look, I understand the delicacy of your position and especially in dealing with the Library of Congress as well, but it is an untenable situation. I will take the heat for this. You know, the Librarian can come see me about it, I don't care. But the IT part of this and the other functions that you need to actually have an office that works has got to be, there is no turf battle here. In fact, there needs to be a removal of you from that turf all together.

But we need these IT issues and we need this to be broke up in a way that you understand the jobs that you do. I think you have done a great job and previous registers as well. Ms. Pallante and others have done a great job of saying why you are different. The thing that has gotten me the most is you all seem to want to work within a broken system as best as I have ever seen, but yet you continue to get hindered at every turn.

So, again, we look forward to moving more in that direction. I am glad you are here. Thank you for your help. And I yield back.

Chairman NADLER. The gentleman yields back. I now recognize the gentlelady from California, Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman, and thank you, Ms. Temple, for being here today, as well as your terrific staff. You know, in all of the interface I have had with the Office, I have been impressed by the dedication of the staff of the Office, the commitment they have to the rights of people who are seeking protection. And I just want to thank you and them for your hard work.

Ms. TEMPLE. Thank you.

Ms. LOFGREN. You know, we have an interesting situation. Actually the House Administration Committee has jurisdiction over the Library and every component within it, and we actually have had oversight hearings relative to the operations. Copyright policy is the jurisdiction of the Judiciary Committee. But in terms of the IT system, we have received very strong commitments from the Librarian as well as from you that the IT system is well underway. And really I think that was neglected too much, for a long period of time. We are playing catch up now. So I am wondering could you

give us a little more detail on the IT improvements and when we can expect to see them come online?

Ms. TEMPLE. Yes, that is a great question. We have been working hard to improve our systems for some time. We have been in the planning stage for a long time, but we are now right in the position to be able to realize some concrete successes from the modernization plan.

So right now we have three different areas, again, that I mentioned that we are focusing on. We are excited about our recordation modernization. As you may know, our recordation system is still paper based.

Ms. LOFGREN. Right.

Ms. TEMPLE. So that is something that it was long in need of modernization. We have been working on that for some time. According to our OCIO, who is actually here today, we are going to be able to launch a public pilot of a new digital recordation system early in the spring of 2020, and so that will be—

Ms. LOFGREN. So next year. Less than year from now.

Ms. TEMPLE. That will be next year, yes. So that will be a tremendous, I think, advantage for the—

Ms. LOFGREN. Mr. Chairman, I wonder if we could have a little order so I can hear the witness.

Chairman NADLER. We will be in order. [Laughter.]

Ms. TEMPLE. That would be a tremendous, I think, advantage for the public to be able to actually see this new digital recordation system. The pilot will be small in nature, but it will enable us to get feedback from the public on necessary improvements as we continue to develop. We are also working on our public records system. We are in the process of contracting with vendors to be able to develop our public records, and those are our records of applications, registrations. The goal, of course, is to be able to connect our applications, our registrations, and all of our data in one system so that the public will be able to get as much information as possible about copyrighted works and copyright ownership. So we are in the process of doing that.

And then we have been working on—

Ms. LOFGREN. And what is the date on that, do you think? I mean, this is good news overall.

Ms. TEMPLE. Yes, we are hopeful that we would be able to have a pilot of the public records system late next year, so late in 2020 as well. Again, that would be a limited pilot, but it would allow for us to have something concrete that a limited amount of the public would be able to utilize to provide input and feedback to us as we continue to develop that system as well.

And then finally, we have been working on our registration system. That is part of the overall enterprise copyright system. We have been engaging in a lot of public interface to develop the frontal portal of that system. We have wireframes that we are working on. We have tested that system, the wireframes at least, with the public, and we are going to continue to do a number of kind of user usability testing, UX/UI processes over the course of the next several months as well.

Ms. LOFGREN. So really we are on the verge in the next year we are going to see a huge change in the IT in the office, and I think

that will benefit rights holders greatly. And, you know, the whole trick here is to find out who to pay and to pay them, and that is really a matter of information and the ease of information.

Let me ask you just a quick question on the consent decrees. I realize that that is really not up to the Office, but DOJ is now renewing its review of this. I don't know what has changed since the last time they looked at it, but it does seem to me that for a broadcaster to be fully covered for any song that might play, the broadcaster has to purchase a blanket license from all four PROs. You know, to me, that seems complicated and expensive. I am wondering if the committee asked you whether you could study in the Copyright Office whether Congress should modernize blanket licenses for the performance of musical works, the same way it modernized sound recordings and mechanical licenses. Would that be something that would divert the office from its necessary IT upgrades, or would that be something that could be accommodated?

Ms. TEMPLE. Certainly if Congress would like us to review that issue, we would be pleased to do so. We obviously have been monitoring the consent decree process on the IP side. The DOJ is reviewing it on the antitrust side. This is an issue we touched upon briefly in our music licensing report that we issued in 2015 where we did recommend, for example, that we migrate any rate setting to the CRB to be more consistent. So, again, certainly we would be definitely willing to continue to review that issue with Congress if you thought that would be—

Ms. LOFGREN. My time is over. Thank you, Mr. Chairman, for indulging me in that lateness, and congratulations on your appointment, Ms. Temple.

Ms. TEMPLE. Thank you.

Chairman NADLER. Oh, yes, I am remiss in not congratulating you also.

Ms. TEMPLE. Thank you.

Chairman NADLER. You are welcome. The gentleman from Virginia, Mr. Cline.

Mr. CLINE. Thank you, Mr. Chairman. The Ranking Member is gone, but "Go Wahoos." I want to thank you for your leadership and Ranking Member Collins also, Chairman Johnson and Ranking Member Roby for their leadership on intellectual property, and Congressman Jeffries for introducing the CASE Act. I am proud to join him as a co-sponsor of that bill. And congratulations to you, Ms. Temple, on your appointment. You have done a great job, and we look forward to many years of leadership from you.

Copyright is particularly important to my home State of Virginia. We have had around 100,000 registrations from Virginia over the last 6 years, 12,000 jobs through the motion picture industry, and 2,500 production-related jobs. And the software industry in Virginia has accounted for over 180,000 jobs. Copyright ownership brings jobs, steady wages, and money to our local economies. And we are here and we have been discussing many of the issues surrounding copyright, including modernization of the Library of Congress, the copyright registration process, music modernization implementation, consent decrees, STELA reauthorization. I want to focus on digital piracy for a moment.

You know, it is an oldie but a goodie, but your office is studying Section 512 of the DMCA, which is coming up on 20 years' anniversary. "notice and takedown" is a critical part of copyright protection, but a lot has changed in 20 years. Many advancements have not been anticipated. Can you talk at all about this study, how it is going and when you plan to release it?

Ms. TEMPLE. Yes. We agree that a lot has gone on in the last 20 years, and that is why we were very pleased when Congress did ask us to study Section 512 and the notice and takedown regime. We are in the process right now of analyzing all of the comments that we received. We received over 90,000 individual comments on Section 512 and whether it is operating effectively today. We also engaged in a number of roundtables. Our most recent roundtable was just earlier this spring where we wanted to make sure that we had all of the information in terms of updates that might have occurred since our last set of written comments were requested.

So we now have all of that information, the 90,000 comments that we are going to read each and every one of them as well as the transcripts from the roundtables, and we will be drafting over the summer. We are hopeful that we will be able to release that report by the end of this year.

Mr. CLINE. Thank you. And as you said, it is an important issue that you have received a lot of comment on. And video streaming piracy is costing the U.S. between \$30 and \$70 billion annually, between 230,000 to 560,000 jobs, between \$45 and \$115 billion in GDP. Can you explain how the Office continues to monitor video streaming piracy and how you are working to address the threat of piracy in this ever-changing environment?

Ms. TEMPLE. Yes. We, you know, obviously are not an enforcement agency, but we do work closely in the interagency with the rest of USG to ensure that on the policy side we have strong protections against piracy. That is, for example, one of the reasons why we testified several years ago on the issue of illegal streaming. We noted that there has been an increase and a rise in illegal streaming even years ago, and that it would be appropriate at this stage for Congress to consider providing parity in terms of the penalties for unauthorized reproductions, distributions, and public performance.

Unfortunately, under our current law, unauthorized public performances actually are not able to be charged as a felony, while unauthorized reproductions and distributions are able to be charged as a felony. As many of you know, streaming has risen in the type of distribution model that has been done by the content industry, and so it is our strong view that it is appropriate for Congress to consider providing parity for the penalties of all of the types of piracy that is out there so that the Department of Justice will have effective tools to combat piracy.

Mr. CLINE. Thank you. And with the few seconds remaining, I want to address something you mentioned in your testimony, the Eighth Triennial Section 1201 proceeding that is going to begin next year. You adopted a streamlined process during last year's rulemaking when you recommended the renewal of exemptions for all 22 types of uses covered by the 2015 rulemaking, and you supported the expansion of seven of those earlier exemptions and the

adoption of two new exemptions. Can you speak to the work that you are going to be beginning and whether you see anything different on the horizon?

Ms. TEMPLE. Yes. We were really pleased at the outcome of or last Section 1201 rulemaking. We did, as you noted, introduce a streamlined process. That process worked very, very well. So for those exemptions where there wasn't really a change in the marketplace since our last proceeding, we instituted a process where an individual could come forward and basically note that and note that they were going to be relying on the evidence of the last triennial rulemaking. And then they wouldn't have to actually resubmit all of that evidence again if there weren't changes in the marketplace.

And that allowed for those exemptions, where there wasn't really a significant amount of opposition, for us to really be able to thoroughly analyze the previous record, yet again, but not have the burden of those who are proponents of the exemptions having to provide a new record that really had not changed. And that streamlined process is the process that we will be following for the upcoming triennial as well.

Mr. CLINE. Great. Appreciate it. Mr. Chairman, I yield back.

Chairman NADLER. The gentleman yields back. The gentleman from Georgia, Mr. Johnson, is recognized.

Mr. JOHNSON of Georgia. Thank you, Mr. Chairman, and thank you for hosting this hearing. And thank you for your presence to testify, and congratulations to you.

Ms. TEMPLE. Thank you.

Mr. JOHNSON of Georgia. I understand that the Copyright Office's IT systems are centralized as part of the Library of Congress' interoperable software programs. As a result, the Copyright Office must provide funds for its IT modernization to the Library only for the Library to in turn provide the new services back to the Copyright Office. What safeguards exist to ensure that funds designated for the Copyright Office's IT needs only serve the Copyright Office's needs once they are transferred to the Library of Congress?

Ms. TEMPLE. Thank you for the question. As you know, after centralization of all of the IT systems and management of the IT systems within the Library, our IT is now under the authority of the Office of the Chief Information Officer. The way that we do request additional funds for IT development is we do have our own appropriation line, and we do request specific IT modernization funding. Once we receive that funding, we transfer that funding to the OCIO for use in the development activities.

Under the appropriations law, they are required to utilize those funds and resources solely dedicated to Copyright Office modernization. We do want to work with the OCIO, though, to ensure that it is a transparent process because we know that stakeholders want to ensure that their money and any fees, for example, that are going towards modernization are going specifically to Copyright Office modernization. So we are going to work with OCIO to ensure that we do have even better communications and more transparency in terms of the usage of our funds for IT modernization.

Mr. JOHNSON of Georgia. All right. Thank you. How have modernization efforts in the Copyright Office been impacted by having to operate within the Library of Congress?

Ms. TEMPLE. Well, you know, it is certainly—

Mr. JOHNSON of Georgia. I guess maybe I should ask have the efforts of the Copyright Office been negatively impacted by having to operate within the Library of Congress.

Ms. TEMPLE. Well, I will say that it is certainly a change. We previously did have, for example, direct access to vendors where the business was guiding the IT development. And so one of the issues that I know is important for myself as well as the rest of our staff is just to ensure that in this new framework, the Copyright Office still does have that direct access to the vendors, to the contractors, so that we are actually the ones who are guiding the modernization efforts.

Of course the Library also has a lot of priorities. They are modernizing other aspects of their systems as well. And so the other issue that we want to ensure is that when there are all these competing priorities, obviously we feel that the Copyright Office IT system is the number one priority. And so it is my really hope that the Librarian and the Library will continue to have IT modernization of the Copyright Office as one of its highest priorities.

And so that is really what we are focusing on, ensuring that the business requirements and needs that we have for the Copyright Office are conveyed and listened to by the those who are developing our system, and that our system development remains a priority even among competing interests as well.

Mr. JOHNSON of Georgia. All right. Thank you. Well, you will keep us abreast of how things progress.

Ms. TEMPLE. Yes.

Mr. JOHNSON of Georgia. The distant-signal satellite television license is set to expire on December 31, 2019, and in your letter you reported that the use of the Section 119 compulsory license has decreased in the past 5 years, but there are still over 870,000 subscribers. If we allow the compulsory license authorization to expire, then what will happen on January 1, 2020?

Ms. TEMPLE. Yes. We have said in our review that the marketplace has already risen up to address this issue. And so we do.

Mr. JOHNSON of Georgia. How so?

Ms. TEMPLE. For example, in the marketplace, you have different ways in order to get signals. For example, you can now watch on YouTube. Streaming services have risen up.

Mr. JOHNSON of Georgia. Well now, with broadband having not been extended to the far reaches of our society, of our country, that poses a problem.

Ms. TEMPLE. Well, I will say that, in our review, we did hear from the satellite providers, that there were about 800,000 subscribers. But one of the issues that we mentioned was, one, the royalty rates have gone down significantly. Again, that was an 85 to 99 percent reduction in the royalties that we received. And even for that 800,000 number, it is not clear that those are all actually subscribers within households. Some of them are RVs and other types of entities.

And so we don't think that there will be a significant harm to rural communities by allowing this license to expire. Again, this is something that we actually supported for many, many years. Over time I think that it has even gotten better in terms of the marketplace. So we think that even if the licenses were something that was useful a few years ago, to allow the marketplace to take advantage of all of the advancements, it is even more so now to do so because of the limited use of that particular license.

Mr. JOHNSON of Georgia. Thank you.

Chairman NADLER. The time of the gentleman has expired. The gentlelady from Alabama, Mrs. Roby.

Mrs. ROBY. Ms. Temple, I want to thank you so much for coming here and testifying today, and thank you for the time that you have spent with me in my office. And congratulations, and I look forward to working with you on ways that we can ensure our copyright system is working efficiently and effectively. So, again, thank you.

As the co-chair of the Congressional Songwriters Caucus, I am particularly interested in effective implementation of the Music Modernization Act, and I know the chairman touched on this, but to ensure that songwriters are getting paid accurately and fairly for their work. And under the MMA, the Copyright Office must designate an entity to serve as the new Mechanical Licensing Collective by July 8. And we talked about this some in my office.

But as you review the submissions and prepare to make regulations to implement the MMA, can you speak to the ongoing transparency and oversight responsibilities of the MLC to ensure correct matching of data that will help ensure that songwriters are paid fairly? And then I will just add one more thing. What would you recommend that we in Congress, and particularly this committee, do to provide meaningful oversight of the MLC and ensure that the MMA accomplishes its goals?

Ms. TEMPLE. Yes. So as I mentioned earlier, you know, we were pleased by both submissions that we received in the Copyright Office for the entities who wish to be designated as the MLC, recognizing that one of the most important goals of the MLC is to ensure that songwriters get paid for the use of their works, and that they reduce the amount of unclaimed, unmatched royalties. So that is something that both proposed designees have actually identified.

One of the things that Congress has also already done to ensure that this process works effectively is to ask the Copyright Office to do a study on best practices with respect to unmatched royalties and ways to reduce the unclaimed funds within the MLC. So that is one thing that Congress has already done. We will be starting to prepare that report as soon as the designation is made, and again, that report will come out in July 2021 where we will be recommending best practices.

And so I think once the report goes to Congress, as well as to the MLC, ensuring that those best practices, that we recommend are actually adopted, I think will be a key aspect of making sure that the system is working effectively.

Mrs. ROBY. Thank you. I am an original co-sponsor as well of the CASE Act, and it is great to see many creators here in the audience today. So currently it is cost prohibitive for many creators to

enforce their rights in Federal court. So how will a copyright small claims tribunal or the copyright claims board in the CASE Act not only benefit creators, but also benefit users of content.

Ms. TEMPLE. Yes. As I said earlier in my opening testimony, it is really important for this system to work, that the legal rights that are created, that people have the ability to enforce those rights. And so with respect to many smaller creators, smaller businesses, individual authors, right now the legal right is there, but it is not effectively enforced because they don't have the ability to get into Federal court. So having this new alternative forum, I think, will be very important to really provide respect for the system and ensure that all who are supposed to benefit from the system are able to do so.

One area that hasn't been highlighted a lot with respect to the CASE Act, however, is that it does also benefit users. You are able to, if you, for example, want to use a copyrighted work and aren't sure whether it is a fair use, you are able to go into the alternative form of the CCB and actually get a determination of noninfringement. So it is not just to go after those who are pirating works, but those who are using works and want, again, the confirmation that they are allowed to use those works and are able to go into that CCB with a streamlined process and get a determination of noninfringement as well.

Mrs. ROBY. So speaking of piracy, my home state of Alabama, like others, has seen an increase in movie and television production, bringing jobs and opportunities. But digital piracy remains a concern, and it can threaten possible future productions. The vast majority of people would never think of walking into a store and stealing a DVD, but don't give a second thought to streaming movies or shows online from illicit sites. So what suggestions would you have, and I have got 18 seconds, on ways that we can educate the public, and particularly young people, on the illegality and harm of digital piracy?

Ms. TEMPLE. Yes. I think that often unfortunately when people think of digital piracy, they don't think that it really does harm individuals. They just see the major artist and think, oh, well, if they don't get paid for that one DVD, it is not going to harm them particularly. But they don't realize the—

[Audio malfunction in hearing room.]

Chairman NADLER. It did go over.

Ms. TEMPLE. Okay. It is on again? Thank you. They don't realize the impact that piracy has not only on artists, but all of those who are really participating in the copyright ecosystem. So I think that, yes, as you mentioned, outreach and education on this issue is critical. Teaching the young people that, if you wrote a paper, you wouldn't want your friend to take that paper and pretend that it was their own. That is basically piracy if you draft a song and somebody steals that song.

So I think, again, once people understand the ramifications of how piracy really affects our culture and our ability to have a thriving copyright ecosystem and a thriving marketplace for culture, I think people will be more willing to understand the importance of protecting those intellectual property rights.

Mrs. ROBY. Thank you. Thank you, Mr. Chairman.

Chairman NADLER. You are welcome. The time of the gentlelady has expired. The gentleman from New York, Mr. Jeffries.

Mr. JEFFRIES. Thank you, Mr. Chairman. First, I ask unanimous consent to enter into the record several letters in support of the CASE Act.

Chairman NADLER. Without objection.  
[The information follows:]

**MR. JEFFRIES FOR THE OFFICIAL RECORD**

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American Society of Media Photographers

P.O. Box 31207  
Bethesda, MD 20824

5/1/19

The Honorable Hakeem Jeffries  
The Honorable Doug Collins  
U. S. House of Representatives  
Washington, D.C. 20515

Dear Representatives Jeffries and Collins:

I am writing you in my capacity as executive director of the American Society of Media Photographers (ASMP), a trade association representing nearly 5000 independent commercial photographers, to thank you for once again introducing the Copyright Alternative in Small-Claims Enforcement Act (the "CASE Act").

The introduction of this critical legislation is a reaffirmation of your keen understanding of the historical inequity that all too often leaves individual creators as small business owners with rights but no remedies when their creative works are infringed, and your long-standing commitment to creation of legal procedures that would help ensure that effective and affordable tools are available when works are exploited by others without permission or compensation – something nearly 70% of our members experience on a weekly basis.

Your continuing pursuit of legislation that provides individual creators and small business owners with a viable alternative to the overly complex and prohibitively expensive federal litigation is greatly appreciated by ASMP's members and many others in the visual artist community. ASMP and its allies in this endeavor look forward to working with you and your colleagues to achieve enactment of the CASE Act in the current Congress.

Sincerely,

Thomas R. Kennedy  
Executive Director  
American Society of Media Photographers

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

NEIL L. BRADLEY  
EXECUTIVE VICE PRESIDENT &  
CHIEF POLICY OFFICER

1615 H STREET, NW  
WASHINGTON, DC 20062  
(202) 463-5310

May 2, 2019

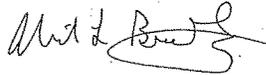
TO THE MEMBERS OF THE UNITED STATES CONGRESS:

The U.S. Chamber of Commerce supports S. 1273 and H.R. 2426, the “Copyright Alternative in Small-Claims Enforcement (CASE) Act.” **Members who cosponsor this bill will receive credit for the Leadership component of their “How They Voted” rating.**

The CASE Act would streamline the process for small copyright claims by creating a small claims board within the U.S. Copyright Office to adjudicate copyright infringement cases. This legislation would provide small businesses and creators with a less burdensome and costly option for defending their intellectual property rights.

We look forward to working with you on this important issue.

Sincerely,



Neil L. Bradley



Contact:  
 Songwriters Guild of America, Inc.  
 210 Jamestown Park Road Suite 100  
 Brentwood, Tennessee 37027-750  
 615-742-9945

**SONGWRITERS GUILD OF AMERICA ISSUES STRONG STATEMENT OF  
 SUPPORT FOR INTRODUCTION OF THE  
 SMALL CLAIMS ENFORCEMENT (CASE) ACT OF 2019**

**May 1, 2019, Washington, DC.** The Songwriters Guild of America, Inc. (SGA), America's largest and longest established songwriter and composer organization run solely by creators themselves, today applauded Reps. Hakeem Jeffries (D-NY), Doug Collins (R-GA), Hank Johnson (D-GA), Martha Roby (R-AL), Judy Chu (D-CA), Ben Cline (R-VA), Ted Lieu (D-CA) and Brian Fitzpatrick (R-PA) for their introduction of the "Copyright Alternative in Small Claims Enforcement (CASE) Act of 2019". "SGA has been actively advocating for this important legislation for well over a decade," states hit songwriter and SGA president Rick Carnes, "and we are gratified and thankful that the CASE Act co-sponsors have taken the lead in pushing to make the crucial protections this bill would provide for music creators a reality."

It has long been SGA's position, dating back to active advocacy which began prior to 2008, that a small claims system is an indispensable step toward helping music creators and other authors to regain the ability to enforce their rights against infringers in a cost-effective way. The organization believes that the new bill strikes the proper balance between consumers and creators, establishing an alternative, opt-in arbitration system to resolve copyright infringement cases, without necessitating the time and expense to creators of filing a formal lawsuit.

"How many times," Carnes continued, "have you heard someone say, 'let's not make a Federal case out of this.' Everyone knows that the enormous cost and energy it takes to prosecute a case in Federal Court is beyond the means of most citizens, and rarely makes financial sense, except as to those rare claims for damages in the millions of dollars. But 'making a Federal case of it' is exactly what an individual songwriter must currently do under the law if his or her song is used without permission and infringed."

Carnes recalled with great dismay the day he first saw his songs being streamed on YouTube, Spotify and other digital distribution networks without consent, and realized

the futility of sending take-down notices to protect his rights. According to him, when he sent the notices, another unlicensed copy appeared within minutes of the first one being taken down. And then another. And another.

Faced with playing an unwinnable game of 'Whack-a-mole' with infringers, Carnes stated, "I realized that my only other recourse was to file an infringement case in Federal Court which would, ages later, likely end up costing massively more than I could ever collect in damages. The average cost to bring a single, full-blown copyright infringement claim today is estimated to approach \$350,000 in legal fees. At the same time, statutory damages for such infringements are currently capped under the U.S. Copyright Act at less than half that amount per title! The Copyright law is useless to songwriters when the cost of enforcement of our rights far exceeds the compensatory damages able to be recovered against infringers. Every American should have the right to protect his or her property, whether a lawnmower, a bicycle, a photograph, or a song."

SGA believes it is long past time for Congress to give music creators a viable way to seek fair remedies when the rights of songwriters, composers and authors are violated, and thanked Representatives Jeffries and the other co-sponsors for standing up for the smallest of small US business people: American Songwriters. SGA also expressed thanks and support for the US Copyright Office, which will oversee the implementation of the Act upon its enactment.

"The modernization process that is taking place at the Copyright Office is what makes possible the fair benefits this bill will provide to the American creative community," concluded Carnes. "We need to get behind the message that a strong US Copyright Office, with proper resources to manage all of its programs, is something that benefits both every American, and the advancement of American culture itself. We hope it will never be necessary for the Copyright Office to limit the scope and size of the small claims system due to underfunding or otherwise, and we intend to work on that issue with the Register and on Capitol Hill as a regular part of SGA's legislative activities and initiatives in Washington, DC."



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May 7, 2019

Honorable Hakeem Jeffries  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20015

Dear Representative Jeffries:

This letter is sent on behalf of the Section of Intellectual Property Law of the American Bar Association (the "Section") to express its views on H.R. 2426, the Copyright Alternative in Small-Claims Enforcement Act of 2019 (the "CASE Act"), which was introduced on May 1, 2019. The views expressed herein are presented on behalf of the Section of Intellectual Property Law. They have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the position of the Association.

With more than 400,000 members, the American Bar Association is one of the largest voluntary professional membership organizations in the world. As the national voice of the legal profession, the ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, provides continuing legal education, and works to build public understanding around the world of the importance of the rule of law. The ABA-IPL Section, which was established in 1894, is the oldest substantive section of the ABA. The Section membership includes lawyers and others representing a wide array of business and other interests, and thus it reflects a broad perspective of the important issues our country faces in developing, improving, and enforcing intellectual property rights for the overall benefit of the United States economy.

The CASE Act was drafted to provide an alternative forum to federal court for low-value copyright disputes. The copyright community has noted the need for such a tribunal, as the high cost of legal counsel, time-consuming nature of discovery, and significant likelihood of loss when proceeding *pro se* have all made federal copyright infringement litigation effectively unavailable for parties with limited resources. As a result, copyright holders who cannot

afford to bring claims essentially must acquiesce to infringement, thus deprived of the protections copyright is meant to afford. Moreover, copyright defendants are often burdened with significant legal costs and long-lasting suits, even where their use is a fair use or otherwise lawful. Overall, these risks hinder copyright law from fulfilling its primary function of incentivizing the creation of new, expressive works.

If enacted, the CASE Act would establish a Copyright Claims Board (the "Board") within the United States Copyright Office (the "Office") to resolve copyright claims seeking a maximum of \$30,000 in damages. The Section has long supported the creation of a low-cost small claims procedure for civil copyright disputes. Moreover, the Section believes that an alternative small claims forum within the Copyright Office limited to claims seeking up to \$30,000 in damages, staffed by lawyers well-versed in copyright and alternative dispute resolution, and open to consenting parties proceeding *pro se* or with legal representation is well worth pursuing. The CASE Act accords with many of these needs and has the potential to resolve many of the aforementioned problems.

Having reviewed and discussed the CASE Act over the last several months, the Section writes to express its support for this legislation. We agree with many of the Act's provisions and believe that it would greatly benefit the copyright community at large; however, there are a few additional points that the Section urges the you to consider.

Specifically, the Section recommends amending the CASE Act to increase the opportunities for dialogue between the Register of Copyrights and the Board on novel legal questions that arise in small claims proceedings. While the CASE Act gives the Board some opportunities for guidance from the Register, the only opportunities currently provided for are

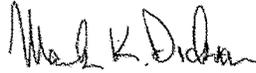
(1) allowing the Board to consult the Register on "general issues of law" and (2) permitting a party denied reconsideration by the Board to appeal to the Register for review of whether reconsideration should be granted. The Register may not weigh in on issues of law *sua sponte*, correct the Board's interpretation of the law, or intervene in a small claim litigant's appeal to federal district court. These restraints will inhibit the efficiency and success of a small claims tribunal, as well as potentially lead to the unnecessary and potentially confusing result that the Board and the Register will adopt different interpretations of the same legal principles.

To avoid this possibility, the Section suggests that the CASE Act be amended in three respects. *First*, the Board should be permitted to seek guidance on novel questions of law when they arise. *Second*, litigants should be able to seek mid-proceeding review from the Register by paying a small fee and submitting short questions of law akin to those found in the "questions presented" sections of appellate briefs, but without additional briefing by the parties. This would help ensure that the Board and the Copyright Office apply the same legal principles, while mitigating concerns about the expense of seeking such review. *Third*, the Register should have the authority to review Board decisions to correct legal errors with regard to such novel legal principles (but not

on the application of those principles). Such reviewability will ensure uniform application of the law and provide clarity for future litigants. A system analogous to that which the Section envisions already exists for the Copyright Royalty Board, and we recommend that the Committee amend the CASE Act's reviewability procedures to track those used under existing law for that tribunal.

Accordingly, the Section supports the CASE Act, but urges you to consider the revisions proposed above. Passing the CASE Act will bring positive change to the copyright system by better enabling copyright holders to protect their works, thus enhancing the public discourse. We thank you for your time and attention. We would be happy to be involved in future discussions as this legislation continues to be considered.

Very truly yours,



Mark K. Dickson  
Chair, ABA Section of Intellectual Property Law

cc: Rep. Jerrold Nadler, Chairman, Committee on the Judiciary, U.S. House of Representatives

Rep. Hank Johnson, Chairman, Subcommittee on Courts, Intellectual Property  
and the Internet, Committee on the Judiciary, U.S. House of Representatives

Rep. Martha Roby, Ranking Member, Subcommittee on Courts, Intellectual Property  
and the Internet, Committee on the Judiciary, U.S. House of Representatives

Rep. Doug Collins, Ranking Member, Committee on the Judiciary,  
U.S. House of Representatives

Rep. Judy Chu

Rep. Ted Lieu

Rep. Benjamin Cline

Rep. Brian Fitzpatrick



April 30, 2019

The Honorable Hakeem Jeffries  
2433 Rayburn House Office Building  
Washington, DC 20515

The Honorable Doug Collins  
1504 Longworth House Office Building  
Washington, DC 20515

Dear Representatives Jeffries and Collins:

On behalf of the authors' organizations signed below, representing collectively tens of thousands of authors from diverse backgrounds and diverse genres, we support the introduction of the Copyright Alternative in Small-Claims Enforcement Act of 2019 (the "CASE Act") in the U.S. House of Representatives. With the many threats authors face today—particularly the proliferation of large-scale digital piracy—a small claims tribunal is more necessary than ever.

Today, copyright infringement cases must be brought in federal court, at a minimum cost of several hundred thousand dollars. Only a handful of authors can even consider such costs. The Authors Guild's 2018 author income survey, with over 5,000 respondents, found that full-time authors earned a median of just \$20,300 from their writing in 2017. That means every dollar counts, and every infringed copy represents at least a dollar of lost income. It also means that enforcement is out of the question. As a result, most creators have been left with unenforceable rights. Thanks to your support of this legislation, we hope that's about to change.

"A right without a remedy is no right at all," said Authors Guild executive director Mary Rasenberger. "On an individual level, the inability to enforce one's rights undermines the economic incentive to create new works," said Rasenberger. "On a collective level, it corrodes respect for the rule of law and deprives society of the benefits of creativity."

The proposed bill, like its predecessors on the last two Congresses, is based largely on draft legislation developed by the Copyright Office in its [2013 Report on Copyright Small Claims](#), which followed a series of public hearings and written comments from stakeholders. The new tribunal would ensure that creators and defendants have a low-cost means of resolving copyright claims. Parties will not have to hire attorneys to participate. Damages would be limited to \$15,000 per work infringed and \$30,000 in the aggregate. Proceedings will occur online or by telephone, and discovery will be kept simple. Most important, participation in the tribunal would be on a voluntary basis and would not interfere with either party's right to a jury trial.

The proposed CASE Act is a balanced bill. The small claims tribunal would hear claims by both copyright users and owners, as well as all defenses and counterclaims permitted under the Copyright Act in federal court. To assuage the concerns of entities who fear abuse of the tribunal, there will be limits on how many claims a person can bring in a year, "bad actors" will be fined for abuse, and repeat offenders barred from continuing to use the tribunal. Respondents may always opt out of the tribunal. The claimant must formally serve the respondent and both the claimant, and the Copyright Office will also send notices describing the opt-out procedures to ensure against any unwitting default judgements. These provisions will ensure against abuse of the system to the detriment of users while giving creators the ability to have their cases heard.

This bill is crucial to providing creators with the ability to enforce their copyrights – the very basis for their livelihoods – and to recognize the benefits and incentives that are at the core of copyright law. Too many authors have been left without real remedies for too long. We look forward to working with you to see that a Copyright Small Claims tribunal is finally established. We thank you greatly for your leadership on this issue of great importance to so many creators.

Sincerely,

Mary E. Rasenberger  
Executive Director, The Authors' Guild

Milton C. Toby JD  
President, American Society of Journalists and Authors (ASJA)

Larry Goldbetter  
President, National Writers Union/UAW Local 1981

Michael Capobianco and Jim Fiscus  
Co-chairs, Legal Affairs Committee, Science Fiction and Fantasy Writers of America

Allison Kelley  
Executive Director, Romance Writers of America

Wayne Stinnett  
President, Novelists, Inc (NINC)

Becky Heath  
President, Garden Communicators International (GardenComm)

Ralph Sevush  
Executive Director, Dramatists Guild

Brad Hodson  
Administrator, Horror Writers Association



June 11, 2019

The Hon. Lindsey Graham  
Chairman  
Senate Judiciary Committee  
290 Senate Russell Office Building  
Washington, DC 20510

The Hon. Jerry Nadler  
Chairman  
House Judiciary Committee  
2132 Rayburn House Office Building  
Washington, DC 20515

The Hon. Dianne Feinstein  
Ranking Member  
Senate Judiciary Committee  
331 Hart Senate Office Building  
Washington, DC 20510

The Hon. Doug Collins  
Ranking Member  
House Judiciary Committee  
1504 Longworth House Office Building  
Washington, DC 20515

Chairman Graham, Ranking Member Feinstein, Chairman Nadler and Ranking Member Collins:

The Recording Academy, a member based organization representing more than 20,000 individual music creators, is proud to endorse the Copyright Alternative in Small-Claims Enforcement Act (CASE) Act (S. 1273/H.R. 2426). This much-needed bill would establish a small-claims copyright case system that enables all creators to protect their work.

Our members are vulnerable to copyright infringement on a daily basis, but unfortunately have little effective means to prevent or enforce against it. For the independent songwriter, artist, or producer stopping infringement is a no-win battle; thousands of our members, and countless more in the music community, do not have the financial means, time, or legal teams at their disposal to enforce against, and seek damages from, the constant stream of copyright violations. As it stands, these independent music creators have rights without remedies.

Fortunately, the CASE Act proves that consensus-driven solutions can establish a better, more practical copyright system for our members. For the first time, the creative community will have access to a streamlined process for faster resolutions of disputes. Most notably, the CASE Act will significantly reduce the cost of defending one's copyright by avoiding federal filing fees and the need to hire an attorney. Additionally, a resolution can be reached without ever having to appear in person. And, as an entirely voluntary system with caps on damages, the CASE Act will stand to benefit potential infringers as well. It is a sensible solution that has garnered widespread support from the creative community, as well as from the Copyright Office and bipartisan members of the House and Senate.



On behalf of the Recording Academy, I urge you to mark-up S. 1273/H.R. 2426 as soon as possible to ensure that the CASE Act can be enacted into law during the 116<sup>th</sup> Congress.

Sincerely,

A handwritten signature in black ink, appearing to read "Daryl Friedman", with a horizontal line extending to the right.

Daryl Friedman  
Chief Industry, Government & Member Relations Officer  
Recording Academy

Cc: Senate Judiciary Committee  
House Judiciary Committee



**Latin Academy of Recording Arts & Sciences, Inc.**

3470 NW 82 Ave., Ste. 600, Miami, FL 33122 • Tel: 305-576-0036 • Fax: 305-576-0036 • www.latingrammy.com

June 11, 2019

**The Hon. Lindsey Graham**  
Chairman  
Senate Judiciary Committee  
290 Senate Russell Office Building  
Washington, DC 20510

**The Hon. Jerry Nadler**  
Chairman  
House Judiciary Committee  
2132 Rayburn House Office Building  
Washington, DC 20515

**The Hon. Dianne Feinstein**  
Ranking Member  
Senate Judiciary Committee  
331 Hart Senate Office Building  
Washington, DC 20510

**The Hon. Doug Collins**  
Ranking Member  
House Judiciary Committee  
1504 Longworth House Office Building  
Washington, DC 20515

Chairman Graham, Ranking Member Feinstein, Chairman Nadler and Ranking Member Collins:

On behalf of the Latin Recording Academy, a U.S. Corporation, I proudly endorse the CASE Act (S. 1273/H.R. 2426). The Latin Recording Academy is the premier membership-based association composed of musicians, songwriters, producers, engineers and other creative and technical recording professionals who are dedicated to improving the quality of life and the cultural condition for Latin music and its makers both inside and outside the United States.

Our members are perpetual victims of a broken copyright system that enables theft and infringement; the CASE Act represents a critical step forward in improving the copyright system for these creators.

With the current level of explosive growth of Latin music, artists, songwriters and producers that make their living in the field are increasingly vulnerable to copyright infringement. Far too frequently, these creators have no feasible means to fight back. Turning to the federal court system to seek damages is a daunting, expensive and time consuming ordeal—worsened by lack of knowledge of the different genres, names and even language barriers as well as other difficulties faced by the people related to the Hispanic market and community at large.

That is why our members (formed mostly by musicians, performers and songwriters), support the CASE Act, which will increase access to justice for many of our Academy members. The bill significantly reduces the cost of defending one's copyright by avoiding federal filing fees and the

need to hire an attorney, which will also speed up the litigation process. One additional benefit is that the CASE Act also allows creators to file online and participate remotely, which could increase participation for creators who do not speak English as their primary language. For many Latino creators the first barrier to an effective protection of their copyright is understanding their rights.

The CASE Act simplifies this process.

The Latin Recording Academy hopes that your Committees will consider the CASE Act in the coming weeks, and that further action can be taken by the 116<sup>th</sup> Congress. It is a consensus solution to a very real problem.

Sincerely,



Gabriel Abaroa  
President & CEO  
The Latin Recording Academy

cc: Senate Judiciary Committee  
House Judiciary Committee  
File



**INSTITUTE FOR INTELLECTUAL PROPERTY  
& SOCIAL JUSTICE, INC.**

*ADVANCING IDEAS  
ENCOURAGING ENTERPRISE  
PROTECTING PEOPLE*

May 3, 2019

Congressman Hakeem Jeffries  
2433 Rayburn House Office Building  
Washington, DC 20515

Re: The Copyright Alternative in Small-Claims Enforcement/CASE Act of 2019 (HR 2426)

Dear Congressman Jeffries,

The Institute for Intellectual Property and Social Justice (IIP SJ) applauds the introduction of the Copyright Alternative in Small-Claims Enforcement Act of 2019 (HR 2426). IIP SJ was established to address the social justice implications of intellectual property law and policy both domestically and globally. IIP SJ's work ranges broadly, and includes the scholarly examination of intellectual property law from the social justice perspective; advocacy for social justice-cognizant interpretation, application, and revision of the intellectual property law; efforts to increase the diversity of the intellectual property legal bar; and programs to empower historically and currently disadvantaged and marginalized communities through the development, protection, use, and exploitation of intellectual property.

The CASE Act addresses a critical problem in the copyright ecosystem- the practical inability of many individual and small business copyright owners to seek legal redress for copyright infringement. Even in cases of blatant and willful disregard of their rights, many individual and small business copyright owners lack the resources to protect their rights in the courts. The cost and complexity of even routine copyright litigation often renders the courts beyond the reach of such rightsholders, especially those in marginalized communities. Involving typically modest monetary damages, the contemplated recoveries are dwarfed by the cost of litigation. Consequently, many legitimate claims simply go unaddressed, a "lack of access to justice" problem that is all too familiar in certain strata and segments of American society.

The inability to protect the personal investment involved in one's creative labors can all but extinguish the impetus to participate in the copyright system. While certainly some artists, scholars, and activists produce expressive works irrespective of the prospects for commercial reward, many others have no choice but to abandon such endeavors to pursue vocational

activities wherein their rights are better protected. If nothing else, a day of even minimum wage labor will result in a paycheck, however small. Moreover, even where creative works are produced notwithstanding these issues, the incentives to register and/or widely disseminate such expressive and informative output are greatly diminished. Such outcomes undermine the very purpose of copyright, particularly where society is denied the unique voices and insights borne of marginalized perspectives.

The Constitutional copyright mandate is to promote the advancement of American culture. With the advent of digital information technology and the Internet, many marginalized artists, scholars, activists, and entrepreneurs enjoy unprecedented opportunities for self-expression and socio-economic empowerment. Passage of the CASE Act will help to ensure that these and other creators who embrace these opportunities to contribute to our nation's cultural storehouse will also enjoy the legal protections and pecuniary rewards that Congress intended to include among the fruits of their expressive labors.

Respectfully Submitted,

Lateef Mtima  
Director, Institute for Intellectual Property and Social Justice

Kimberly Tignor  
Executive Director, Institute for Intellectual Property and Social Justice

# musicanswers

April 29, 2019

Honorable Hakeem Jeffries  
c/o Ms. Elaine Gin  
[Elaine.Gin@mail.house.gov](mailto:Elaine.Gin@mail.house.gov)

Dear Representative Jeffries,

On behalf of our nearly 3600 signatories, MusicAnswers is proud to endorse the Copyright Alternative in Small-Claims Enforcement Act ("CASE Act").

We applaud this important effort to make it easier for music creators to be fairly compensated for their work and we thank you for your efforts to support our community.

Sincerely,



Phil Galdston  
Co-Founder  
[phil.galdston@icloud.com](mailto:phil.galdston@icloud.com)



David Wolfert  
Co-Founder  
[davidwolfert@gmail.com](mailto:davidwolfert@gmail.com)

[musicanswers.org](http://musicanswers.org)



## National Press Photographers Association

120 Hooper Street • Athens, GA 30602  
[president@nppa.org](mailto:president@nppa.org)

Via Email

Rep. Hakeem Jeffries  
2433 Rayburn House Office Building  
Washington, DC 20515

**RE: Support of the CASE Act**

Dear Rep. Jeffries,

As the *Voice of Visual Journalists*, our members are visual journalists who provide the public with compelling images and stories that inform our democracy, the National Press Photographers Association (NPPA) would like to thank you for introducing the CASE Act, and express our support for this legislation that would create a copyright small claims tribunal within the U.S. Copyright Office. Your years of dedication working with authors groups including NPPA to craft a measure that would serve the needs of individual creators is greatly appreciated.

Copyright infringement is a pernicious problem for our members. Visual journalism is incredibly valuable work that is regularly stolen and circulated on the Internet. Yet visual journalists currently face a long, expensive process to be compensated for the theft of their work. The manner in which infringement persists without a workable remedy is economically devastating for photographers, their clients and their employers. It is our hope that the balanced nature of the CASE Act provides a real solution for photographers and other authors.

NPPA members' work helps Americans — and others — better understand the world in which we live. As news organizations have trimmed staff, more and more of our members are now working as independent contractors, licensing their images and footage for editorial use. Visual journalists work on extremely tight deadlines covering events of great national and international importance, including political campaigns, wars, breaking news, sports and entertainment. Those images are widely infringed as a matter of course. Within seconds of its creation an image may be downloaded and re-posted, becoming "viral" in short order.

NPPA's attorneys, who you have worked with on this legislation, hear on a regular basis from members who are devastated by the economic loss and the additional burden of policing and fighting infringements. In many cases, these photographers are unable to bear the burden of a federal lawsuit, thus encouraging and enabling those predatory actors to continue to infringe with impunity. We hope that the CASE Act changes that equation and serves as a practical solution for the problem of policing copyright infringement.

On behalf of our members, thank you.

Sincerely,

*Michael P. King*

Michael P. King, President  
National Press Photographers Association

cc: Zoe Oreck - Legislative Director and Counsel, [zoe.oreck@mail.house.gov](mailto:zoe.oreck@mail.house.gov), Fax: (202) 225-1018



1710 ROY ACUFF PLACE | NASHVILLE, TN 37203

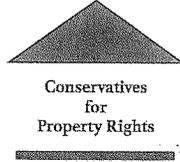
Dear Congressmen Jeffries and Collins:

The Nashville Songwriters Association International supports the CASE Act designed to give a more cost effective and less burdensome way for copyright-related disputes to be arbitrated among the concerned parties.

This legislation will benefit American songwriters who can't always afford the costly process of resolving copyright-related disputes in federal court. We thank Congressman Hakeem Jeffries who has made this legislation a priority for several months in navigating a path through many interested stakeholders resulting in legislation that has consensus and establishes a framework for workable resolutions of copyright-related disputes. Likewise, we recognize Congressman Doug Collins for his work on this bill, and both he and Congressman Jeffries for their leadership on passage of the Music Modernization Act and other matters to help the songwriting profession.

Our thousands of songwriter members applaud your efforts.

Sincerely,  
Bart Herbison, Executive Director  
Nashville Songwriters Association International



May 24, 2019

The Honorable Hakeem Jeffries  
2433 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Jeffries:

Conservatives for Property Rights (CPR) writes in support of the Copyright Alternative in Small-Claims Enforcement (CASE) Act, H.R. 2426.

CPR emphasizes the central importance of private property in all its forms — physical, personal, and intellectual. The right to private property ranks among the unalienable rights the Founders referenced in the Declaration of Independence. Thus, property rights should not be considered a conservative or liberal issue, although this coalition approaches property rights from a conservative philosophical perspective.

The bipartisan CASE Act takes a constructive approach of creating a voluntary, streamlined arbitration process for resolving small-claims copyright infringement matters. H.R. 2426 would strengthen private property rights in the creations of the largest segment of the copyright community, small creators such as photographers, songwriters, visual artists, videographers, writers, and authors. The Professional Photographers of America witness testified of this legislation that "there is no discussion that will affect more small businesses — more mom-and-pop creators — than that of establishing a small claims system."

The CASE Act would provide independent, Main Street intellectual property owners a viable means of pursuing lost revenues from the unauthorized use of their creative works. Presently, the remedy of federal court is too expensive where copyright infringement involves small claims. Three-fourths of the time, small creators' damages amount to \$3,000 or less. Attorneys generally cannot afford to take a case where damages from copyright infringement are less than \$30,000.

Under H.R. 2426, copyright owners could seek redress by an alternative dispute resolution-type proceeding through a Copyright Claims Board to be housed in the U.S. Copyright Office. This is important from a private property rights perspective because the practical inability to enforce one's property rights against those who infringe his or her copyrighted creations — literary, graphic, or otherwise — effectively deprives the creator of a property right.

*"protecting the exertions of talents and industry . . . securing to them their justly acquired fruits"*  
— Alexander Hamilton

Conservatives for Property Rights commends the Copyright Alternative in Small-Claims Enforcement Act and looks forward to working with you in strengthening the intellectual property rights of the hundreds of thousands of small creators.

Sincerely,

James Edwards  
Executive Director  
Conservatives for Property Rights

Seton Motley  
President  
Less Government

C. Preston Noell III  
President  
Tradition, Family, Property, Inc.

Kevin L. Kearns  
President  
U.S. Business & Industry Council

Matthew Kandrach  
President  
Consumer Action for a Strong Economy

Daniel Schneider  
Executive Director  
American Conservative Union

*"protecting the exertions of talents and industry . . . securing to them their justly acquired fruits"*  
— Alexander Hamilton



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June 10, 2019

Hon. Hakeem Jeffries (NY-08)  
2433 Rayburn House Office Building  
Washington, DC 20515

Re: H.R.2426, CASE Act of 2019, the Copyright Alternative Small-Claims  
Enforcement Act, SUPPORT

Dear Congressman Jeffries:

Thank you for giving Volunteer Lawyers for the Arts (“VLA”) the opportunity to comment on H.R. 2426, the *Copyright Alternative in Small-Claims Enforcement Act of 2019* (the “CASE Act”), establishing an alternative dispute resolution forum within the Copyright Office for copyright-related small claims. The CASE Act addresses the urgent need of artists and the arts organizations we represent, including visual artists, photographers, filmmakers, songwriters and musicians, for an affordable means of dispute resolution, and is consistent with our mission of service to New York’s low-income artists. VLA gives its unqualified support to this important legislation.

Artists are currently faced with a proliferation of copyright infringement given the ease of access and copying works on the internet. Many infringers cavalierly copy and monetize the creative works of others without authorization, knowing that the only alternative for our low-income artists (and others) is to institute a federal lawsuit at an expense that greatly outweighs the monetary value of the claims. This is often the case involving infringements on the internet, since the cost of a license to use a copyrighted work on a website typically is modest. Frequently, attempts to communicate with the infringer and to seek licenses are ignored. Attorneys, moreover, are extremely unlikely to take these matters on contingency, given their monetary value. Ultimately, the market for the works is harmed because of the infringers’ exploitation of the works without payment to the creators.

## Volunteer Lawyers for the Arts

One East 53<sup>rd</sup> Street, Sixth Floor • New York, New York 10022-4201 • Tel: 212-319-2787 • Fax: 212-752-6575 • VLANY.ORG

The CASE Act tribunal will provide a much needed solution to this disenfranchisement. The Act's dispute resolution process is expedited and streamlined, and easily accessible to all copyright owners, who may participate without retaining legal counsel or engaging in lengthy discovery and in-person trials. Artists will be able to affordably challenge the taking and monetizing of their work without an appropriate license. The results will be monetary recoveries of relatively modest amounts that are significant to our low-income artists.

The CASE Act will not only strengthen the protections afforded to artists, but also create meaningful incentives for compliance with existing laws and widely accepted norms of fair dealing. The CASE Act process is voluntary and caps the infringer's damages, incentivizing them to participate in an equitable forum to resolve small copyright infringement claims and to license future uses of artists' works.

Many artists rely on the licensing and selling of their artwork to earn a living. Their ability to enforce their right to do so is critical to their livelihood and to the continued creation of art, which contributes invaluable to our culture and society. The CASE Act will provide creators additional tools to protect their work and their careers, thereby fulfilling the goal of copyright, "to promote the progress of Science and useful Arts. . ."

The CASE Act offers a fair and equitable solution to adjudicating straight-forward, small copyright infringement claims. We appreciate your continued support of the creative community, and particularly New York's low-income artists, through the introduction of the CASE Act. If you have any questions or require any additional information, please do not hesitate to contact me at [kwagner@vlany.org](mailto:kwagner@vlany.org) or (212) 319.2787 ext. 25.

Very truly yours,



Kathryn E. Wagner  
Executive Director



FOR IMMEDIATE RELEASE  
May 30, 2019

Contact: Ashley Durkin-Rixey  
ACT | The App Association  
[arixey@actonline.org](mailto:arixey@actonline.org)  
(202) 420-7488

**ACT | The App Association Supports the Copyright Alternative in Small-Claims  
Enforcement Act of 2019 (CASE Act)**

(WASHINGTON, DC) May 30, 2019– Today, ACT | The App Association released a statement from president Morgan Reed regarding the introduction of the CASE Act of 2019 in the House (H.R. 2426) and Senate (S.1273):

"Intellectual property (IP) is critical to the growth and success of our members, and for the app industry as a whole. However, most app developers do not register their copyright claims with the Copyright Office, limiting their options to enforce their rights. The complexity of the registration system and the unclear benefits of registering are often cited by app developers as the reasons they feel it is not worth the time and cost of resources. This leaves app developers who cannot afford costly litigation in a high-risk situation if someone infringes their work.

"The CASE Act will provide app developers with a user-friendly resolution process via the small claims board that allows for remote participation and up to \$30,000 in damages for infringement and misrepresentation claims. This will significantly increase the viable options for app developers to enforce their rights. These changes reflect the realities of the 21<sup>st</sup>-century digital economy and will encourage greater participation by app developers in the copyright registration system.

"We strongly urge the House of Representatives and Senate to pass S. 1273 and H.R. 2426"

###

About the App Association: ACT | The App Association represents more than 5,000 app makers and connected device companies in the mobile economy. Organization members leverage the connectivity of smart devices to create innovative solutions that make our lives better. ACT | The App Association is the leading industry resource on market strategy, regulated industries, privacy, and security.



31 West 34th Street - 8th floor  
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graphicartistsguild.org  
info@graphicartistsguild.org

April 30, 2019

The Honorable Hakeem Jeffries  
2433 Rayburn HOB  
Washington, DC 20515

The Honorable Doug Collins  
1504 Longworth HOB  
Washington, DC 20515

The Honorable Judy Chu  
2423 Rayburn HOB  
Washington, DC 20515

The Honorable Ben Cline  
1009 Longworth HOB  
Washington, DC 20515

The Honorable Brian Fitzpatrick  
1722 Longworth HOB  
Washington, DC 20515

The Honorable Hank Johnson  
2240 Rayburn HOB  
Washington, DC 20515

The Honorable Ted Lieu  
403 Cannon HOB  
Washington, DC 20515

The Honorable Martha Roby  
504 Cannon HOB  
Washington, DC 20515

Dear Representatives Jeffries, Collins, Chu, Cline, Fitzpatrick, Johnson, Lieu, and Roby:

On behalf of graphic artists – illustrators, designers, animators, and others – we would like to thank you for introducing and co-sponsoring The Copyright Alternative in Small Claims Enforcement Act of 2019 (The CASE Act). This legislation addresses a crucial concern for all individual creators and small copyright holders, and we're grateful for your attention to it.

Currently, graphic artists see their work repeatedly infringed by those who use their works without permission or compensation, creating a loss of licensing income which can be devastating to individual creators and the small businesses they represent. The only course of action small copyright holders have is to take an infringer to federal court in a procedure that is complex, time-consuming, and costly. Furthermore, the legal costs of such an action often dwarf the potential recovery, making it difficult for small copyright holders to find legal counsel.

The small copyright claims tribunal proposed by The CASE Act would be an equitable and affordable option for graphic artists with small copyright infringement cases. It's a solution that is long overdue for individual creators and small copyright holders, for whom copyright has too often been a right without a remedy. And it's a necessary correction to a system in which infringers have been able to act with impunity.

We believe that The CASE Act's impact will go beyond establishing a fair and affordable process for copyright holders and copyright users. It will hearten creators who have long felt disenfranchised, increasing copyright registrations; it will put a spotlight onto the individual creators of copyrighted works, belying the public misbelief that copyright only serves large corporate interests; and it will encourage those who wish to use copyrighted works to engage and negotiate with copyright holders.

We look forward to working with your and your colleagues in getting the bill successfully enacted.

Sincerely,

Lara Kisielewska, National President

William Morse, Secretary  
Diane Barton, Treasurer  
Rebecca Blake, Advocacy Liaison

Todd LeMieux, Communications Chair  
Dawn Mitchell, At-Large Board Member  
Haydn Adams, Immediate Past President



## Future of Music Coalition

PO Box 73274. Washington DC. 20056. 202-822-2051

April 25, 2019

At its best, copyright law protects the rights of creators of all sizes, while benefiting the public interest. Unfortunately, mounting a copyright infringement lawsuit is often extremely expensive and time consuming. This means that musicians, songwriters, and independent labels without massive financial resources may lack the ability to meaningfully respond to even clear cases of brazen infringement. What good is a right if you can't enforce it?

The CASE Act offers an eminently reasonable approach to addressing this long-standing problem, making it possible and affordable for these creators and copyright holders to defend their exclusive rights. We're also encouraged that the bill contains important provisions ensuring due process and discouraging false and fraudulent claims.

Our hope is that by ensuring that creators have a meaningful way of enforcing their rights, offering the opportunity for their case to be heard by a trained expert rather than a lay jury, while maintaining support for fair use and free expression, the CASE Act will encourage public respect and understanding for copyright law, moving us away from the polarization of past debates towards common-ground solutions.

Future of Music Coalition is proud to endorse this sensible update to copyright law, and looks forward to working for its swift passage.

A handwritten signature in black ink that reads "Kevin Erickson". The script is fluid and cursive, with the first letters of "Kevin" and "Erickson" being capitalized and prominent.

Kevin Erickson  
Director



**Associated Musicians of Greater New York**  
322 West 48th Street, New York, NY 10036  
Phone 212-245-4802 • [www.local802afm.org](http://www.local802afm.org)  
Fax 212-245-6389 (2<sup>nd</sup> fl) • 489-6030 (3<sup>rd</sup> fl) • 245-6257 (4<sup>th</sup> fl) • 245-6255 (5<sup>th</sup> fl)

April 26, 2019

Representative Hakeem Jeffries  
Washington DC Office  
2433 Rayburn House Office Building  
Washington, DC 20515

Dear Representative Hakeem Jeffries,

As the world's largest union local representing musicians, The Associated Musicians of Greater New York, Local 802 AFM cares deeply about the rights of creators to protect their work through copyright enforcement. Local 802 appreciates the work of Rep. Jeffries and the other sponsors of H.R. 3945 on behalf of artists and musicians across the country, and we are proud to see a pro-musician bill introduced by a U.S. Representative from right here in NYC. This long overdue remedy will empower musicians to defend their rights in a small-claims copyright tribunal established at the U.S. Copyright Office, creating a fairer and more efficient path to stop infringement of their copyrights.

Local 802 is proud to support the passage of the CASE Act. Do not hesitate to reach out with any questions or if we can be of further assistance in the ongoing struggle for the rights of musicians.

Sincerely,

Local 802 Executive Board

c.c Elaine Gin



**MUSICIANS:**  
We're the **US** in  
**MUSIC**

## Shaftel & Schmelzer

Lisa F. Shaftel • 24 Warren Rd. • Framingham, MA 01702 • lisa@s2do.com • 617-755-1240  
 John P. Schmelzer • 1002 South Wesley Ave. • Oak Park, IL 60304 • jthepen@ameritech.net • 708-386-4005

### **CASE Act (Copyright Alternative in Small-Claims Enforcement Act) of 2019 Letter of Support, April 30, 2019**

The CASE Act establishes a “small-value copyright court” within the Copyright Office so that copyright owners can pursue infringement cases where damages are too low for cost-effective litigation in federal court. Visual creators’ organizations have been asking for this recourse for creators’ lost income for well over ten years.

#### **THE CURRENT SITUATION**

There are many businesses large and small that have been built on the model of not paying for the images they use. Licensing images—certainly for commercial reproduction and display—is a standard and customary business practice for creators and users of images. It is the cost of doing business, as well as a legal obligation for the user.

Using images without permission and without paying a licensing fee to copyright owners is simply stealing. Authors and creators trying to earn a living from their work suffer death by a thousand cuts with no practical legal recourse to stop the bleeding.

#### **THE CASE ACT IS THE SOLUTION**

The CASE Act creates a simplified and less costly alternate dispute resolution process for creators and copyright owners to recover the licensing fees owed them by businesses that have already made unauthorized use of their photos, illustrations and graphics. The ADR process will provide the means for authors and creators to get injunctive relief from an offensive/unauthorized use of their work as well. It also serves notice to the business community that there will be a low cost legal opportunity for authors and creators to enforce their ownership and copyrights, and underscores the value of creative works.

The CASE Act doesn’t change copyright law, nor does it change our court system. The CASE Act would level the playing field by enabling authors and creators to enforce their copyrights without being required to hire an attorney and file a lawsuit in federal court that would cost more than the damages they’ve suffered.

We support and thank Congressman Hakeem Jeffries and Congressman Doug Collins, Senators John Kennedy, Thom Tillis, Dick Durbin, and Mazie Hirono for protecting the legal rights of individual creators and small creative businesses with the CASE Act of 2019.

Respectfully Submitted,  
 Lisa F. Shaftel and John P. Schmelzer

• Advocates & Consultants for Visual Artists •



**AMERICAN FEDERATION OF MUSICIANS • LOCAL 174-496**

2555 Ursulines Avenue • New Orleans, LA 70119 • Phone (504) 947-1700  
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May 24, 2019

Honorable Hakeem Jeffries  
c/o Ms. Elaine Gin  
[Elaine.Gin@mail.house.gov](mailto:Elaine.Gin@mail.house.gov)

Dear Representative Jeffries,

The American Federation of Musicians Local 174-496 New Orleans, Baton Rouge and Lafayette, is proud to endorse the Copyright Alternative in Small-Claims Enforcement Act ("CASE Act").

This act will help many songwriters and musicians by letting them be able to have their say, without wiping them out financially, concerning their rightful royalties when copyright infringement occurs. Thank you for protecting the members of the creative middle class who rely upon commercializing their creative works to make a living.

Yours in Music & Solidarity,

AFM Local 174-496 Executive Board

**LIVE MUSIC IS BEST • DEMAND THE UNION LABEL**



**American Federation of Musicians LOCAL 47**

of the United States and Canada, AFL-CIO/CLC



JOHN ACOSTA  
President

RICK BAPTIST  
Vice President

GARY LASLEY  
Secretary/Treasurer

May 28, 2019

Honorable Hakeem Jeffries  
c/o Elaine Gin  
Central Brooklyn District Office  
55 Hanson Place Suite 603  
Brooklyn NY 11217  
[elaine.gin@mail.house.gov](mailto:elaine.gin@mail.house.gov)

Dear Representative Jeffries,

On behalf of our more than 7,000 members, the American Federation of Musicians Local 47 has a vested interest in protecting the rights of creators with copyright enforcement. We commend and appreciate your efforts along with the other sponsors of H.R. 3945, the CASE Act, in supporting artists and musicians throughout the nation with this important legislation.

The CASE Act will provide a much-needed solution for musicians and other creative artists to defend and protect their rights in a small-claims copyright tribunal established at the U.S. Copyright Office.

AFM Local 47 is proud to support this legislation that provides critical protections for members of the creative community who rely upon commercializing their creative works to make a living. Our thousands of musician members applaud these efforts, and AFM Local 47 looks forward to working toward the successful passage of this important legislation.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Acosta', written over the word 'Sincerely,'.

John Acosta  
President, American Federation of Musicians Local 47

Mr. JEFFRIES. Thank you, and congratulations, Ms. Temple, on your permanent elevation to the position. I continue to appreciate the leadership that you provide. I want to thank my colleagues, Chairman Nadler, Chairman Johnson, Ted Lieu, Doug Collins of course, Congresswoman Roby, and Congressman Cline, for their support of the CASE Act.

Ms. Temple, has copyright infringement increased significantly over the last several years?

Ms. TEMPLE. Well, that is, an issue that we have studied. I think according to some reports, yes, copyright infringement continues to increase steadily, and the type of copyright infringement changes, for example, from, illegal downloading to illegal streaming. So that is something that is a current concern because the more effective laws that we have, the more effective pirates are in trying to circumvent those laws.

Mr. JEFFRIES. Under current law, when there is a claim for copyright infringement, that, of course, must be heard in Federal court? Is that right?

Ms. TEMPLE. Yes.

Mr. JEFFRIES. And that applies regardless of the amount in controversy? Is that true?

Ms. TEMPLE. Yes.

Mr. JEFFRIES. So if the amount in controversy is \$5,000, if someone wants to vindicate that right, they still have to bring a Federal court case, correct?

Ms. TEMPLE. Right, yes.

Mr. JEFFRIES. Now, I think you mentioned earlier today that the average cost of litigating a case in Federal court is approximately \$200,000 if you take it to trial. Is that true?

Ms. TEMPLE. Yes. Yes.

Mr. JEFFRIES. So in many instances, the cost of litigating in Federal court is often higher than the damages that one may be seeking as a petitioner. Is that true?

Ms. TEMPLE. Yes. Yes, it is.

Mr. JEFFRIES. So is it fair to say that as a result of this sort of vexing situation, you have creators, visual artists, others who are left with a right, but no remedy to vindicate that right? Is that true?

Ms. TEMPLE. Yeah, that is one of our key conclusions.

Mr. JEFFRIES. And do you support sort of a less burdensome alternative, such as a small claims court-like tribunal housed within the Copyright Office?

Ms. TEMPLE. Yes, and we issued a full report, as mentioned, recommending the creation of just such a court within the Copyright Office in 2013 with our Small Claims Report.

Mr. JEFFRIES. And in terms of that 2013 report, that system that you recommended I think would be overseen by a panel of three copyright experts called the Copyright Claims Board?

Ms. TEMPLE. I don't know if we called it the CCB, but, yes, it would essentially be the same framework that is in actually the current CASE Act.

Mr. JEFFRIES. Okay. And it would allow petitioners and respondents to participate without an attorney and without necessarily appearing in court. Is that right?

Ms. TEMPLE. Right, and that is the main purpose, allowing people to appear, for example, pro se, so they don't have to spend that \$200,000. Also they might be able to utilize, for example, law students who are able to come in and help them. And I know under the CASE Act, the claims attorneys who are part of that bill would also be able to help guide those who are pro se in how to file their claims as well, which will be a very helpful aspect of the law.

Mr. JEFFRIES. Also do you think that there is value in having copyright experts who will be part of the tribunal sort of assess the merits of a case and determine what, if any, damages would be available in the context of a dispute?

Ms. TEMPLE. Yes, copyright can often be very complex, and that is why we did recommend in our report that the CCB or whatever small claims tribunal, have authority by having expertise in copyright law. So at least two of the people who would be appointed would actually have to have expertise, both representing copyright owners as well as users.

Mr. JEFFRIES. And I think the 2013 report also recommended considering imposing a ceiling on the damages. Is that right?

Ms. TEMPLE. Yes.

Mr. JEFFRIES. And as far as you understand it, does the CASE Act sort of incorporate those recommendations by setting a \$30,000 cap for each dispute, and \$15,000 per work in terms of claims that are brought before the copyright review board?

Ms. TEMPLE. Yes, and that was our exact recommendation in our 2013 report.

Mr. JEFFRIES. Okay. And in terms of the importance of individual artists being able to vindicate their rights under copyright, could you speak to the significance of it? Many of us have noted that Article I, Section 8, Clause 8 of the United States Constitution, which gives Congress the power to regulate intellectual property law in order to promote the progress of science and useful arts, is sort of at the core of the founding of this Nation. And so to have a circumstance where you have artists who have a right but no remedy, and can't vindicate that right seems inconsistent with one of the foundational principles of the United States of America. But I would be interested in your thoughts.

Ms. TEMPLE. I couldn't say it any better. I will say that I certainly agree. We have recognized that individual artists and creators are really the backbone of our copyright ecosystem, and so having a system where those individual artists and creators aren't really able to participate and legally enforce their rights really isn't an adequate system at all. And that is why we do support a small claims tribunal so that those individual artists and creators are able to have a forum in which they can vindicate their rights.

Mr. JEFFRIES. Thank you for your service. Thank you for your testimony. I yield back.

Chairman NADLER. The gentleman yields back. The gentleman from California, Mr. Lieu.

Mr. LIEU. Thank you, Mr. Chair. Thank you, Ms. Temple, for your public service and for being here. My district in Southern California is home to a lot of creators. The Music Modernization Act was very important both to America as well as my district, and I look forward to your office's implementation of it. My first ques-

tion is, how will artists and songwriters and creators be able to comment on or give feedback to your office regarding the implementation of MMA?

Ms. TEMPLE. Yes, so they have already been able to participate and provide comments in response to our designation, or our proposed designation, of the MLC, which is the first regulatory activity we have under the MMA. We have received over 600 comments from individual artists and others interested in providing their views as to which entity should be designated as the MLC. And then after we do designate, there are a number of regulatory implementation activities that we have to engage in.

For each of those activities, we will go through a formal rule-making process where we will seek comments from all of the public and especially, of course, those affected by the MMA, so that they will be able to participate in that process.

Mr. LIEU. So if a creator is watching this and they want to know how to submit a comment, how do they specifically do that? Do you have a website? Do you—

Ms. TEMPLE. Yes, we have a website. In fact, just the day after the MMA was implemented, we put a specific webpage with FAQs about the MMA and the importance of the MMA to individual songwriters. We encourage songwriters and anybody who is interested to come to our website, our Music Modernization website page and actually get further information. They can also sign up for various notices that we put out. Any time, for example, that we do a regulatory process, we will issue a notice. We will tweet about it, but we also send it out to our subscribers so they are aware of it. So we encourage them to sign up with the Copyright Office so they can get those types of notices as well.

Mr. LIEU. Great. Thank you. Once the Mechanical Licensing Collective is stood up, how will it be held accountable for accurately distributing royalties?

Ms. TEMPLE. Yes. I think that there are a number of provisions in the MMA that are critical and important to ensuring that whatever designation is made, that the system and the entity that is designated will be appropriately ensuring that songwriters are actually able to get their royalties.

Again, we will have a number of rulemakings to ensure that the process is working effectively. There are audit right responsibilities in the Music Modernization Act itself that provide that, for example, the MLC will have to provide an audit that will then be made public and sent to Congress, as well as the Copyright Office. And then, again, we do have regulatory authority to help to implement and effectuate the Music Modernization Act if there is something that we feel needs to be clarified, for example.

Mr. LIEU. Thank you.

I would like to ask a question on intellectual property theft. A recent study showed that it was around \$225 billion in cost to the U.S. What are some of your greatest challenges in fighting back against that?

Ms. TEMPLE. I am sorry. I didn't hear—

Mr. LIEU. I am sorry. Against IP theft.

Ms. TEMPLE. Yes. As I said, we aren't an enforcement agency, but, we work closely with the wider United States government to

ensure that, again, the U.S. has strong protections in its law to ensure that we can fight effectively against piracy. I mentioned earlier that, unfortunately, as we update our law, often the pirates update their activities to try to get around our laws. And so one of the critical—critically important things for us to do is just ensure that our law does keep up to date and that we are able to and the Department of Justice is able to, effectively go after the pirates, despite or however they are operating so that we can ensure that piracy does not continue to rise.

And so we are working, continuing to work closely with Congress and with the Department of Justice and others who are interested in ensuring that the laws are kept up to date to be able to address the rising cost of piracy.

Mr. LIEU. Thank you.

So my understanding of NAFTA 2.0 that is being negotiated is that there is a notice and takedown system for infringement, but that if a member state meets certain legislative requirements, that that is sufficient to comply. Do you believe that both Canada and Mexico will be able to comply and actually enforce that?

Ms. TEMPLE. Yes. NAFTA 2.0 has a notice and takedown system. We work closely with the interagency on any trade and treaty negotiations. We participated in the—on the delegations and ensuring that the provisions of the updated do reflect the U.S.'s position in that resulting provision is a good one and terms of the strength of IP laws. And we feel that we are hopeful that our trading partners will be able to effectuate that.

Mr. LIEU. Thank you. I yield back.

Chairman NADLER. I thank the gentleman. The gentlelady from Texas, Ms. Escobar.

Ms. ESCOBAR. Thank you, Mr. Chairman.

Thank you so much for your testimony today and for being here to answer our questions.

Only one entity, the Digital Music Association, has made a bid to become the DLC. The DiMA comprises executives from Apple, Spotify, Google, Amazon, and Sirius XM. Do you think smaller digital music platforms or new entrants have been overlooked by these large corporations?

Ms. TEMPLE. Well, I will say that, the process to be designated as the DLC is an open process. So anyone who wants to be considered as an entity to be the DLC is certainly, or was certainly, allowed to provide a submission to be designated. It wasn't limited to just the larger corporations. It just so happened we only received one submission to be the DLC, unlike the MLC, where we did receive two designations.

Under the MMA, we don't actually have to choose a DLC. The DLC does have to comply with the statutory requirements of the MMA. So we will thoroughly look at the submission that we received from the one applicant and ensure that it does reflect the goals of the statutory provisions. And then we will make a decision as to whether that entity should be designated as the DLC.

Ms. ESCOBAR. Okay. Thank you.

If Congress does not reauthorize the Section 119 license, should it play a role in establishing another market-based alternative, or should the market play out on its own?

Ms. TEMPLE. Yes, we have said with respect to the Section 119 license specifically that, again, that license has really reached its limit in terms of its effectiveness, and we think that the marketplace itself has been able to rise up. So we don't think that there necessarily needs to be an alternative to the Section 119 license, but instead, we think that the free market would be appropriate to allow for those entities who had been using the license to be able to compete effectively.

Ms. ESCOBAR. What impact would the reauthorization of this section have on the Copyright Office, and is there any burden in maintaining the Section 119 license?

Ms. TEMPLE. Yes. As I said, for several years we have recommended to Congress that they sunset that license. We will obviously continue to administer the license and to distribute royalties if the license does remain. But it is something, again, where the royalties under that license are dropping, and they are continuing to drop.

And so we just don't see that license as being an effective way to support the copyright ecosystem. Instead, we think that the free market at this stage, again, is more appropriate.

So we will continue to administer the license if it is reauthorized, but we do strongly believe that over the course of the last few years, it has really been obvious that that license is no longer needed and that it should be allowed to sunset.

Ms. ESCOBAR. Do you think the Section 119 license diminishes the value of copyrights?

Ms. TEMPLE. Well, we have always said that for compulsory license, which does allow for the use of copyrighted works without the permission of the copyright owner, that they should only be done in instances of true market failure.

And so if there isn't a market failure—and right now, we don't think that there is—then we don't believe that the compulsory licenses are needed any longer, and that is how the copyright ecosystem should actually work. And so because there is no more market failure with respect to the need for a Section 119 license, we do think that, again, it is appropriate to allow the market to take over.

Ms. ESCOBAR. And what new legal or policy issues does the office foresee becoming important over the next few years? Are you planning on undertaking any new initiatives?

Ms. TEMPLE. Yes. As I mentioned earlier in my testimony, I think in response to a question, we do have our Section 512 study that is still ongoing that we hope to issue by the end of this year. So looking at how effective the Section 512 notice and takedown regime is with respect to piracy and the balance that it is supposed to effectuate within the system will be, I think, a critical aspect. We may have recommendations to Congress on that issue.

We are also very interested in Congress potentially addressing the issue of illegal streaming. Again, as I mentioned, right now the penalties are really not on par for violations of the unauthorized use of public performances in contrast to the felony penalties that are in our law for violations of the reproduction and distribution rights.

So I think looking at illegal streaming is certainly an area, and we actually did—we just recently received a letter from Congress, from the Senate side on this particular issue that we will be responding to in the upcoming weeks as well.

Ms. ESCOBAR. Thank you, Mr. Chairman. I yield back.

Chairman NADLER. The gentlelady yields back. The gentlelady from Pennsylvania, Ms. Dean?

Ms. DEAN. Thank you, Mr. Chairman.

And may I add my congratulations to you, Director Temple, for your recent appointment. It is terrific and exciting.

I wanted to ask you two areas of inquiry, some of which you have touched upon, but in particular, you mentioned the analysis of overall workforce needs in your 2020 study. So when you look at needs, I am wondering specifically what areas are you looking at, and what do you hope might be some of your takeaways? What are some of the biggest challenges and threats? So a little more information on the 2020 study.

Ms. TEMPLE. Yes, in terms of the Copyright Office workforce needs?

Ms. DEAN. Yes.

Ms. TEMPLE. So one of the things that we have said is that when we are modernizing the Copyright Office, we know it is critical to focus on IT, but we don't want to just focus on IT. We want to modernize our entire systems.

We want to make sure that our workflow and our processes are really being modernized as well. We want to make sure that we have the right positions that reflect either our new IT systems or the new ways that we are going to have to do our job.

So right now, we do have—we are working on having several contractors come in to assist us with that process. We already have the Office of Personnel Management in our office right now, which is looking at our position descriptions and our positions to make sure that, for example, they are adequately graded, that we have enough. They will be in our office until 2020, and then they will issue a study on that issue.

Then we are also going to be engaging with a contractor to help us with business process reengineering, looking at the workflow aspects of our office to make sure again that we have the most effective and efficient processes. And then we are finally looking at organizational change management. We are going to bring in a contractor to help us with that area as well.

We understand in a business transformation of this magnitude, it is critical that we have the buy-in of all of our staff and that they understand how their positions may change and are supportive of that. And so we are going to have a consultant come in to help us with that.

So we have a number of areas that we are working on to support IT modernization and modernization of the office as a whole that really aren't focused exclusively on the IT development side.

Ms. DEAN. Are you also looking at diversity and inclusion across the board in the organization? I serve on the Diversity and Inclusion Subcommittee in Financial Services. And it is interesting to take a look at organizations. I had a roundtable in my district. We

had business. We had law enforcement. We had educational leaders.

As part of your study, are you looking also at that, not just percentage of diversity—women, people of color, those who are disabled, all kinds of diversity—but across the spectrum of the Copyright Office?

Ms. TEMPLE. Yes. You know, I take those issues very seriously, myself personally. We are working with the Library. The Library actually just did develop a group, Library wide, to look at diversity and inclusion issues. So we have a—my senior adviser, actually, a direct report of mine, is actually working on that group.

So she is going to be helping the Library, Library-wide in terms of those initiatives and is also spearheading those initiatives for me personally within the Copyright Office.

Ms. DEAN. Some of my common sense takeaways from having conversations about that is, number one, sometimes people just think their offices are diverse, and then they actually take a moment to look around, and then they find they aren't. So it is being sort of deliberate and intentional about making sure you are looking at that.

And number two is sort of setting goals. So I am delighted you are looking at that.

I will flip real quick in the one minute I have remaining. Can you tell us about any plans you have to evaluate or potentially outsource additional functions, privatizing any functions that you might be doing, or are you trying to, in your overall study and modernization, not do that kind of outsourcing?

Ms. TEMPLE. We think that it is important that the copyright system of the United States is run by the United States and is controlled by the Copyright Office. So that is the main focus. We are, of course, looking at creative options for resources and funding.

So, for example, we are exploring the possibility of no-cost contracting as part of the way to fund our IT modernization. So while we think it is important to maintain the Copyright Office IT systems within the Copyright Office, we are certainly willing and are looking right now at ways to creatively fund the development of that system.

Ms. DEAN. Terrific. Thank you, Director Temple.

Thank you, Mr. Chair. I yield the remainder of my time.

Chairman NADLER. The gentlelady yields back the remainder of her time. The gentlelady from California, Ms. Bass.

Ms. BASS. Thank you, Mr. Chair. And let me join everyone else in congratulating you on your position, and I enjoyed our conversation, look forward to working with you.

Ms. TEMPLE. Thank you.

Ms. BASS. The Music Modernization Act presents a unique opportunity to address inequities artists of color have faced for decades due to a lack of access and representation. Today, there has been a 72 percent increase in on-demand audio streaming. Hip hop surpassed rock as the most popular in terms of total consumption in the United States, and 9 out of 10 most streamed songs in 2018 were hip hop songs.

African-American and Latinx artists, hip hop and R&B accounted for 29.7 percent of all streams in 2018, more than doubling rock.

This is also at a time when Latin music has experienced record-breaking revenue growth due to streaming in both English and Spanish.

The MLC will be tasked with ensuring that owners of music composition copyrights receive royalty payments and maintain a music ownership database that will allow copyright owners to stake claims to their songs. So it is critical that the thought leadership driving this process reflects every type of music copyright owner. So when considering an entity responsible for the Mechanical—excuse me—Licensing Collective, have you considered the issue of diversity or encouraged diversity in its leadership?

Ms. TEMPLE. I will say, yes, that is certainly an issue that we have heard some concerns about from some of the commenters who have participated in our rulemaking process. We—by statute, of course, the entity that is designated as the MLC does have to represent, be endorsed by, and be supported by the largest number of musical work copyright owners or the largest percentage of musical work copyright owners. And so that will by statute ensure that the MLC does have a diverse representation in terms of the types of artists that it will have on its board.

We did receive one comment, or a couple of comments, about just the diversity in terms of ethnicity and race on the board as well. We were pleased that in response to those comments, we did ask questions of both MLCs, and both who have proposed to be designated as the MLC have actually submitted comments to us committing to actually having a diverse and considering a diverse board. So we are very pleased by the response that we received from both of the entities proposing to be designated that this is an issue that they take seriously.

Ms. BASS. Excellent. Excellent. Thank you.

Some have argued that the new blanket licensing system flips the burden from digital service providers to the rights holders and songwriters. Jeff Price, a board member of the American Music Licensing Collective, which is one of the candidates for the Mechanical Licensing Collective, said that, “Unlike before, where the digital service providers would have to find you and pay you, now you have to know about the MLC, regardless of where you are on the planet.”

So how do you respond to these concerns, and are they addressed in your designation process?

Ms. TEMPLE. Well, I think that partially they are actually addressed in the Music Modernization Act language itself. There is an obligation on the part of the entity that is designated as the MLC to make sure that they do outreach activities to alert songwriters to the need to sign up with the MLC.

Ms. BASS. Do you know how they would do—how they would conduct the outreach?

Ms. TEMPLE. Yes. That is something that we did actually ask for information on from both of the designees, and so that is actually in terms of how they plan on doing it, and that is something that anyone can go on our website and see some of their plans in terms of outreach.

They are also supposed to work with the DLC once it is designated, and the DLC itself is also supposed to provide outreach ac-

tivities to those who come to their platforms, letting them know that the MLC exists and that they are encouraged to sign up. And then, separately, the Copyright Office also has statutory responsibilities under the MMA to provide outreach and education activities.

And so we are committed, once the designation occurs, to take seriously those activities and really ensure that we can do our part in supporting the operation of MLC and ensuring that songwriters are aware of the need to participate to ensure that they are able to get paid and get their royalties.

Ms. BASS. And do you have a way of monitoring how that outreach is going?

Ms. TEMPLE. Well, as I mentioned earlier, you know, one of the main issues is to ensure that there are not a large number of unclaimed funds remaining in the MLC, and that is why it is important for us to conduct a study on best practices, to reduce the amount of unclaimed funds. And so I think that will be a key area, us reviewing the practices of the MLC once it is designated, as well as best practices overall, and making recommendations to Congress and to the MLC itself in terms of, again, best practices to reduce the amount of unclaimed royalties that they might have.

Ms. BASS. Thank you very much.

Chairman NADLER. The gentlelady yields back. The gentleman from North Dakota, Mr. Armstrong.

Mr. ARMSTRONG. Thank you, Mr. Chairman.

I know you had spoken with Mr. Cline and Mrs. Roby and touched on digital piracy, and you spoke to the Copyright Office's role on this subject. I would like to highlight some findings from a recent U.S. Chamber of Commerce, and NERA Consulting issued a study on the impacts of digital video piracy on the U.S. economy.

As of 2018, there were more video streaming subscribers compared to paid TV subscribers and approximately 500 licensed online video portals. Twenty-six-point-six billion viewings of U.S. films were digitally pirated each year, costing over \$29 billion annually. You mentioned that this harms not only the content creators, but also the broader economy. And I know that your office is not the enforcement agency, but can you explain current enforcement authority to prevent such piracy?

Ms. TEMPLE. Yes. The current enforcement authority is handled by the Department of Justice. Again, as I mentioned earlier, we do work with them closely on policy issues with respect to IP rights and updating our laws. We also work closely with the Department of Justice, the Patent and Trademark Office, and other parts of the interagency to ensure that our trading partners also have strong IP laws in their regimes. And so that is one thing that we do when we support the interagency on treaty and trade negotiations to, again, ensure that the global copyright ecosystem does protect strongly the copyrights of individuals and of businesses.

Mr. ARMSTRONG. And I am assuming pirating technology, I mean, it is a constant battle. Which would be to my next question and no matter how many enforcement agents we have, I mean if there is 26.6 billion pirated viewings, I mean, you are not going to get it at the viewer side. You have to get it where it is being pirated. I mean, I just can't imagine the monumental task that this is.

Ms. TEMPLE. Yes. It certainly is a monumental task, and I think that is why there is just not one way to address it. Certainly, making sure that we have a strong IP framework is an important aspect of it, but we are also encouraged by voluntary initiatives where the digital platforms and content creators are working together voluntarily to address this issue. So that is another area that can really help to combat the rising piracy as well.

Mr. ARMSTRONG. And you recommended that we continually update our laws to keep up with piracy. What policy changes can we make, either in the laws themselves or allowing these agencies to adapt more quickly to better protect this content?

Ms. TEMPLE. Yes, as I said, making sure that we are reflecting the way that piracy occurs is one of the most important things that we need to do. So updating our laws, for example, to provide for felony penalties for illegal streaming is something that, again, we strongly support and have supported in the past. We are, as I mentioned earlier, also reviewing the notice and takedown regime of Section 512 to see whether it is still providing the balance that Congress intended and whether there are areas that need to be tweaked either through legislative change or through additional voluntarily initiatives. And so those are some of the ways that both Congress and the Copyright Office can help to ensure that piracy is combated.

Mr. ARMSTRONG. And I guess this is just kind of my last question, and I am not sure there is an answer for it. But we do a really good job of—well, I hope at least sometimes we do a really good job of dealing with the issue in front of us. But in this universe, how do we promulgate policy that allows us to deal with something we don't even know exists yet that could come on the horizon in 6 months?

Ms. TEMPLE. Right. That, again, is the perennial issue in terms of trying to get ahead of the pirates. Any time we have new technology, new technology can often be used by pirates as well. So I think, again, having a multipronged process to get out ahead of it is important, ensuring that our copyright laws are kept updated, but also ensuring that there are effective ways for the industries themselves on a voluntary basis to work together to address piracy is an important aspect as well.

Mr. ARMSTRONG. Thank you. I yield back.

Chairman NADLER. The gentleman yields back. The gentlelady from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

It is stunning that we have not had a hearing since 2015. So I congratulate the Chairman and Ranking Member for a very important hearing. And as well, congratulate Ms. Temple for her appointment, moving from so many different positions, but now the person. And so, again, congratulations to you and your team.

I, too, want to focus on the Music Modernization Act and also the question of modernization dealing with the technology in your office, which I think is extremely important, the status of the Copyright Office IT. And at the same time, what kind of firewalls are you putting in place to avoid hacking, the infringement from foreign adversaries, to be very honest, because what you have may

have some measure of intelligence to it in terms of its quality or value to international operators.

But let me raise this point. Some have argued that the new blanket licensing system flips the burden from digital service providers to the rights holders and songwriters. Jeff Price, a board member of the American Music Licensing Collective, AMLC, which is one of the candidates for the Mechanical Licensing Collective, said that, “Unlike before, when the digital service providers would have to find you and pay you, now you have to know about the MLC, regardless of where you are on the planet.”

So how do you respond to these concerns, and are they addressed in your designation process? Question number one. And Price also estimates that the new system could leave \$4 billion to \$5 billion of accrued royalties undistributed, which concerns me. I have lived with the music licensing issue and trying to balance it for many years in this committee, and we did make great progress in the past year.

Price also estimates—and so what measures can be taken to ensure that rights owners are properly compensated and not unduly burdened in collecting that compensation?

Ms. TEMPLE. Yes, thank you for the question.

This, again, is a very important one, and it is a critical part of whatever entity is designated, that they ensure that they reduce the amount of unclaimed royalties. I will say that we are unaware of where Mr. Price got the figure of \$4 billion to \$5 billion. That did not come in any of the comments that we received in terms of the possibility of unclaimed royalties. So we would be interested in terms of where that estimate is coming from.

But we do think, again, that there are specific provisions in the statute that will help to reduce those unclaimed royalties. Again, in addition to this having to be a priority of whichever entity is designated, by statute the entity has to create an unclaimed royalties committee to review these issues. They have to provide audits to ensure that they are operating effectively. Those audits are going to be made available to Congress and to the Copyright Office.

And then, again, we will be undertaking a full study that will seek comments from all of those who are affected by the MMA to ensure that there are best practices implemented by the MLC to reduce the amount of unclaimed royalties. And again, that study will be issued in July of 2021.

Ms. JACKSON LEE. So your action item would be that you will be studying the processes that have been established. Well, let me follow up by saying under Title I of the Music Modernization Act, digital music providers, such as Spotify and Apple Music, will soon be able to obtain a blanket license. So how will the Copyright Office help ensure that the transition to the blanket license system will be seamless?

Ms. TEMPLE. Yes. We are committed to helping to make sure that that process works effectively. We, again, immediately upon the passage of the MMA, issued certain rules and regulations that were required primarily for the pre-1972 sound recordings part of the MMA and then now are in the process of implementing regulations for the Section 115 aspect of the MMA.

Once we designate the MLC and the DLC, we will then work closely on implementing regulations. Again, we have to do regulations on the form and type of notices, of the blanket license, the form and type of notices of license activity, usage reports, usability issues, interoperability issues, as well as privacy and consideration of privacy and confidential information.

Ms. JACKSON LEE. Let me—

Ms. TEMPLE. So we have a lot to work to do.

Ms. JACKSON LEE. Right.

Ms. TEMPLE. And we are committed to doing it.

Ms. JACKSON LEE. Well, let me get these two other questions in. Let me try to understand how your IT is working to avoid breaching and security breaches. And then, two, your outreach to minorities who need that kind of outreach as you go forward to understand this process.

Ms. TEMPLE. Yes. So in terms of IT modernization and the security of our systems, that is a primary goal of our office, to ensure that our systems are secure. We obviously take in a lot of very important and valuable information both information as well as the data and deposits themselves. So we think it is critical that the Copyright Office—

Ms. JACKSON LEE. Minority outreach?

Ms. TEMPLE. Hmm?

Ms. JACKSON LEE. Minority outreach?

Ms. TEMPLE. And minority outreach. In terms of minority outreach, again, that is a critical area. We are expanding and have expanded our outreach and education program recently. We just recently had some students from the Hispanic Bar Association in our office to encourage them to seek IP law as an appropriate career.

I just recently spoke at the Howard University about copyright and social justice, which is something that a lot of people don't equate copyright with, but copyright is an aspect of social justice. So that is an area that I personally am interested in and that we have been pursuing in recent months as well.

Ms. JACKSON LEE. Thank you, Mr. Chairman. Thank you very much. Congratulations.

Ms. TEMPLE. Thank you.

Chairman NADLER. The time of the gentlelady has expired. The gentleman from Florida, Mr. Deutch.

Mr. DEUTCH. Thanks very much. Mr. Chairman, thanks for holding the hearing.

Thanks to our witness for being here, and congratulations on your formal nomination.

I know you have been doing the job for quite a while, and I appreciate your service and willingness to lead the office into the 21st century. I just want to follow up on some of the questions that my friends Mr. Nadler and Ms. Jackson Lee have already touched on.

As co-chair of the Songwriters Caucus with my friend Congresswoman Roby, we meet with songwriters from across the country, and there has been a good discussion about the MLC and compiling the information for the MLC and matching the information of songwriters. I just wanted to make sure I understood.

On the issue of market share, market share is going to be determined based on streaming and ownership information. But obvi-

ously, if the database isn't complete, then payments could end up poorly representing the actual marketplace. The statute provides discretion.

I just wanted to reemphasize some of what has already been discussed about the focus being on making sure that this is done right, obviously. Not focusing solely on accomplishing a task in time for a deadline, which would then lead to rushing to make payments from unmatched funds before the database is complete, as complete as possible anyway, and making sure that the pool is as small as possible.

That is—that is the way you are approaching it, and I just want to confirm that.

Ms. TEMPLE. Yes, and we were again pleased that both of the entities that wanted to be designated as the MLC agreed with the interpretation that unclaimed funds cannot be distributed until 2023. So that will actually ensure whoever is designated as the MLC has time to actually develop a framework to reduce the amount of unclaimed funds.

Mr. DEUTCH. Great. I appreciate that.

Second, as you know, Cloudflare is a large company that provides a number of services related to Internet security and the delivery of content over the Internet. There is no doubt services are valuable to its many legitimate, law-abiding customers. Indeed, I have recently seen reports that the Copyright Office uses its services as well.

I have also seen, however, some concerning reports of what appears to be a darker side of the use of Cloudflare describing its widespread provision of services to known bad actors, including hate speech sites, counterfeiters, even terror groups, according to one of the reports that I read. And I just ask whether you would agree to review the Copyright Office's use of Cloudflare in light of these really disturbing reports.

Ms. TEMPLE. That is an important question. As you know, post centralization of IT was in the Library. Those issues are decided by OCIO, the Librarian's OCIO. We have raised this issue, in light of stakeholders' concern, with OCIO that some have questioned the use of that particular entity, and so we are hopeful that they will review that issue.

Mr. DEUTCH. So you have raised it and asked them to do what?

Ms. TEMPLE. We asked them to review the issue to see if it is appropriate for them to use that entity.

Mr. DEUTCH. Okay. I appreciate that, and we would appreciate being kept abreast of that analysis as well.

I would like—I would like to ask about the fast-paced nature of creation and publication online today. Photojournalists obviously tweet images of breaking news. Artists and poets post moving works on Instagram. Authors now write on blogs. And this modern-day publishing is done in an instant.

And the tools make it incredibly easy to share creative content online, but obviously, there are challenges for your office. If you could talk about some of the challenges and opportunities that you see as you work to keep pace with protecting those creators who share their work online who are doing really important work, creators who are fortunate to have copyright protection. But if they

don't have the benefit of statutory damages, their work then in the blink of an eye is then put at risk.

So if you could just talk about how you see this going forward?

Ms. TEMPLE. Yes. And we know that this is a critical issue. Obviously, in order to get statutory damages, they have to have registered within a certain amount of time with the Copyright Office, and so we want to make sure that, again, as we develop a modernized system, we make it as easy as possible to register and also to register, you know, a high volume of works.

We understand, for example, photographers will take thousands of pictures in one session. Right now, we have a group registration option for photographers that does allow them to provide up to 750 photographs with us at one time, and that is to ease the burden of individual filings of copyright registration applications.

In the future—

Mr. DEUTCH. If I can just ask, has that been successful since February when it was implemented?

Ms. TEMPLE. It has been successful in the sense that it allows the Copyright Office to adequately use its resources to, handle a large volume of photographs. We do understand that there are some concerns by photographers that that number is too low. And so one of the things that we are looking at as we that continue to modernize is whether there are ways that we can use technology to more quickly review those types of claims where they are high-volume claims.

And yes, we would be able to raise that limit beyond 750 if we are able to use technology. One of the things that we would love to do is, for example, allow people to register through their mobile telephone so that they are able to do it easily, use API to be able to be interoperable with our office. So those are some of the areas that we are exploring in terms of modernization right now.

Mr. DEUTCH. Terrific. Great. Thanks very much.

Ms. TEMPLE. Thanks.

Chairman NADLER. The time of the gentleman is expired. The gentlelady from Texas, Ms. Garcia.

Ms. GARCIA. Thank you, Mr. Chairman.

And Ms. Temple, thank you for being here. I would like to congratulate you, and I do apologize. I did have another hearing that I am sort of bouncing around from one to the other. But, so if I ask anything that you have already talked about, please excuse me.

But I wanted to start with picking up where my colleague and fellow Houstonian left off, Congresswoman Sheila Jackson Lee. In the blanket license that you are going to be able to give now to Spotify and Apple Music, is there a reason that a blanket license was chosen versus the old song-by-song licensing, and will that cause any additional challenges for you?

Ms. TEMPLE. So a blanket license was chosen to really further effectuate the efficiency of the music 1854 licensing system. The old song-by-song license, as you can realize, these individual services are using millions and millions of works. So if they cannot find the songwriter or copyright owner in our database, they will have to file it.

For example, they had to file notices with the Copyright Office to be able to get a license under Section 115. We received in mil-

lions of individuals NOIs, pursuant to that song-by-song license approach. And so that really was not the most efficient way to market or music licensing under—

Ms. GARCIA. Do you see any issues arising from that?

Ms. TEMPLE. Arising from the—

Ms. GARCIA. From doing the blanket license?

Ms. TEMPLE. No. This is, again, something that the Copyright Office has reviewed for several years. We supported the creation of a blanket license under Section 115 for many, many years even before our Section 115 report in 2015. So this is something that we think will actually further support the efficiency of the music licensing market and actually allow songwriters to get paid more effectively.

Ms. GARCIA. Right. And then I wanted to also talk a little bit about the piracy issue. I realize that DOJ does the enforcement. You do not. But what steps are you taking or are you taking any steps now to kind of monitor and create the data, and can you share with us today if there is—since you started doing it, if you are already doing it, how big the increase is? Is it as big as we think, or we don't even know the full of it?

Ms. TEMPLE. I don't want to get out ahead of us in terms of the fact that we are right now—in the process of completing our report on Section 512, and so we will have some more specific data once that report is released.

Ms. GARCIA. When will that be released?

Ms. TEMPLE. So that will be released by the end of this year.

Ms. GARCIA. Okay.

Ms. TEMPLE. And so that is, again, one of the areas that we are working on in the policy side to ensure that our laws are kept updated to deal with piracy. Again, we also work with the interagency to ensure that our copyright framework, both domestically and internationally, is strong. So we do support delegations for treaty and trade negotiations as well.

And then, finally, I think the U.S. government has been interested in supporting, if it can, voluntary initiatives between digital platforms and content creators to see if there are things that they can do even outside of specific laws to address this issue voluntarily.

Ms. GARCIA. Well, but to assure the public today, I mean, you are telling me that you are monitoring—

Ms. TEMPLE. Yes.

Ms. GARCIA [continuing]. And you are looking at it. And you look at it not only here in the continental U.S., but you are looking at it globally?

Ms. TEMPLE. Yes. We have a full international policy affairs department that helps assist the rest of the United States government as they look at these issues. We often review, for example, the laws of other countries to see if they reflect the strong IP framework that we have here in the United States, and we will provide suggestions to them to consider as they are updating their laws to ensure that that they are effectively addressing piracy as well.

Ms. GARCIA. And you, as a representative of the United States, are fully engaged and fully participating in any global forums or, you know, coalitions that are looking at this topic?

Ms. TEMPLE. Yes. We, you know, by statute participate in foreign delegations, as mentioned. We work very, very closely with the United States Trade Representative. We also serve on delegations to the World Intellectual Property Organization. So that is something that we do regularly.

Ms. GARCIA. Right. Very quickly, I just want to go on record as being supportive of the small claims court. I think anything we can do to make it easier for the average, everyday American to be able to go through this process would be very helpful to many people that we represent, and I hope that you can support that and assist in any way you can if that were to become the law.

Ms. TEMPLE. Yes. We do fully support that.

Ms. GARCIA. All right. Thank you.

Yield back. Thank you, Mr. Chairman.

Chairman NADLER. The gentlelady yields back. The gentlelady from Arizona, Ms. Lesko.

Ms. LESKO. Thank you, Mr. Chairman, and thank you, Ms. Temple.

And I think since you are going to be done pretty soon because I think I am the last one over here at least. I think there was questions already answered because I was going to talk about STELAR and the reauthorization or your recommendation not to reauthorize it. And I was told somebody asked you what will happen to the satellite subscribers that utilize Section 119 license. But more specifically, you know, I have concerns about maybe the people that have recreational vehicles, truckers, those type of folks. What are their options going to be, and are you considering grandfathering in some customers?

Ms. TEMPLE. As I said earlier, we looked at this issue for many years. We do think that the usage of that license has really dropped significantly so that there will not be a significant market harm to those rural communities that rely—have relied on the license in the past and that the free market will allow for other entities to come up and to allow for the actual usage of various satellite transmission. So we don't think that it needs to be done rather through a compulsory license, but it can be done through the free marketplace.

Ms. LESKO. And Ms. Temple, since I wasn't here for your answer, how many people, how many consumers utilize that service?

Ms. TEMPLE. So, right now, I think it was mentioned earlier that there was an estimate that there were about 800,000 subscribers, and I think you mentioned that in your testimony as well. One of the issues that we recognize is that it is not clear and we did ask, I think, that question of the services exactly what types of subscriptions they are reflecting. Are they household subscriptions or others?

And so that is one issue that we are seeking further information on.

Ms. LESKO. And Mr. Chairman, I guess I just want to say please keep in mind these people. And even though it is a relatively small number, I know that when the service is taken away, I assume

they are not going to be happy. So if we can get some more information on that, and I will try to find out how many of these subscribers are in my district. And so thank you very much, Ms. Temple, and I yield back.

Ms. TEMPLE. Thank you.

Chairman NADLER. The gentelady yields back. The gentelady yields back.

There being no further questioners, this concludes today's hearing. We thank the witness for attending and for her work.

Without objection, all Members will have 5 legislative days to submit additional written questions for the witness or additional materials for the record.

Without objection, the hearing is adjourned.

[Whereupon, at 11:45 a.m., the committee was adjourned.]

## **APPENDIX**

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**Questions for the Record**  
**Hearing on Oversight of the U.S. Copyright Office**  
**Rep. Jerrold Nadler, Chairman**  
**Committee on the Judiciary**

1. Please provide more information on the process by which funds for the Copyright Office are transferred to the Office of the Chief Information Officer of the Library of Congress. In particular, please provide information detailing the processes the Copyright Office employs to approve and track the use of those funds, and any steps taken to ensure that all Copyright Office funds go towards supporting only Copyright Office IT needs.
2. What is the Office of the Chief Information Officer's current approach to IT development? How does this approach impact the Copyright Office's own processes and business needs?
3. What processes allow for communication and feedback between the Copyright Office and the Office of Chief Information Officer regarding IT system development?
4. Which entity has final say on Copyright Office IT requests – the Copyright Office or the Office of the Chief Information Officer?

## Rep. Collins QFRs – Copyright Hearing

1. In your testimony, you talk about undertaking a policy study regarding best practices that the mechanical licensing collective may implement in order to identify, locate, and pay out royalties to musical work copyright owners with unclaimed accrued royalties held by the collective. I think we would all agree it is critical to ensure songwriters are being paid the royalties they are due, and that the MLC is matching royalties with the songwriter or songwriter.

How do you see this policy study contributing to those efforts, and are there other steps that can be taken in the short, medium, and long term to ensure that stakeholders are doing their part to meet the goals of the MMA and that songwriters are efficiently being paid the royalties they have earned?

2. One of the problems that motivated us to pass the Music Modernization Act was the problem of rate-less licensing – where a digital service provider could file an NOI with the Copyright Office and use music without paying for it. The Music Modernization Act ended that practice, instead simplifying the process for DSPs to license music and songwriters will get paid.

Has the office stopped receiving NOIs for digital uses? Can you tell us how many NOIs were received in total before the office stopped accepting them?

3. We live in a digital world where piracy happens in a matter of seconds. Copyright registration takes months.

The Supreme Court recently said that a copyright owner can't sue to protect his or her rights until the Copyright Office has issued a registration. Chairman Nadler and I wrote to you to express our concern about this, and I want to thank you for your thoughtful response and your efforts to get pendency down, but I am still concerned that is not going to be enough to protect creators, who can be deprived of their rights—their livelihood—for months while waiting for the process to play out.

One area that we may warrant attention comes in the context of takedown notices under the DMCA. Once a takedown notice is sent to a platform pursuant to the DMCA, the platform notifies the user, who can then send a counternotice arguing that whatever he or she posted is not infringing. The law then gives the platform 10-12 days to re-post the material in question *unless a lawsuit has been filed* during that period.

But under the new Supreme Court ruling, my understanding is that it wouldn't be possible to file a lawsuit during that period if there isn't already a registration. As we examine this issue, would you commit to working with us to review this apparent statutory conflict?

**Congressman Greg Stanton**  
**Submission of Questions for the Record**  
**Hearing: Oversight of the Copyright Office – June 26, 2019**

**Music Modernization Act**

1. The MMA also creates a Digital Licensee Coordinator position—or “DLC”—to represent the interests of digital licensing platforms.
  - a. How should the interests of digital music services be balanced against those of rights holders and songwriters?
  - b. What interaction or collaboration do you expect the DLC to have with the MLC, and what will be the Copyright Office’s role in overseeing that relationship?

**Expiration of the Distant Signal Satellite Television License**

1. In 2011, the Office wrote a report providing recommendations for how to responsibly repeal the retransmission statutory licensing provisions in the Copyright Act, including the section 119 license. Back then, one of the Office’s recommendations was that Congress should provide a date-specific trigger and transition period for the phase-out of the section 119 license that builds in “sufficient time for a measured and orderly transition period.”
  - a. What has influenced the Office’s shift in its view that immediate expiration is preferable to a transition period to eventual phase-out?
  - b. If Congress were to allow a transition period, what should that transition period look like and how long should it last?

**Miscellaneous**

1. The U.S. Chamber of Commerce and the economics firm NERA recently released a report finding that digital streaming piracy is annually costing the United States between 29 and 71 billion dollars in lost domestic revenues, between 230,000 and 560,000 in jobs, and between 45 and 115 billion dollars in GDP. How is the Office monitoring or addressing this threat of increasing piracy?

**Questions for the Record**  
**Hearing on the Oversight of the Copyright Office**  
**Committee on the Judiciary**  
**U.S. House of Representatives**

**Questions from Chairman Jerrold Nadler:**

- 1. Please provide more information on the process by which funds for the Copyright Office are transferred to the Office of the Chief Information Officer of the Library of Congress. In particular, please provide information detailing the processes the Copyright Office employs to approve and track the use of those funds, and any steps taken to ensure that all Copyright Office funds go towards supporting only Copyright Office IT needs.**

Under the Library's centralized information technology (IT) structure, the Librarian of Congress has made the Chief Information Officer (CIO) the final authority for all technology matters for the agency and its component Service Units, including the Copyright Office. Under this model, the Copyright Office transfers its appropriated Copyright IT modernization funds to the Office of the Chief Information Officer (OCIO) through an intra-agency agreement (IAA). The Copyright IT Modernization IAA is accompanied by a memorandum of agreement, signed by both the Register of Copyrights and the CIO. The IAA lists the specific modernization contracts for which funding is provided, and the IAA is subject to Economy Act requirements and restrictions. OCIO does not receive funding for Copyright IT development activities conducted by OCIO FTE staff, although this is contemplated for future activities through use of NTEs. Non-IT Copyright modernization projects are directly managed and funded by the Copyright Office.

As the business owner for the systems being modernized, the Copyright Office is responsible for identifying the high-level IT system requirements for Copyright modernization. From those requirements, the Copyright Office and OCIO work together to establish the IT acquisitions funded by the IAA. Development efforts are conducted in close collaboration between OCIO and the Copyright Office, with OCIO providing the Copyright Office and the Library's Chief Financial Officer (CFO) regular input on financial management, including obligation amounts, obligation dates, and relevant contract award information. Modifications to project plans and changes in contract estimates that affect the IAA are coordinated through the Library CFO. The OCIO also provides status updates for the modernization projects that are under its control.

OCIO is in the process of shifting its development approach from a largely contract labor model to an NTE model that leverages federal staffing. OCIO believes the change is necessary to provide greater flexibility in project management and to ensure continuity of effort throughout development projects. The Library's CFO, Office of the General Counsel (OGC), and OCIO are assessing the methodology under which direct OCIO labor charges will be reimbursed by Library Service Units. The full process for managing future year IT modernization activities (FY2020 and beyond) is still being developed by the Library and will adhere to government auditing requirements.

Additional Response from the Library of Congress

The Library's CFO is responsible for ensuring that all Library of Congress funds are spent according to appropriations law. As noted in the Modified U.S. Copyright Office Provisional IT Modernization Plan,<sup>1</sup> under the applicable Library of Congress Regulation (LCR), the Library ensures that all of its IT activities (i) are designed to align all Library IT investments with strategic and budget planning and enterprise architecture (EA), (ii) are conducted in a framework for effective IT investment decision-making and investment management, and (iii) are managed with integrity and effectiveness.<sup>2</sup>

The Library follows the IT investment management (ITIM) framework, as laid out in an LCR. ITIM is a means to provide a common structure for discussing and assessing IT capital planning and investment control practices at federal agencies. The Library recognizes that having consistent ITIM throughout the agency is critical to the achievement of its mission. Under the ITIM framework, Service Units are responsible for identifying business needs as they relate to IT projects, while OCIO is responsible for assessing the technical requirements and financial costs of those projects, which is then used in decision making about resource allocation across the Library. The Library's ITIM framework is used to document IT investment opportunities, identify areas where consolidation can be encouraged and duplication can be avoided, evaluate the strategic alignment and expected value of proposed IT investments, and track the progress and results of operationalized IT investments. This ITIM framework supports full lifecycle management of IT investments to include budget planning, IT resource management, IT acquisitions, IT delivery, and IT program oversight.

As recommended by the Federal IT COST Commission, OCIO is also implementing the Technology Business Management (TBM) framework, which provides greater transparency into the business value of IT services and provides common definitions and standards for classifying and categorizing IT resources and costs. While the Library anticipates that full maturity with TBM will take several more years, aligning IT and finance through TBM is already providing greater effectiveness and more insight into the management of the Library's IT resources.

**2. What is the Office of the Chief Information Officer's current approach to IT development? How does this approach impact the Copyright Office's own process and business needs?**

In October 2016, the Library of Congress centralized the IT processes of all its Service Units, including the Copyright Office.

<sup>1</sup> The investment management approach that the Library uses for U.S. Copyright IT Modernization efforts is noted in the *Modified IT Plan* issued by the Office in 2017. See U.S. COPYRIGHT OFFICE, MODIFIED U.S. COPYRIGHT OFFICE PROVISIONAL IT MODERNIZATION PLAN: ANALYSIS OF SHARED SERVICES, SUPPORT REQUIREMENTS, AND MODERNIZATION EFFORTS 10 (2017), available at [copyright.gov/reports/itplan/modified-modernization-plan.pdf](http://copyright.gov/reports/itplan/modified-modernization-plan.pdf) ("MODIFIED IT PLAN").

<sup>2</sup> Library of Congress, LCR 5-110, Information Technology Resource Management, 3.A.1.

Many members of the Copyright Office's IT staff were transferred to OCIO during the centralization process. In January 2018, the Copyright Office created the Copyright Modernization Office (CMO) to serve as our liaison on IT needs and coordinate modernization efforts across the Office and with OCIO. The CMO is tasked with analyzing and documenting the Copyright Office's modernization needs from a business perspective, coordinating Copyright Office organizational change management, and ensuring that IT modernization activities are continuously aligned with the Copyright Office's strategic goals.<sup>3</sup> As directed by Congress, the Copyright Office has extensively engaged with OCIO "to achieve efficiencies in shared services, while allowing for mission-specific modernization to be the responsibility of the Copyright Office."<sup>4</sup>

At the strategic level, the Office must now coordinate long term IT planning with the Library's new IT Governance and IT Investment Planning processes, which entrust strategic prioritization of IT investments to a Technology Strategy Board (TSB). Under the Library's IT governance strategy, the TSB "sets strategic priorities for the development and use of information technology (IT) based on the Library of Congress Strategic Plan and Library of Congress Digital Strategy; and ensures that Library IT investments are fully transparent and properly aligned with strategic objectives and business needs." The TSB is comprised of the Library's executive leaders, including the Register of Copyrights, and co-chaired by the Principal Deputy Librarian of Congress and the CIO. The ultimate authority for all Library investments remains with the Librarian of Congress. The Librarian has delegated to the CIO final authority over all technology matters for the agency. All large IT project investment requests from Library Service Units, including the Copyright Office, must go through the Library's IT governance process for approval by the CIO and the Principal Deputy Librarian of Congress. If a project is denied, there is an appeal process to the Librarian.

The Copyright Office understands the need for effective governance mechanisms in this centralized structure. As we move forward with modernization, the Copyright Office is committed to working with the Library to raise IT issues before the TSB that affect the Copyright Office's processes and business needs. The Office is hopeful that any challenges in transparency, communication, and project prioritization among Library Service Units will be promptly addressed in order to ensure that development activities across the Library are successful.

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<sup>3</sup> Creation of the CMO was in accordance with the *Modified IT Plan* issued by the Office in 2017. See MODIFIED IT PLAN at 4–5.

<sup>4</sup> S. REP. NO. 115-274, at 43 (2018). See also H.R. REP. NO. 115-696, at 18 (2018) ("The Committee continues to support the collaborative work between the United States Copyright Office (USCO) and the Library of Congress's Office of the Chief Information Officer's Office (OCIO). Copyright modernization is something the Committee fully supports and will continue to provide requested resources towards. The Committee does have concerns that thus far the investments have not yielded many public-facing Copyright modernization enhancements. However, the Committee's understanding is that the Copyright modernization work to date has been behind the scenes building a strong foundation for the long-term modernization strategy. When appropriate USCO is encouraged to engage with stakeholders both in the Congressional-community and beyond to highlight the progress that has already been made and to outline clear benchmarks for progress moving forward.").

Apart from the TSB structure itself, the Copyright Office is working with OCIO and other Library offices such as the Contracts and Grants Directorate (CGD) to improve communication and transparency about Copyright Office projects and IT development so that the Office is kept fully informed of changes to the schedule, budget, and features of its system. The Copyright Office also continues to work with OCIO to enhance their understanding of our services and ensure that the Copyright business requirements are fully understood and captured so that the system will meet the needs of our customers. The Office has made clear that its system needs are unique among the Library's Service Units and may require a vastly different approach to modernization and IT development. The Office believes it is critical that Copyright Office IT projects receive the level of attention and prioritization that Congress and the public expect. This does require significant resources and time from Copyright Office staff, who fulfill this role in addition to day-to-day Office operations.

Although both the Copyright Office and OCIO are committed to partnership, the Copyright Office contributes resources and time from Copyright Office staff to ensure that the modernization effort fully captures the service needs of the Office. Because the Copyright Office does not have direct control over IT activities, including decisions involving IT contracting and source selection, the Copyright Office contributes significant resources and time to ensure that IT modernization projects are meeting the Office's business needs. In instances where business requirements have been inadvertently excluded, the Copyright Office is working with OCIO and CGD to modify contract requirements to ensure that identified Copyright Office business needs are met.

According to OCIO, OCIO follows the Library's established Project Management Life Cycle (PMLC) and System Development Life Cycle (SDLC) processes for IT development projects. Those processes are aligned with government regulations and industry best practices and have been validated by both the Government Accountability Office (GAO) and the Library's Office of the Inspector General (OIG). At its heart, OCIO's IT development approach is based on the most current IT development methods, which focus on a continuous process of development, testing, deployment, and operation of IT systems to allow for rapid, incremental improvements that meet business objectives and user needs. To be successful, OCIO's approach requires close collaboration between the technology team and business stakeholders—with a deep understanding of customer requirements and the capacity to provide seamless delivery with continuous customer feedback.

### **3. What processes allow for communication and feedback between the Copyright Office of the Office of the Chief Information Officer on IT system development?**

At the staff level, there are daily communications and exchanges on various tasks. As noted above, the CMO directs and coordinates all modernization for the Copyright Office, including resources, communications, stakeholder engagement, and business project management. Currently CMO is comprised of 25 employees, arranged in three sections: program/project management, business analysis, and data management. CMO staff are the first line of communications with OCIO staff on IT projects and programs. IT modernization also involves additional Copyright Office staff, including subject matter experts in the various units involved in recordation and registration projects, as well as advice from the USCO Chief Financial Officer and the USCO Office of General Counsel. There are a number of joint Copyright Office-OCIO product teams.

The Library's IT development approach is built on the idea of an integrated team of IT and business subject matter experts working closely together. IT projects include daily communication and collaboration between OCIO and USCO staff to coordinate development sprints and maintain focus on user needs.

To ensure ongoing high-level engagement, the Modified Copyright IT Modernization Plan created a USCO Modernization IT Governance Board, headed by the Register of Copyrights and the Library CIO.<sup>5</sup> The Board brings together key stakeholders from the Copyright Office and OCIO to provide strategic direction and discuss issues needing attention and resolution.

Finally, the Library's new IT governance structure provides several venues for engagement about Copyright IT efforts. The Copyright Office has representation on several of the governing bodies, including the IT Product Governance Board and the IT Finance Working Group. And the TSB, which includes the Register of Copyrights, serves as a regular forum for critical issues that require executive-level discussion.

#### **4. What entity has the final say on Copyright Office IT requests – the Copyright Office or the Office of the Chief Information Officer?**

The ultimate authority for all Library investments is the Librarian of Congress. The Librarian has delegated to the CIO final authority over all technology matters for the agency. Under this governance model, the TSB will recommend to the Librarian what strategic investments should be made and maintain accountability for technology projects across the Library. This structure guarantees that, regardless of the source of funding for a technology activity, the Library's executive decision-making body will have insight into the activity, including benefits, risks, and anticipated outcomes, and the authority to continue or discontinue the activity, based on its performance and the needs of the institution.

The Library has centralized its decision-making process in the structure of the TSB, as described above. Within the Library's IT governance structure, the Library's executive leaders—including the Register of Copyrights—provide the highest level of consideration for IT decision-making. Large IT investment requests from the Copyright Office and other Service Units are evaluated under the IT governance process and approved by the CIO and the Principal Deputy Librarian of Congress. If a project is denied, there is an appeal process to the Librarian.

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<sup>5</sup> MODIFIED IT PLAN at 11 (“The Governance Board, whose members will include (but are not limited to) the LOC CIO, the Register of Copyrights, and other senior management, will facilitate the close collaboration between OCIO and USCO necessary to accomplish a transformation of this magnitude. The Governance Board will provide strategic direction to the CMO, which will be tasked with coordinating IT modernization on behalf of USCO to ensure that they are continuously aligned with the Office's strategic goals. The CMO will also work closely with the OCIO Program Management Office (“PMO”), which will lead technology projects related to the modernization. USCO and OCIO PMs will report, respectively, to the CMO and PMO.”).

**Questions from Ranking Member Doug Collins:**

1. **In your testimony, you talk about undertaking a policy study regarding best practices that the mechanical licensing collective may implement in order to identify, locate, and pay out royalties to musical work copyright owners with unclaimed accrued royalties held by the collective. I think we would all agree it is critical to ensure songwriters are being paid the royalties they are due, and that the MLC is matching royalties with the songwriter or songwriter.**

**How do you see this policy study contributing to those efforts, and are there other steps that can be taken in the short, medium, and long term to ensure that stakeholders are doing their part to meet the goals of the MMA and that songwriters are efficiently being paid the royalties they have earned?**

The Copyright Office views the policy study, which will provide best practice recommendations to the MLC, as playing an important role in ensuring that copyright owners are efficiently identified and paid. As directed by the MMA, the study will solicit input on how the MLC can best “identify and locate musical work copyright owners with unclaimed accrued royalties held by the collective,” “encourage musical work copyright owners to claim the royalties of those owners,” and “reduce the incidence of unclaimed royalties.” The Office hopes that this study may yield practical suggestions for the MLC to consider as it undertakes various duties relevant to the broader goals of reducing the incidence of unclaimed accrued royalties, identifying musical works embodied in particular sound recordings, administering a process by which copyright owners can claim ownership of musical works (and shares of such works), and establishing a musical works database relevant to these activities. The Office will initiate its policy study this winter, with the goal of promoting dialog and collaboration among stakeholders as these important issues are examined and discussed. By statute, the MLC must give “substantial weight” to recommendations provided by the Office.

In addition, educational outreach will be critical to identifying, locating, and paying royalties to musical work copyright owners with unclaimed accrued royalties held by the collective. The Copyright Office will engage in a wide variety of education and outreach activities to inform the public of important changes under the new law. The Office hopes to build significant knowledge and understanding within the music community through these efforts, including by educating songwriters and others about the process by which they may claim ownership of musical works in the MLC database and receive royalties for uses of their works. The MLC and DLC, along with the Copyright Office, are tasked with facilitating education and outreach regarding the new blanket licensing system to the broader songwriting community, and the Office looks forward to working with the MLC and DLC on such endeavors.

Finally, the MMA directs the Register to promulgate regulations with respect to the operation of the revamped blanket mechanical license and operation of the MLC, such as regulations regarding the form of the notices of license and notice of nonblanket activity; usage reports and adjustments; information to be included in the musical works database; requirements for the usability, interoperability, and usage restrictions of that database; and the disclosure and use of confidential information. In addition, the Register may promulgate regulations that are necessary or appropriate to effectuate the MMA, such as those relating to matters of governance, including

ensuring that the MLC's bylaws include an avenue to ensure that subsequent board member selections are made in compliance with all relevant legal requirements. The Office will solicit public comment regarding those subjects through future notice(s), and encourages stakeholders across the music industry to participate in these rulemakings.

2. **One of the problems that motivated us to pass the Music Modernization Act was the problem of rate-less licensing—where a digital service provider could file an NOI with the Copyright Office and use music without paying for it. The Music Modernization Act ended that practice, instead simplifying the process for DSPs to license music and songwriters will get paid.**

**Has the office stopped receiving NOIs for digital uses? Can you tell us how many NOIs were received in total before the office stopped accepting them?**

Yes. The Copyright Office stopped accepting NOIs for digital uses on October 11, 2018, the effective date of the MMA. All NOIs received by the Office since then are screened to confirm that they only pertain to non-digital uses (*e.g.*, CDs, vinyl records, tapes, and other physical media). Since enactment of the MMA, the Office has received 18 NOIs (covering over 180,000 titles) pertaining to digital uses, all of which were rejected. The last of these was received in December 2018.

Since the filing of NOIs began in 1978, approximately 16,000 NOIs have been filed with the Copyright Office as of July 2019. Between FY2016 and FY2018, approximately 14,200 NOIs were filed with the Office, covering over 95 million titles. While the Office does not keep statistics on the number of NOIs that pertain to digital uses versus non-digital uses, the vast majority of the titles covered by the NOIs filed from FY2016 through FY2018 were for digital uses.

3. **We live in a digital world where piracy happens in a matter of seconds. Copyright registration takes months.**

**The Supreme Court recently said that a copyright owner can't sue to protect his or her rights until the Copyright Office has issued a registration. Chairman Nadler and I wrote to you to express our concern about this, and I want to thank you for your thoughtful response and your efforts to get pendency down, but I am still concerned that is not going to be enough to protect creators, who can be deprived of their rights—their livelihood—for months while waiting for the process to play out.**

**One area that we may warrant attention comes in the context of takedown notices under the DMCA. Once a takedown notice is sent to a platform pursuant to the DMCA, the platform notifies the user, who can then send a counternotice arguing that whatever he or she posted is not infringing. The law then gives the platform 10-12 days to re-post the material in question *unless a lawsuit has been filed* during that period.**

**But under the new Supreme Court ruling, my understanding is that it wouldn't be possible to file a lawsuit during that period if there isn't already a registration. As we examine this issue, would you commit to working with us to review this apparent statutory conflict?**

The Copyright Office looks forward to working with you to review the interplay between the Copyright Act's registration requirement and the timing requirements related to "takedown" and "putback" under section 512(g)(2)(C) of the DMCA (17 U.S.C. § 512(g)(2)(C)).

As this question notes, on May 31, 2019, the Office responded to an inquiry by the House Judiciary Committee regarding registration and pendency times at the Copyright Office in light of the Supreme Court's decision in *Fourth Estate Public Benefit Corp. v. Wall-Street.com, LLC*. As I highlighted in my letter, registration provides important benefits to copyright owners while furthering several public policy objectives, including creating a definitive public record of copyright claims at the time of registration and promoting judicial economy on issues of registrability. While the copyright system incentivizes early registration, it also creates specific provisions to address exceptional cases where it would be otherwise difficult for a copyright owner to register a claim to copyright prior to instituting a suit for infringement. These provisions include the preregistration system of section 408(f) of the Copyright Act, as well as the Office's administrative option for special handling, which typically enables claimants to complete registration within five business days unless further correspondence is required. The Office intends to continue to publicize these options, which seem well-tailored to serve the needs of copyright owners seeking expedited registration to address timing considerations set forth by section 512's counternotice and putback provision.

Other sections of the Copyright Act contain special provisions to balance infringement concerns with the desire to ultimately maintain the registration requirement for works that are the subject of infringement suits, such as section 411(c)'s special provision for works that are first fixed simultaneously with their transmission (*i.e.*, live sporting events) and section 411(a)'s general requirement of obtaining registration before instituting suit is waived, so long as the rights holder subsequently and timely registers the work (*i.e.*, with an effective date of registration three months after instituting suit).

Consideration of these existing statutory provisions may be helpful as Congress examines the interplay of the registration requirement with the timelines set out in section 512. Separately, the Copyright Office is conducting its own policy study of section 512, and may have additional recommendations for Congress at the conclusion of the study. We are ready to assist Congress in your review of these and other statutory provisions.

**Questions from Representative Greg Stanton*****Music Modernization Act***

**1. The MMA also creates a Digital Licensee Coordinator position—or “DLC”—to represent the interests of digital licensing platforms.**

**a. How should the interests of digital music services be balanced against those of rights holders and songwriters?**

The Copyright Office applauds the passage of the MMA, which is expected to benefit many different participants within the music marketplace, including digital music services, songwriters, publishers, artists, record labels, libraries, and the public. Having stakeholders from across the music industry continue to work together on implementation in the same collaborative spirit in which the MMA was enacted can help the MMA realize its full promise.

While the MMA benefits rights holders and songwriters, digital music services also benefit from the creation of a blanket license created under the MMA, as it provides both efficiency and business certainty for those entities. The core structure of the MMA strikes a balance by providing digital services with the certainty of a blanket license while setting up a collective to ensure that rights holders and songwriters will actually receive payment when their music is played on those services. The MMA replaced the previously-existing section 115 song-by-song compulsory licensing structure for making and distributing musical works with a blanket licensing system for certain digital uses (e.g., permanent downloads, limited downloads, or interactive streams). Now, digital music services will be able to obtain a blanket license—to play the songs they want—and no longer have to file NOIs with the Copyright Office, on a song-by-song basis, each time they wish to obtain a compulsory license. The blanket licensing system should therefore reduce digital music services’ liability risk compared to the older song-by-song licensing system, and increase administrative efficiency. Meanwhile, rights holders and songwriters will operate the MLC to ensure the timely and accurate payment of royalties due from the services for such uses.

While the operational costs of the MLC will be borne by digital music providers through voluntary contributions and an administrative assessment set by the Copyright Royalty Judges, songwriters and rightsholders also have a shared interest in making sure that the MLC is managed efficiently and effectively. Congress also had the foresight to allow DLC representatives to serve as non-voting members on the board of the MLC and on its Operations Advisory Committee, which will allow the DLC to promote efficient and effective practices relating to information technology and data resources.

**b. What interaction or collaboration do you expect the DLC to have with the MLC, and what will be the Copyright Office’s role in overseeing that relationship?**

The MMA envisions extensive collaboration between the MLC and DLC. The DLC appoints a non-voting member to the MLC board to represent digital music providers’ interests and appoints other representatives of to the MLC’s operations advisory committee (which is comprised of equal

numbers of members from the MLC and DLC). By statute, the DLC and MLC must also coordinate in their respective efforts “to enforce notice and payment obligations with respect to the administrative assessment” that will fund the new collective.

In addition, the MLC and DLC, along with the Copyright Office, are tasked with facilitating education and outreach regarding the new blanket licensing system to the broader songwriting community, including by educating songwriters and others about the process by which they may claim ownership of musical works in the MLC database and receive royalties for uses of these works. The Office looks forward to working closely with the MLC and DLC on such endeavors.

Further, the MMA directs the Copyright Office to promulgate regulations with respect to various activities by the MLC and DLC including the form of the notices of license and notice of nonblanket activity, usage reports and adjustments, and the protection of confidential information contained in records of the MLC and the DLC. These regulations will also address information to be included in the musical works database; requirements for the usability, interoperability, and usage restrictions of that database; and potentially other areas where regulatory activity is appropriate to effectuate the statutory provisions. The Office will solicit public comment regarding those subjects through future notice(s) and encourages stakeholders across the music industry to participate in these rulemakings.

*Extension of the Distant Signal Satellite Television License*

**1. In 2011, the Office wrote a report providing recommendations for how to responsibly repeal the retransmission statutory licensing provisions in the Copyright Act, including the section 119 license. Back then, one of the Office’s recommendations was that Congress should provide a date-specific trigger and transition period for the phase-out of the section 119 license that builds in “sufficient time for a measured and orderly transition period.”**

**a. What has influenced the Office’s shift in its view that immediate expiration is preferable to a transition period to eventual phase-out?**

In its 2011 report, the Copyright Office recommended phasing out the three statutory licenses under which a cable system or a satellite carrier may transmit distant and local broadcast television signals without incurring the transaction costs associated with acquiring private licenses to carry the programming of these signals (sections 111, 119, and 122 of the Copyright Act). Accordingly, the phase-out period envisioned by the Office in its 2011 report involved more than just the section 119 license.

As noted by the Office in its June 3, 2019, letter to Chairman Nadler and Ranking Member Collins, discussion of section 119 is often lumped with these other compulsory licenses for broadcast programming in sections 111 and 122. However, with respect to section 119 by itself, the Office believes that any challenges arising from an immediate expiration are significantly reduced. As the Office noted in our letter, usage of the section 119 license has decreased dramatically since 2011—and plummeted between 85% and 99.5% between the first reporting period of 2014 and the first reporting period of 2018. Meanwhile, other new technologies and programming-delivery models have emerged and flourished without the assistance of a

compulsory license, such as OTT services that deliver television and video via the internet (e.g., Netflix, Hulu, and Amazon Video) to subscribers in almost two-thirds of U.S. households.

**b. If Congress were to allow a transition period, what should that transition period look like and how long should it last?**

The Copyright Office believes that the time is ripe to let the 119 exemption sunset in December 2019, and that no transition period is necessary. If Congress would prefer to provide a post-expiration transition period, the Office recommends that it be no more than a few months. As evidenced by DISH's ability to carry at least one local broadcast station in all 210 U.S. media markets, satellite operators and broadcasters can successfully negotiate within the free market in good faith.

*Miscellaneous*

**1. The U.S. Chamber of Commerce and the economics firm NERA recently released a report finding that digital streaming piracy is annually costing the United States between 29 and 71 billion dollars in lost domestic revenues, between 230,000 and 560,000 in jobs, and between 45 and 115 billion dollars in GDP. How is the Office monitoring or addressing this threat of increasing piracy?**

While the U.S. Copyright Office is not an enforcement agency, we do carefully track trends in national and global infringement of copyrights. We are familiar with the report you cite, and are as alarmed as you at its digital video piracy numbers.

The Copyright Office participates in the U.S. Trade Representative's Special 301 Notorious Markets process every year, during which the Office works with the U.S. government interagency to identify marketplaces that exemplify global counterfeiting and piracy concerns. The 2018 Notorious Market list focused on emerging piracy models, including online piracy such as illicit streaming devices and stream ripping, and identified 33 online markets and 25 physical markets.

Additionally, the Copyright Office is in the process of studying the section 512 notice-and-takedown process, and may have recommendations relevant to the prosecution of illegal streaming as part of that study.

One statutory change that the Office has identified which would assist the Department of Justice in prosecuting illegal streaming would be to amend the Copyright Act and the Criminal Code so that criminal infringement of the right of public performance could be prosecuted at a felony level just like the rights of distribution and reproduction. Illegal streaming, while it may violate the rights of distribution and reproduction, primarily violates the right of public performance. However, because copyright infringement has historically implicated reproduction and distribution, those are the only rights the infringement of which has so far earned felony penalties. Since 2011, the Office has advocated that, with the increase in illegal streaming, law enforcement needs to be able to prosecute public performance infringement at the same level as the infringement of other rights. We explained our position in more detail in a July 18, 2019 letter to Senators Tillis and Coons, which is available at <https://www.copyright.gov/laws/hearings/letter-to-senators-tillis-and-coons-on-felony-streaming.pdf>.

