

REGISTER OF COPYRIGHTS SELECTION AND
ACCOUNTABILITY ACT OF 2017

APRIL 20, 2017.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. GOODLATTE, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1695]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1695) to amend title 17, United States Code, to provide additional responsibilities for the Register of Copyrights, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The Amendment

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SEC. 1. SHORT TITLE.

This Act may be cited as the “Register of Copyrights Selection and Accountability Act of 2017”.

SECTION 2. REGISTER OF COPYRIGHTS.

(a) AMENDMENTS.—Section 701 of title 17, United States Code, is amended—

(1) in subsection (a)—

(A) by striking “(a) All administrative” and inserting the following:

“(a) REGISTER AND DIRECTOR.—

“(1) IN GENERAL.—All administrative”;

(B) by striking “director” and inserting “Director”;

(C) by inserting after the first sentence the following: “The Register of Copyrights shall be a citizen of the United States with a professional background and experience in copyright law and shall be appointed by the President from the individuals recommended under paragraph (6), by and with the advice and consent of the Senate.”; and

(D) in the last sentence, by striking “shall be appointed” and all that follows through “and shall act” and inserting “shall act”;

(2) in subsection (b), by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively, and adjusting the margins accordingly;

(3) by redesignating subsection (b) as paragraph (2), and adjusting the margins accordingly;

(4) in paragraph (2), as so redesignated, by inserting “DUTIES.—” before “In addition”;

(5) by inserting after paragraph (2) the following:

“(3) OATH.—The Register of Copyrights shall, before taking office, take an oath to discharge faithfully the duties of the Copyright Office described in paragraph (2).

“(4) REMOVAL.—

“(A) IN GENERAL.—The Register of Copyrights may be removed from office by the President.

“(B) NOTIFICATION.—The President shall provide notification to both Houses of Congress of a removal under subparagraph (A).

“(5) TERM OF OFFICE.—

“(A) IN GENERAL.—Subject to subparagraph (B), the Register of Copyrights—

“(i) shall be appointed for a term of 10 years; and

“(ii) may serve until a successor is appointed, confirmed, and taken the oath of office.

“(B) LIMITATION.—The Register of Copyrights may not continue to serve after the date on which Congress adjourns sine die after the date on which the 10-year period described in subparagraph (A)(i) ends.

“(C) REAPPOINTMENT.—An individual appointed to the position of Register of Copyrights, by and with the advice and consent of the Senate, may be reappointed to that position in accordance with the requirements of this section.

“(6) PANEL FOR REGISTER OF COPYRIGHTS RECOMMENDATIONS.—There is established a panel to recommend a list of at least 3 individuals to the President for appointment as the Register of Copyrights. The panel shall be composed of the following:

“(A) The Speaker of the House of Representatives.

“(B) The President pro tempore of the Senate.

“(C) The majority and minority leaders of the House of Representatives and the Senate.

“(D) The Librarian of Congress.”;

(6) by redesignating subsections (c) through (f) as subsections (b) through (e), respectively;

(7) in subsection (b), as so redesignated, by inserting “SEAL.—” before “The Register”;

(8) in subsection (c), as so redesignated, by inserting “ANNUAL REPORT.—” before “The Register”;

(9) in subsection (d), as so redesignated, by inserting “APPLICABILITY OF TITLE 5.—” before “Except as provided”; and

(10) in subsection (e), as so redesignated, by inserting “COMPENSATION.—” before “The Register”.

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply with respect to any vacancy for the Register of Copyrights after January 1, 2017. If a Register of Copyrights is appointed during the period beginning on January 1, 2017 and ending on the day before the date of the enactment of this Act, that Register shall meet the requirements of the amendments made by this Act or shall be replaced in accordance with such amendments.

Purpose and Summary

The Register of Copyrights Selection and Accountability Act makes the Register of Copyrights position at the U.S. Copyright Office subject to a Presidential nomination and Senate-confirmation process while simultaneously creating a 10-year term on the position. The legislation ensures that all future Registers are chosen through this public process and also resolves constitutional concerns regarding the authority of regulations promulgated by the U.S. Copyright Office.

Background and Need for the Legislation

Over the past several years, this Committee has conducted a comprehensive review of our nation’s copyright system and laws. During this review, the Committee heard from a wide range of perspectives regarding our copyright laws, ranging from industry-specific concerns to much broader ones, including the need to reform the Copyright Office itself. Since November 2014, the status and selection process for the Register of Copyrights position has been among these concerns.

As a legislative branch official, Members of Congress, as well as many stakeholders, believe the Register of Copyrights should be more accountable to Congress. In addition, concerns have been expressed, and lawsuits commenced, challenging the authority of the Register of Copyrights to issue rules because the position is not presidentially-appointed.

The current vacancy for the position of Register of Copyrights provides a unique opportunity for Congress to address these and other concerns and to statutorily lay out an appropriate selection process for the next Register.

H.R. 1695 would apply a selection process for the Register of Copyrights that is similar to the process for selecting other legislative branch officials, including the Comptroller of the Government Accountability Office. Specifically, the legislation will clarify the process by which a new Register of Copyrights is chosen and the duration the Register serves. Currently, the position is chosen using the same process used to hire more junior employees within the Library of Congress and the Register can serve for an unlimited duration. Under the proposed legislation, the President will select a nominee from a list of names identified by a Congressional leadership panel that includes the Librarian of Congress. The individual then chosen, once confirmed by the Senate, would serve a ten-year term. This nomination process and term of office would provide greater stability for the Register position and the U.S. Copyright Office as a whole. It will also ensure that the U.S. Copyright Office is more accountable to Congress. During the markup, negative comments were made about the prior Register of Copy-

rights that do not reflect the longstanding professional and honorable relationship this Committee enjoyed with the former Register.

Hearings

The Committee on the Judiciary held no hearings on H.R. 1695, but did hold a related hearing on the future of the U.S. Copyright Office on February 26, 2015, and received testimony from the former Register of Copyrights, Maria Pallante, on April 29, 2015, about the structure of the U.S. Copyright Office.

Committee Consideration

On March 29, 2017, the Committee met in open session and ordered the bill H.R. 1695 favorably reported, with an amendment, by a roll call vote of 27–1, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises the following roll call vote occurred during the Committee’s consideration of H.R. 1695.

1. Motion to report the bill favorably. Approved 27–1.

ROLLCALL NO. 1

| | Ayes | Nays | Present |
|---|------|------|---------|
| Mr. Goodlatte (VA), Chairman | X | | |
| Mr. Sensenbrenner, Jr. (WI) | | | |
| Mr. Smith (TX) | | | |
| Mr. Chabot (OH) | | | |
| Mr. Issa (CA) | X | | |
| Mr. King (IA) | | | |
| Mr. Franks (AZ) | X | | |
| Mr. Gohmert (TX) | X | | |
| Mr. Jordan (OH) | X | | |
| Mr. Poe (TX) | X | | |
| Mr. Chaffetz (UT) | | | |
| Mr. Marino (PA) | | | |
| Mr. Gowdy (SC) | X | | |
| Mr. Labrador (ID) | X | | |
| Mr. Farenthold (TX) | X | | |
| Mr. Collins (GA) | X | | |
| Mr. DeSantis (FL) | X | | |
| Mr. Buck (CO) | X | | |
| Mr. Ratcliffe (TX) | X | | |
| Ms. Roby (AL) | | | |
| Mr. Gaetz (FL) | | | |
| Mr. Johnson (LA) | X | | |
| Mr. Biggs (AZ) | X | | |
| Mr. Conyers, Jr. (MI), Ranking Member | X | | |
| Mr. Nadler (NY) | X | | |
| Ms. Lofgren (CA) | | X | |
| Ms. Jackson Lee (TX) | X | | |
| Mr. Cohen (TN) | X | | |
| Mr. Johnson (GA) | | | |
| Mr. Deutch (FL) | X | | |
| Mr. Gutierrez (IL) | | | |

ROLLCALL NO. 1—Continued

| | Ayes | Nays | Present |
|--------------------------|-------------|-------------|----------------|
| Ms. Bass (CA) | X | | |
| Mr. Richmond (LA) | | | |
| Mr. Jeffries (NY) | X | | |
| Mr. Cicilline (RI) | | | |
| Mr. Swalwell (CA) | X | | |
| Mr. Lieu (CA) | X | | |
| Mr. Raskin (MD) | X | | |
| Ms. Jayapal (WA) | X | | |
| Mr. Schneider (IL) | X | | |
| Total | 27 | 1 | |

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1695, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 30, 2017.

Hon. BOB GOODLATTE,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1695, the Register of Copyrights Selection and Accountability Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Stephen Rabent.

Sincerely,

KEITH HALL.

Enclosure.

cc: Honorable John Conyers Jr.
Ranking Member

**H.R. 1695—Register of Copyrights Selection and
Accountability Act of 2017**

As ordered reported by the House Committee on the Judiciary on
March 29, 2017.

Under current law, the Director of the Copyright Office is appointed by the Librarian of Congress. H.R. 1695 would make that position subject to appointment by the President with the advice and consent of the Senate. The Director would serve a 10 year term, subject to removal by the President. Under the bill, the President would make the appointment from a list of individuals recommended by a panel composed of members of Congress and the Librarian of Congress. Based on information from the Library of Congress, CBO estimates that implementing the bill would have no significant effect on the federal budget.

Enacting H.R. 1695 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 1695 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1695 contains no intergovernmental or private sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Stephen Rabent. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

Duplication of Federal Programs

No provision of H.R. 1695 establishes or reauthorizes a program of the Federal government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Disclosure of Directed Rule Makings

The Committee estimates that H.R. 1695 specifically directs to be completed no specific rule makings within the meaning of 5 U.S.C. § 551.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1695 converts the Register of Copyrights position to a Presidentially nominated and Senate-confirmed position, subject to a ten-year term limit.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1695 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short Title. Section 1 sets forth the short title of the bill as the “Register of Copyrights Selection and Accountability Act of 2017.”

Sec 2. Register of Copyrights

Section 2(a) amends 17 U.S.C. §701(a) by creating minimum standards for those who hold the Register of Copyrights position by requiring the officeholder to be a U.S. citizen who has professional background and experience in copyright law. The Committee views these two qualifications as the most critical for the position, although there are other criteria that may be desirable in potential candidates depending upon the challenges and needs facing the U.S. Copyright Office at the time of the vacancy. Once future Registers of Copyright are confirmed, they would now be subject to an oath of office per section 701(a)(3) before taking office. Section 701(a) is further expanded by adding in the existing functions and duties in the current section 701(b).

Section 2(a) creates a new selection process for choosing future Registers in section 701(a)(6), which follows existing precedent for Legislative Branch agencies, such as the Government Accountability Office (GAO). The process requires the President to choose the nominee from candidates identified by a selection panel comprised of the Speaker of the House of Representatives, the President pro tempore of the Senate, the majority and minority leaders of the House of Representatives and the Senate, and the Librarian of Congress (in whose agency the U.S. Copyright Office is located). The panel must recommend at least three candidates who meet the new qualifications for Registers of Copyright.

The proposed section 701(a)(4) allows the President to remove the Register from office subject to a notification requirement to the House of Representatives and Senate. Unless the Register is removed by the President, the Register will serve a ten-year term per section 701(a)(5), but may serve until a successor is sworn in so long as that date is not later than when Congress next adjourns sine die after the ten-year term expires, in which case the Register must step down on the date on which Congress adjourns sine die. The Register may be reappointed to another ten-year term, but must do so subject to the same requirements as a potential new candidate.

Section 2(b) sets out an effective date for any Register of Copyrights chosen for a vacancy that exists after January 1, 2017. The position has been filled on an acting basis prior to this date so the requirements created by this legislation apply to any new Register. If a Register is chosen by the Librarian of Congress using the current hiring process in place prior to the enactment of this legislation, such Register could only remain in office if he or she meets the new qualifications for the position, were recommended by the congressional panel to the President, chosen from the slate of three or more candidates by the President as the nominee, confirmed by the Senate, and then sworn in to office. If he or she did not meet these criteria, he or she could only serve until someone who does meet these criteria is sworn into office.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 17, UNITED STATES CODE

* * * * *

CHAPTER 7—COPYRIGHT OFFICE

* * * * *

§ 701. The Copyright Office: General responsibilities and organization

[(a) All administrative] (a) *REGISTER AND DIRECTOR.*—

(1) *IN GENERAL.*—All administrative functions and duties under this title, except as otherwise specified, are the responsibility of the Register of Copyrights as [director] *Director* of the Copyright Office of the Library of Congress. *The Register of Copyrights shall be a citizen of the United States with a professional background and experience in copyright law and shall be appointed by the President from the individuals recommended under paragraph (6), by and with the advice and consent of the Senate.* The Register of Copyrights, together with the subordinate officers and employees of the Copyright Office, [shall be appointed by the Librarian of Congress, and shall act] *shall act* under the Librarian's general direction and supervision.

[(b)] (2) *DUTIES.*—In addition to the functions and duties set out elsewhere in this chapter, the Register of Copyrights shall perform the following functions:

[(1)] (A) Advise Congress on national and international issues relating to copyright, other matters arising under this title, and related matters.

[(2)] (B) Provide information and assistance to Federal departments and agencies and the Judiciary on national and international issues relating to copyright, other matters arising under this title, and related matters.

[(3)] (C) Participate in meetings of international intergovernmental organizations and meetings with foreign government officials relating to copyright, other matters arising under this title, and related matters, including as a member of United States delegations as authorized by the appropriate Executive branch authority.

[(4)] (D) Conduct studies and programs regarding copyright, other matters arising under this title, and related matters, the administration of the Copyright Office, or any function vested in the Copyright Office by law, including educational programs conducted cooperatively with foreign intellectual property offices and international intergovernmental organizations.

- [(5)] (E) Perform such other functions as Congress may direct, or as may be appropriate in furtherance of the functions and duties specifically set forth in this title.
- (3) OATH.—*The Register of Copyrights shall, before taking office, take an oath to discharge faithfully the duties of the Copyright Office described in paragraph (2).*
- (4) REMOVAL.—
- (A) IN GENERAL.—*The Register of Copyrights may be removed from office by the President.*
- (B) NOTIFICATION.—*The President shall provide notification to both Houses of Congress of a removal under subparagraph (A).*
- (5) TERM OF OFFICE.—
- (A) IN GENERAL.—*Subject to subparagraph (B), the Register of Copyrights—*
- (i) *shall be appointed for a term of 10 years; and*
- (ii) *may serve until a successor is appointed, confirmed, and taken the oath of office.*
- (B) LIMITATION.—*The Register of Copyrights may not continue to serve after the date on which Congress adjourns sine die after the date on which the 10-year period described in subparagraph (A)(i) ends.*
- (C) REAPPOINTMENT.—*An individual appointed to the position of Register of Copyrights, by and with the advice and consent of the Senate, may be reappointed to that position in accordance with the requirements of this section.*
- (6) PANEL FOR REGISTER OF COPYRIGHTS RECOMMENDATIONS.—*There is established a panel to recommend a list of at least 3 individuals to the President for appointment as the Register of Copyrights. The panel shall be composed of the following:*
- (A) *The Speaker of the House of Representatives.*
- (B) *The President pro tempore of the Senate.*
- (C) *The majority and minority leaders of the House of Representatives and the Senate.*
- (D) *The Librarian of Congress.*
- [(c)] (b) SEAL.—*The Register of Copyrights shall adopt a seal to be used on and after January 1, 1978, to authenticate all certified documents issued by the Copyright Office.*
- [(d)] (c) ANNUAL REPORT.—*The Register of Copyrights shall make an annual report to the Librarian of Congress of the work and accomplishments of the Copyright Office during the previous fiscal year. The annual report of the Register of Copyrights shall be published separately and as a part of the annual report of the Librarian of Congress.*
- [(e)] (d) APPLICABILITY OF TITLE 5.—*Except as provided by section 706(b) and the regulations issued thereunder, all actions taken by the Register of Copyrights under this title are subject to the provisions of the Administrative Procedure Act of June 11, 1946, as amended (c. 324, 60 Stat. 237, title 5, United States Code, Chapter 5, Subchapter II and Chapter 7).*
- [(f)] (e) COMPENSATION.—*The Register of Copyrights shall be compensated at the rate of pay in effect for level III of the Executive Schedule under section 5314 of title 5. The Librarian of Congress shall establish not more than four positions for Associate*

Registers of Copyrights, in accordance with the recommendations of the Register of Copyrights. The Librarian shall make appointments to such positions after consultation with the Register of Copyrights. Each Associate Register of Copyrights shall be paid at a rate not to exceed the maximum annual rate of basic pay payable for GS-18 of the General Schedule under section 5332 of title 5.

* * * * *

Dissenting Views

If Congress enacts this bill we will make a grievous error. It's important to understand the factual and historical context in which this bill is nestled.

Article 1 of the Constitution gives the power to enact laws establishing copyrights in the United States, but it was not until 1870 that copyright functions were centralized in the Library of Congress, claims having previously been recorded by U.S. District Court clerks. In 1897, a separate department in the Library was created and then Librarian of Congress, Mr. Ainsworth Spofford appointed Mr. Thorvald Solberg as the Register of Copyrights to run the office. Ever since, the Librarian of Congress, who is appointed by the President and confirmed by the Senate, has appointed the Register of Copyrights to oversee this division in the Library. Until this bill.

Dr. James Billington, the last Librarian of Congress, was appointed by President Ronald Reagan and served as Librarian of Congress for 42 years. His public service is honored by us all and he accomplished many important things at the Library. However, modernization of the Copyright Office was not among his achievements. After Dr. Billington's retirement in 2015, President Obama appointed and the Senate Confirmed Dr. Carla Hayden. When Dr. Hayden was appointed, Congress enacted legislation which, for the first time, instituted a "term limit" of ten years on the service of the Librarian. Dr. Carla Hayden has made modernization of the Library, including the Copyright Office, a priority.

The last Register of Copyrights testified before the Judiciary Committee as well as the House Administration Committee that the Copyright Office should be an independent office and the Register appointed by the President, essentially an independent agency. The last Register also engaged in public advocacy of this point.¹ However, while advocating for this change and other policy matters, the simple administration of the office was deficient in the area of modernization.

The February 2017 Library of Congress Inspector General report² I entered into the record found that the Copyright Office wasted six years and nearly \$12 million dollars implementing its Electronic Licensing System.³ This was a simple accounting system

¹ THE NEXT GENERATION COPYRIGHT OFFICE: WHAT IT MEANS AND WHY IT MATTERS (a longer version of the Eleventh Annual Christopher A. Meyer Memorial Lecture delivered by Maria Pallante on November 20, 2013 at George Washington University Law School). <https://www.copyright.gov/about/office-register/meyer-lecture.pdf>.

² Library of Congress, Office of the Inspector General's FY 16 Review of Systems Development Life Cycle.

³ Id. at ii.

for distributing royalties collected by the Office and managing royalty investment accounts.

Most tellingly, they found that “Copyright executives at the time did not disclose in the Library’s performance management system and annual Congressional Budget Justifications the magnitude of issues and cost”⁴ In other words, this information was hidden from Congress and Library, and false information provided instead.

In 2010 the Copyright Office started the project of digitizing pre-1978 registration records. Seven years later it has managed to digitize just the card catalog and even that is lacking metadata to make it searchable. None of the actual records are available in digital form.⁵

It took the Office nearly 20 years to create a system so that online service providers could electronically submit their notice and takedown agents, prior to last December, online service providers had to submit their registrations via paper, which then had to be manually entered in by Office employees.⁶

Finally, while preparing the FY18 appropriations request, the Library noticed that a \$25 million dollar line-item in the Copyright Office’s request didn’t add-up. When questioned about this, the prior Register stated that this number was no big deal, it was just a placeholder. They would just make adjustments after the money was appropriated. In other words, the Copyright Office gave the Librarian fake budget numbers with the knowledge that she would testify in front of the Appropriations Committee, under oath, to the need of these funds.

Dr. Hayden reassigned the Register and, disagreeing with the reassignment, the Register resigned. It appears that some on the Judiciary Committee have concerns about whether the Librarian was justified in her reassignment of the previous Register. This Committee has not had a hearing on this topic, and I doubt ever will. So I felt that it was important to put into the record just a sample of the problems the Librarian confronted when she made her decision. These are not just my opinions, but are documented by the report of the Inspector General which was entered into the record.

I would also like to correct my colleague who stated for the record their concerns that the Librarian did not notify the Committee before reassigning the previous Register. Both the House Administration Committee and the House Judiciary Committee received phone calls from the Librarian stating her intent to reassign the previous Register, before it was carried out.

This bill removes the Register appointment authority from Dr. Carla Hayden and transfers it to President Donald Trump.

No coherent rationale has been advanced on how this will improve the administration of the Copyright office. The Chairman of the Committee asserted that this would give greater transparency to the Committee in the operation of the Copyright office. He later clarified that it was the advice and consent of the Senate to Presidential appointments that he was referring to.

⁴Id. at iii.

⁵<https://www.copyright.gov/digitization/status.html>.

⁶The Copyright Office’s “interim” agent designation regulations went into effect on November 3, 1998. The paper-based system was not replaced until December 1st 2016. <https://www.copyright.gov/dmca-directory/>.

This is a preposterous statement. Once a Presidential appointee is confirmed, there is no greater attention to the desires of the Congress or transparency than for any other non-Presidential appointee. The frequent conflicts between Republicans in Congress and the appointees of President Obama, ranging from the Environmental Protection Agency to the Internal Revenue Service are testimony of the truth of that.

The Chairman also cites numerous hearings on the issue of copyright as justification for this bill, but having attended every one of those hearings as a Member of the Intellectual Property Subcommittee, I can attest that there was no hearing on this bill nor on its impact on the modernization efforts now being undertaken by Dr. Hayden.

An impressive list of supporters of the bill was submitted to the record. I am aware from the many copyright hearings that serious frustrations exist among many copyright holders. Those issues deserve resolution. However, this bill will make matters worse not better.

If this bill becomes law the Library of Congress and the Copyright Office will no longer be able to function as a single organization. This will be a disservice to not only the American public but also to those they are purporting to help, content creators. The public and content creators do not benefit from making the Register appointed by the President, and they do not benefit from making the Copyright Office a separate Executive Branch agency, which is the real goal of this legislation, as backed-up by the statements of many of my Committee colleagues.

What would benefit both the public and content creators is a Copyright Office that uses modern technology to provide electronic registration and deposits of copyrighted works, tools for determining who to pay when you use their work, and greater transparency in both ownership and public domain status of works.

However, this bill will drastically set back both the modernizing of infrastructure and the implementation of new Copyright services. The Library believes that under its current modernization plan that it can save almost two years on the Copyright Office's plan, and significant amounts of money. A private consulting group is currently reviewing this plan, but the Library believes it will be able to start implementation by September of this year.

Until my statements at this markup, it is my understanding, that the vast majority of my colleagues on the Committee had no knowledge of the Library's aggressive progress. Nor were they briefed on how delaying the appointment of a new Register could impact this plan.

Given the speed at which Congress acts, and the backlog of 495 Presidential appointees who haven't even been nominated yet, I doubt that if this bill becomes law, a new Register will be appointed in time to benefit from the efficiency gains made by the Library's hard work and careful planning.

The public and content creators aren't the only ones who will suffer from this shortsighted bill. The Copyright Office staff themselves will be thrown into a "Sophie's choice" every time there is a conflict between the Librarian and the Register. Without the ability to remove the Register, the relationship between the Librarian and the Register is fundamentally altered. It will create uncer-

tainty and ambiguity in the chain of command, and unnecessary hurdles to the modernization effort.

The only possible result of this change is more conflict between the Library and the Copyright Office, not less. It is unfair to put the hardworking employees of the Copyright Office into this lose-lose situation because of the incompetence of previous leadership. Especially when the new Librarian was taking responsibility to remedy the deficiencies created by her predecessor's inaction.

I cannot support legislation that delays Copyright Office modernization, harms the public, harms content creators, increases tension between the Library and Copyright Office, and harms Copyright Office employees.

This bill is a vote of no confidence in a Librarian who is aggressively pulling the Library and Copyright Office into the 21st century and, by all evidence, justifiably reassigned an ineffective and negligent Register. While I have examined the problems with this bill on the basis of public policy, I cannot help but notice that since 1897, while a series of male Librarians of Congress appointed the Register, it was not until the first female Librarian was appointed that a bill was introduced to remove the power of the Librarian to appoint the Register (as well as new law to limit the term in office of the Librarian). The problems, now being addressed by our new Librarian, festered without remedy—and without legislation marked up by the Judiciary Committee—until that unbroken chain of male Librarians was succeeded by one of the most qualified Librarians ever to serve the Library of Congress, Dr. Carla Hayden.

MS. LOFGREN.

