

January 31, 2017

The Honorable Bob Goodlatte
Chairman
Judiciary Committee
U.S. House of Representatives
2309 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member
Judiciary Committee
U.S. House of Representatives
2426 Rayburn House Office Building
Washington, DC 20515

Re: Response to First Proposal on Copyright Reform

Dear Chairman Goodlatte and Ranking Member Conyers,

The International Center for Law and Economics (ICLE) respectfully submits the attached comments in response to the Committee's policy proposal for reform of the U.S. Copyright Office.

We applaud your attention to these important issues and we look forward to assisting the Committee in any way we can as it continues to work to advance the enactment of copyright laws "for the digital age [that] reward creativity and innovation."

Sincerely,

Geoffrey A. Manne, Executive Director
Neil Turkewitz, Senior Policy Counsel for IP & the Digital Economy
Kristian Stout, Associate Director for Innovation Policy
Allen Gibby, Senior Fellow for Law & Economics

ICLE Comments on Judiciary Committee Review of U.S. Copyright Law: Policy Proposal for Copyright Office Reform

Given the importance of copyright protection to the US national interest, including from an economic, political and social perspective (on which, please see our response to the Register’s request for comments, attached), we strongly agree with the proposal set forth by the Committee to reform the Copyright Office.¹

First, we agree with the Committee that in order to best advance the interests of the United States — “to meet the needs of a modern 21st Century copyright system”² — the Copyright Office should be established as a stand-alone office in the legislative branch, and that the Register be nominated and subject to confirmation by Congress.

As will undoubtedly be articulated in other submissions, the establishment of the Copyright Office within the Library of Congress was largely an accident of history related to the deposit of copies and the Library collection. But there is little reason to continue the status quo in an environment of constant change when it no longer best serves the interests of the nation. For much of our history, while there may have been the potential for some conflict between the objectives of the Library and those of the Copyright Office, they tended to be minimal, and largely to be avoided by the Library’s general deference to the Copyright Office in matters affecting copyright policy.

In the current *digital* environment, however, the intersections and points of conflict between Library priorities focused on preservation and access, and Copyright Office priorities of encouraging and protecting creativity, have grown more frequent and more fundamental.

Defenders of the status quo suggest on the one hand that there is no conflict between the goals of libraries and copyright law (an observation with which ICLE concurs), yet simultaneously proclaim that copyright needs to be balanced *against* the public interest, directly articulating a perceived conflict. Thus, for example, a letter sent by Brandon Butler on behalf of a group comprised largely of librarians declares that:

¹ Chairman Goodlatte and Ranking Member Conyers, H. Comm. on the Judiciary, *Reform of the U.S. Copyright Office* (Dec. 8, 2016), available at <https://judiciary.house.gov/wp-content/uploads/2016/12/Copyright-Reform.pdf>.

² *Id.*

Copyright law strikes an important *balance between the short-term, private interests of authors and intermediaries, and the long-term interests of the public*, including succeeding generations of authors and intermediaries, whose works build on the edifice of existing work. Libraries are not on one side of that balance; they are at the fulcrum, promoting broad access by investing heavily in copyrighted works, and educating patrons about authors' and users' rights.... *We reject [a] false dichotomy between copyright and the public interest.*"³

But in the course of one short passage, the authors embrace the false dichotomy that they simultaneously claim to reject by contrasting the "short-term private interests of authors" with the "long-term interests of the public." Such a balancing equation by definition presupposes a conflict. We agree with Butler, *et al.* that copyright protection advances the public interest, and that discussions of access versus protection mask a much more complex relationship. Sadly, however, the authors disagree with themselves, and in one short and internally inconsistent paragraph help to illustrate the importance of an autonomous Copyright Office, capable of more clearly elucidating the complementary roles of libraries and copyright holders.

This theme is further explored by Kevin Madigan who aptly noted in a piece deconstructing the letter:

Describing the "crucial parts" of the copyright system embraced by libraries and librarians, the letter lists "fair use, first sale, inter-library loan," and claims that "without them libraries as we know them in this country could not exist." One might argue that more crucial to the existence of libraries are the creative works that line their stacks, but this reality doesn't seem worth mentioning. In fact, Butler asserts that copyright law has a "fundamentally public-serving character," contrary to the letter's earlier emphasis on serving copyright owners, authors, and the public equally. After praising the balance, then rejecting it, the letter unequivocally elevates the importance of the access libraries provide over the contributions and rights of creators.⁴

³ Letter to Chairman Grassley, Ranking Member Leahy, Chairman Goodlatte, and Ranking Member Conyers from Brandon Butler and co-signatories (Dec. 14, 2016), *available at* <http://thetaper.library.virginia.edu/images/42-Experts-Letter-re-CO-signed.pdf> (emphasis added).

⁴ Kevin Madigan, *Librarians' Contradictory Letter Reveals an Alarming Ignorance of the Copyright System*, CPIP (Dec. 19, 2016), *available at* <http://cpip.gmu.edu/2016/12/19/librarians-contradictory-letter-reveals-an-alarming-ignorance-of-the-copyright-system/>. We commend the entire piece to the attention of the Committee (and append it to this Comment with the author's permission).

And, indeed, to understand the inherent areas of potential conflict between libraries and the goals of the Copyright Office, one need look no further than the public positions of the American Library Association in its “National Library Legislative Day Priority” appended to its statement supporting the nomination of Dr. Carla Hayden as Librarian of Congress.⁵ There it declares its support for what it euphemistically frames “Copyright ‘Recalibration’ for Maximum Information Access.”⁶ While access is certainly something that needs to be considered by the Copyright Office in formulating recommendations and policies in pursuit of its constitutionally derived mandate to “promote the Progress of Science and useful Arts,” a predetermined goal that copyright needs to be “recalibrated” in order to enhance *access* is not an appropriate default setting or animating mission for the Copyright Office.

To be clear, this is not in any way about Dr. Carla Hayden in particular; discussions about Copyright Office autonomy have been ongoing for some time and, as the Committee is well aware, predate Dr. Hayden’s appointment. It is worth noting, however, that some parties seem to view her appointment as an opportunity to end the traditional deference paid by the Librarian to the Register,⁷ which does increase the importance and urgency of effecting the proposed transition. But we wish to underscore that we do not offer these views in connection with anything the Librarian herself may have said.

It is time, or past time, to establish the proper foundations for the operation of the Copyright Office in light of its economic and cultural significance. It is also past time to rely on legacy processes and traditions that ill serve US interests in a well-functioning and modern copyright system. The proposal from the Committee will help the Copyright Office to meet its constitutional and statutory obligations, and will allow both the Library of Congress and the Copyright Office to focus on their core competencies and missions.

On the other issues raised in the Committee proposal, we endorse the views put forward, and offer only a few comments:

⁵ American Library Association, *Support the Marrakesh Treaty, Copyright “Recalibration” for Maximum Information Access, and Copyright Office Modernization within the Library of Congress* at 6, available at <http://www.ala.org/advocacy/sites/ala.org.advocacy/files/content/04-25-16%20All%20Issue%20Briefs%20NLLD%202016.pdf#page=6>.

⁶ *Id.*

⁷ *See, e.g.*, Electronic Frontier Foundation, *The Copyright Office Belongs in a Library*, (Jul. 23, 2015), available at <https://www.eff.org/deeplinks/2015/07/copyright-office-belongs-library>.

We wholeheartedly endorse the proposal to add a Chief Economist and Chief Technologist to the Office. Everyone should welcome the addition of informed, rigorous and evidence-based decision making. Economists can help the Copyright Office by highlighting the economic consequences of various policy decisions so that potential costs and benefits are better understood. Technologists can assist policymakers in assessing the technological universe in ways that will better inform their decision-making. A sound 21st Century copyright policy is impossible without a firm and consistent grasp of both economics and technology.

With respect to Advisory Committees, we agree that specialized knowledge from market participants and others steeped in the creation, commercialization, distribution and use of creative content could be enormously valuable. We believe that the Register should have the authority to create such a committee when he or she feels that it would be useful — but stress that reliance on such committees should not be a mandate, and should be fully within the discretion of the Register.

The Copyright Office has a long and rich tradition of transparency. But, as a general matter, *committees*, while nice in principle, may not be the most effective and efficient way of receiving input, and sometimes function to impede rather than advance thoughtful consideration of complex matters. That said, and as noted in our comments to the Register, we do believe that a technical committee to examine the development of standard technical measures within the meaning of Section 512(i) should be contemplated. Section 512(i) was an important part of the balance struck by Congress in the DMCA, and it deserves the attention and resources necessary to bring it to life.

With respect to Information Technology Upgrades, we agree that upgrading the Copyright Office IT system is important, and that Congress should ensure that the Register has the necessary resources and authority to advance this key objective. This is another area where technical advisory committees may be useful to engage stakeholders in developing technological solutions for databases, including registration and recordation information, with an emphasis on modernizing deposits and ensuring data interoperability.

We endorse the Committee's other recommendations regarding IT upgrades, but do highlight that the construction, operation and effect of any Copyright Office database must be consistent with our international obligations: to wit, the absolute clarity that there is no obligation to furnish any information to the Copyright Office, and that no rights, or enforcement thereof, be conditioned on participation in a government database. Many stakeholders remain unconvinced of the merits of a centralized government database, and believe that the Copyright Office might be better positioned to help guide the use of standards that would permit proprietary databases to communicate with one another, rather than seeking

to effectively manage a centralized system. Indeed, given the complexity of these issues we believe that it would make more sense for Congress to take up data issues as part of copyright *licensing* reform rather than as an aspect of legislation that establishes the structure of the Copyright Office itself.

Finally, with respect to Small Claims, we again endorse the proposal of the Committee. We agree that such a system could be useful, and could provide a means for quick resolution of uncomplicated copyright claims in an efficient manner — particularly for parties that lack the resources to meaningfully consider litigation. We wish to stress, however, the importance of ensuring that the establishment of any mechanism for addressing small claims does not serve to limit or otherwise affect current remedies available for infringement, and that it operates only where both parties consent to adjudication via the small claims process. But this need not be a bar to small claims adjudication — in fact, we believe that it would be worth giving considered thought to creating incentives in certain cases to encourage the use of such a system — *e.g.*, by providing that any party claiming a safe harbor under Section 512 will be deemed to have consented to adjudication through small claims.

We again commend the Chairman, Ranking Member and the Committee on its proposal, and we look forward to your further proposals.

Respectfully Submitted,

INTERNATIONAL CENTER FOR
LAW & ECONOMICS
3333 NE Sandy Blvd., Suite 207
Portland, OR 97232
(503) 770-0076
icle@laweconcenter.org

ATTACHMENT A

ICLE Response to the Library of Congress Survey Requesting Input on Expertise Needed by the Register of Copyrights

What are the knowledge, skills, and abilities you believe are the most important for the Register of Copyrights?

While undoubtedly this is a restatement of the obvious, the Register should, first and foremost, have a background that demonstrates his or her understanding of the importance of modern and effective copyright protection and its critical role in the economic and cultural health of this nation.

In 2015 (the most recent year comprehensively analyzed),¹ the value added to U.S. GDP by the core copyright industries was more than \$1.2 trillion dollars, amounting to 6.88% of the U.S. economy; the value added by *all* copyright industries approached \$2.1 trillion, amounting to 11.69% of the U.S. economy. In addition, core copyright industries employed over 5.5 million workers in 2015, or 3.87% of the entire U.S. workforce, whose average annual 2015 compensation of \$93,221 far exceeded (by 38%) the U.S. average. Taken together, all copyright industries employed more than 11.4 million workers in 2015, or 7.95% of the U.S. workforce.

But copyright has more than just economic value. The empowerment of creators through copyright reflects the core principles of individuality, self-reliance, freedom of expression, cultural diversity and experimentation upon which this republic was founded. The right to determine the uses of one's creative work is a fundamental right recognized by Article 27 of the Universal Declaration of Human Rights and other instruments. Moreover, society gains when it creates sufficient incentives to authors to create original works and to voluntarily share them with the public.

The Register should seek to ensure that all creators are able to choose the manner in which their creations are used. An effective and functional copyright environ-

¹ The following data are from STEPHEN E. SIWEK, COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY: THE 2016 REPORT, *available at* <http://www.iipawebsite.com/pdf/2016CpyrtRptFull.PDF>.

ment is not a panacea; it does not on its own create global parity in the marketplace of ideas. But it does give individual creators a fighting chance, and an opportunity to compete. The ability to generate revenue from one's creativity — to earn a living as a creator by determining how and when to license the use of one's creative works — is fundamental to a society's ability to foster cultural production. The moral and economic aspects of this equation are inseparable.

It is also important for the Register to fully grasp that systems of copyright replaced private patronage as the mechanism for enabling creators to be self-sustaining. When creativity is fueled by market forces, the cultural power and potential of individuals is unleashed and society benefits. While copyright may be inadequate on its own to create optimal market conditions, it remains by far the most effective tool for fostering creativity and democratizing culture.

As the Librarian surely knows, defending the right of creators to determine the uses of their works in the present technological universe isn't always popular. Many argue that copyright is outdated, that it conflicts with freedom of expression and the ability to innovate, and that it should therefore be replaced by broad exceptions and/or compulsory licenses. In an era that trumpets the value of "permissionless innovation," the right of an individual to say no to the proposed use of his or her works strikes some as antediluvian. But, properly understood, permissionless innovation can't mean that property and contracts are irrelevant; such a view undermines the "fuel of interest" that is essential to maintaining "the fire of genius," in Abraham Lincoln's memorable language. It will be up to the next Register to properly contextualize copyright so that its importance as an exclusive property interest is understood, to ensure that permissionless innovation refers to a *regulatory* environment and not to the erosion of commercial agreements rooted in fundamental property interests, and to vigorously challenge the notion that protection of original expression through the copyright law is a form of restriction on freedom of expression.

In short, the next Register must be prepared to take positions that may be unpopular with certain parties in order to advance modern and effective copyright protection. He or she must work with Congress to adapt copyright to the digital age in order to provide creators with an effective means of expanding their ability to determine the uses of their works. Digital technologies provide unprecedented opportunities for creators to make their works available, and can contribute greatly to the country's economic and cultural health. But the potential of the internet and other technologies to expand markets for creators has been stifled by the piracy and sub-market licensing resulting from negotiating asymmetries, in turn caused by the mismatch between technology and the law protecting creators'

rights. The next Register should have a vision for addressing this imbalance, and for fulfilling the promise of the digital age.

Some organizations have suggested that the role of the Copyright Office is to be a neutral party serving as a referee between competing interests. The new Register must soundly reject that view, and reject the very notion that the interests of creators and the public interest are in tension. Rather, the Register must fully comprehend and act on the necessity of leadership in advancing a sound understanding of copyright policies for the digital age.

Leadership requires patience, vision and fortitude. And of course there are times to listen — but there are also times to act. In handling our cultural legacy and our future, we can ill afford neutrality from the top copyright official in the government.

What should be the top three priorities for the Register of Copyrights?

Priority #1: The most important and overarching priority is constant engagement in an evolving technological landscape that creates risks and opportunities for creators as well as distributors. We agree with the proposal from the House Judiciary Committee recommending the addition of a Chief Economist and Chief Technologist to the Office, and the formation of diverse advisory committees to ensure that the Register has the best information possible. But we also highlight that the Register must lead, and not wait for consensus to develop — particularly where consensus is unlikely. The Register has an obligation to present and future Americans to ensure that copyright is fit for purpose in the digital age, and to work closely with Congress in securing necessary adaptations and/or enforcement.

Priority #2: While aspects of the copyright law — and Section 512 in particular — are showing their age and should be amended to provide greater incentives for intermediaries to address infringing conduct on their platforms, the new Register can take steps even without new legislation that could play a significant role in modernizing copyright protection.

Section 512(i) is particularly interesting. Unlike other conditions on safe harbors, 512(i) requires *accommodation* of certain technical measures (referred to as *standard technical measures*) rather than merely passive non-interference. Standard technical measures are defined in Section 512(i) as

technical measures that are used by copyright owners to identify or protect copyrighted works and —

- (A) have been developed pursuant to a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process;
- (B) are available to any person on reasonable and nondiscriminatory terms; and
- (C) do not impose substantial costs on service providers or substantial burdens on their systems or networks.

The development and deployment of standard technical measures could address many of the issues that presently undermine the copyright system, potentially preventing infringement through more effective and nuanced tools than are presently employed. Identifiers and content protection technologies that are pervasive and not platform-dependent could greatly facilitate both licensing and the identification and prevention of infringement.

Unlike inflexible technologies employed only at the content level (which would generally either permit or deny uses of works at the network or equipment level), standard technical measures could be implemented with much finer granularity, allowing greater interdiction but also greater permissiveness and an enhanced ability to discern between infringing and non-infringing uses of protected subject matter. The development and accommodation of standard technical measures was a key part of the DMCA deal fashioned by Congress, and reflects Congress' belief that technologies, rather than legal norms, would be the key component in managing copyright protection in the digital realm. Sadly, 512(i) has been an effective dead letter given the reluctance by those who would need to accommodate such measures to engage in developing mandatory standards. One of the first priorities of the Register should be to create technical working groups to develop such measures.

Priority #3: There has been much discussion of Copyright Office modernization, and one of the key priorities for the new Register will be to implement the Copyright Office's IT modernization plan, including making the registration and recordation process easier and more affordable. For the new Register to be effective, the Copyright Office itself must be properly structured and staffed.

Respectfully Submitted,

INTERNATIONAL CENTER FOR
LAW & ECONOMICS
3333 NE Sandy Blvd., Suite 207
Portland, OR 97232
(503) 770-0076
icle@laweconcenter.org

ATTACHMENT B

Antonin Scalia Law School, George Mason University



Librarians' Contradictory Letter Reveals an Alarming Ignorance of the Copyright System

 Kevin Madigan / December 19, 2016 /



On December 14th, a group of librarians sent a [letter](#) to Congress explaining why they believe the Copyright Office should remain under the control of the Library of Congress. Written by University of Virginia Library's Brandon Butler, the letter is a self-contradicting and uninformed response to recent [recommendations on reform](#) of the Copyright Office offered by leading members of the House Judiciary Committee. While the lawmakers' report proposes overdue, sensible reforms to the framework of a department in need of modernization, the librarians' letter favors a one-sided approach to reform and reveals a gross misunderstanding of how copyright law and the Copyright Office ensure public

access to creative works.

The Letter Embraces the Very Conflict It Claims to Reject

The letter begins by criticizing another recent [letter](#) to Congress from former Registers of Copyright Ralph Oman and Marybeth Peters in which they question the recent firing of Register of Copyright Maria Pallante and discuss the urgent need for an independent Copyright Office. Butler takes issue with the former Registers' suggestion that the Library of Congress and the Copyright Office have different priorities and distinguishable missions, insisting that if any tensions exist, they are a result of bias at the Copyright Office. Alleging that the former Registers and the Copyright Office are "on the side of authors and media companies," Butler proclaims that libraries "in all their richness and complexity" truly serve the interest of all. It's a nice-sounding theory, but unfortunately it's completely inaccurate and soon contradicted by a palpable disregard for the rights of authors and creators.

Claiming that librarians and the Library of Congress don't subscribe to the theory of an adverse dichotomy between authors and the public, the letter then reinforces this theory by suggesting the scales should be tipped in favor of the public. In one paragraph, Butler endorses the "important balance between the short-term, private interests of authors and intermediaries, and the long-term interests of the public." Curiously, just after he lauds this "important balance," it is abruptly discarded as a reflection of "a narrow conception" and "inimical" priorities that cause an unproductive tension between the Office and the Library of Congress. Soon after describing libraries as the "fulcrum" upon which the balance of copyright and the public interest rests, the letter declares that "[we] reject this false dichotomy between copyright and the public interest."

Regardless of this hollow denunciation, it's clear that Butler believes there is a conflict between the interests of authors and the interests of the public, as he preaches to it throughout the letter. After paying lip service to rising above tensions between copyright and the public interest, Butler distinctly pushes for a system that values libraries over creators and the rights in their works. Describing the "crucial parts" of the copyright system embraced by libraries and librarians, the letter lists "fair use, first sale, interlibrary loan," and claims that "without them libraries as we know them in this country could not exist." One might argue that more crucial to the existence of libraries are the creative works that line their stacks, but this reality doesn't seem worth mentioning. In fact, Butler asserts that copyright law has a "fundamentally public-serving character," contrary to the letter's earlier emphasis on serving copyright owners, authors, and the public equally. After praising the balance, then rejecting it, the letter unequivocally elevates the importance of the access libraries provide over the contributions and rights of creators.

The Letter Fails to Take into Account a Complex Creative Economy Based on Property Rights

James Madison observed in [Federalist No. 43](#) that "the public good fully coincides . . . with the claims of individuals." The Founders of our country recognized that creative economies are built upon the property rights of authors and artists, and as CPIP's recent [policy brief](#) on creative markets explains, they "had the foresight to recognize that the public ultimately benefits when this protection is secured by law." Promoting the public interest by recognizing the importance of individual interests was a theory drawn from Adam Smith and his seminal *The Wealth of Nations*. In it, Smith explained that concerted efforts to benefit the public are often less effective—and less helpful to society—than uncoordinated individual efforts to pursue private interests, and that society benefits the most when individuals are empowered to create valuable goods and services by pursuing their own interests.

Embodying these principles, copyright empowers authors and creators to pursue their own private interests by granting them exclusive property rights in their works. These same property rights support creative industries and provide significant benefits by playing a key role in facilitating the myriad transactions that contribute to a vibrant creative economy grounded in free market principles. Among other things, these

property rights enable the division of labor, encourage product differentiation and competition, and spur investments in the development and distribution of creative works. Copyright not only incentivizes the creation of works, but also the commercialization of these works through further development, marketing, and distribution.

Copyright's intricate ecosystems are based on incentives that ensure the continued creation and distribution of original works of authorship, yet the librarians' letter doesn't seem to appreciate their significance or how they function. Butler dedicates much of the letter to emphasizing the importance of public access to copyrighted works, but access is only the final step in a complex system of investment, commercialization, and distribution of creative works. The librarians claim to "understand that copyright is a complex ecosystem," but nothing in the letter validates this assertion. The only part of the creative economy they deem worth discussing is the end result of access, with all other imperative stages either not realized or ignored.

The Librarians Are Oblivious to a Broken System

Ending with a plea to Congress not to interfere with the current "relationship" between the Library of Congress and the Copyright Office, the letter claims the Library is in the best position to lead a desperately needed modernization initiative at the Office. It's a bold claim, given that the Library stood by as the Office's infrastructure became embarrassingly outdated and underfunded over the past twenty years. Before her untimely ouster, Register Pallante provided Congress with a [perspective](#) on copyright review that included a detailed list of deficiencies within the Office in need of improvement. Specifically, Pallante cited the diminishing number of fulltime employees and inadequate budget that have made it all but impossible to support growth and development at the Copyright Office:

The Copyright Office budget is consistently in the neighborhood of \$50 million, of which \$30 million is derived from fees paid by customers for registration and other services. The Library's overall budget for 2015 is approximately \$630 million, inclusive of the Copyright Office. Without taking anything away from the important duties or funding deficiencies in the rest of the Library, the Copyright Office's resources are inadequate to support the digital economy it serves.

Pallante's report goes on to discuss the serious information technology (IT) problems facing the Office, and to question the Library's plan to address IT concerns by exerting more control over the Office's departments and decisionmaking. The former Register was wise to question a plan that would give more control to an

organization that has consistently failed to value or support the Copyright Office and its mission.

Further demonstrating just how out of touch they are with the realities of the current copyright law landscape, an affiliated group of librarians recently professed their faith in the Digital Millennium Copyright Act (DMCA) safe harbor system that is undoubtedly failing creators, copyright owners, and the public. In [comments](#) submitted to the Copyright Office as part of its study on the effectiveness of Section 512 of the DMCA, the Library Copyright Alliance (LCA) makes the absurd claim that the “safe harbors are working exactly as the stakeholders and Congress intended.” But, just before this assertion, the comments accuse copyright owners of abusing the DMCA’s notice and takedown process, and suggest amendments to the DMCA are necessary “to curtail this abuse.” Not only are the LCA’s comments utterly contradictory, they ignore substantial evidence and testimony from dozens of interested parties that the DMCA needs to be reformed and updated.

As CPIP highlighted in a recent [examination of the state of the DMCA](#), the notice and takedown system has been largely ineffective in managing the [ever-increasing amount of piracy](#), and courts continue to diminish service providers’ responsibility to cooperate with copyright owners to detect and deter infringement. The [constant game of whack-a-mole](#) with websites offering infringing content continues, and platforms such as YouTube are [teeming with unauthorized works](#). Artist, creators and copyright owners have loudly voiced their frustration with the current system and [called for reforms](#) that better respect their rights. In the face of such obvious evidence of a broken system, to claim the DMCA is working exactly as intended speaks volumes of the librarians’ inability to recognize the reality of the situation.

It’s Time for Change at the Copyright Office

The House Judiciary Committee’s proposal on copyright reform is a [response](#) to years of listening “to the views and concerns of stakeholders from all sides of the copyright debate,” and it identifies modernization efforts that address the concerns of these interested parties. Since 2013, the House Judiciary Committee’s Subcommittee on Courts, Intellectual Property and the Internet has conducted [20 copyright review hearings](#) on the current state of copyright law which included testimony from 100 witnesses. In addition to the hearings, Committee Chairman Bob Goodlatte and Ranking Member John Conyers brought a copyright listening tour to Nashville, Silicon Valley, and Los Angeles where a wide range of creators, innovators, technology professionals, and users of copyrighted works had the opportunity to tell the Committee directly what changes they believe are needed to ensure U.S. copyright law evolves with the digital age.

The resulting policy proposals reflect a broad acknowledgment by those who participated in the review that the Copyright Office must be updated to keep up with the digital culture it serves. Two of the most important steps in this modernization effort identified by the Committee include requiring the Office to

maintain an updated digital database and granting the Office autonomy with respect to the Library of Congress. If Brandon Butler and the signatories of his letter had their way, the Copyright Office would remain under control of an organization that has proven it is unable to help propel the Office into the 21st century. It's not particularly surprising that librarians would want the Library of Congress to retain control over the Copyright Office, but an overwhelming majority of creators, copyright law experts, and lawmakers recognize that the Office needs to move forward, rather than remain trapped in the past.

LEARN. CHALLENGE. LEAD.

Center for the Protection of Intellectual Property / Antonin Scalia Law School, George Mason University

Reproduced and distributed with the express written consent of Kevin Madigan