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January 31, 2017

The Honorable Bob Goodlatte
Chairman
House Judiciary Committee
United States House of Representatives
Washington, D.C. 20515

The Honorable John Conyers
Ranking Member
House Judiciary Committee
United States House of Representatives
Washington, D.C. 20515

RE: House Judiciary Committee Proposal, “Reform of the U.S. Copyright Office”

Dear Chairman Goodlatte and Ranking Member Conyers:

More than one hundred years ago, Congress established the Copyright Office as a department within the Library of Congress. This arrangement has long supported copyright’s purpose “to promote the Progress of Science and the useful Arts.” The Office’s placement within the Library of Congress has also allowed the United States to build what has become the largest library in the world, known for its rich collection of cultural artifacts.

We agree with the Committee that there is clear consensus that the Copyright Office needs to be modernized to meet the demands of the digital age. Technology has outpaced the Copyright Office’s systems. The Office would benefit from greater flexibility to set fees.

However, AALL believes that the Copyright Office can modernize while remaining within the Library of Congress. The Library of Congress has taken several positive steps to address the Copyright Office’s technology concerns and those identified in the Government Accountability Office report (GAO-15-338). The new Librarian of Congress has expressed interest in working with the Copyright Office to address their needs, and we believe she should be given additional time to work with the Office.

While we disagree with the proposal to establish the Copyright Office as an independent agency, there are elements on which we do agree about the future of the Office. We appreciate the opportunity to provide our comments.

I. The Register of Copyrights and Copyright Office Structure

AALL believes that if Congress decides to move the Copyright Office out of the Library of Congress, the Office should be established as an independent executive branch agency, not a legislative branch agency. A move to the executive branch would clearly subject the office to the Appointments Clause, and trigger certain transparency and accountability measures that are essential for a fair and balanced copyright system.

Whether as an executive or legislative branch agency, the Copyright Office must promote greater transparency. The Office should post online with whom they are meeting and when those meetings occur. The Office should include all stakeholders in policy discussions, including the diverse types of libraries, educational institutions, consumer groups, and technology companies.

If Congress decides to make the Office an independent entity, we support the Committee’s suggestion of appointing



positions of Chief Economist and Chief Technology Officer. We also recommend the establishment of a Chief Knowledge Officer, whose responsibilities could include acting as liaison to the Library of Congress, ensuring the fulfillment of mandatory deposit needs, conducting outreach to user groups, and making recommendations on systems usage. We recommend that this person be a degreed librarian or other information professional.

Whether the Register remains in the Library or becomes the head of an independent agency, we believe he or she must take a balanced approach to copyright policy; possess demonstrated managerial experience and knowledge of information systems to maintain and improve the core operations of the Office; and have experience working with both public and private sectors and a willingness to develop consensus and work with individuals outside the Office. AALL's response to the Librarian of Congress's call for input on the next Register of Copyrights includes more information about our position on the next Register. Those comments are available on AALL's website at <http://www.aallnet.org/Documents/Government-Relations/Formal-Statements/2017/Registercomments.pdf>.

II. Copyright Office Advisory Committees

We appreciate the Committee's proposal on advisory committees, which AALL believes could provide important viewpoints of stakeholders. We support the creation of an advisory committee on issues related to libraries, museums, and archives, but urge Congress to ensure that the Copyright Office has clear direction to include library representatives on other advisory committees, including those not specifically about libraries. Balance between copyright owners and users is a key component of a functional copyright system, and this need for balance should be reflected in advisory committee membership. It is also important to have representation from different types of libraries, including law libraries and other types of special libraries.

In addition to hosting advisory committees, the Office should be required to seek and consider input from agencies whose work addresses copyright issues, including the Federal Trade Commission, Federal Communications Commission, and National Telecommunications and Information Administration.

III. Information Technology Upgrades

As we stated in our response to the Copyright Office calls for comments on Information Technology Upgrades for a Twenty-First Century Copyright Office (81 FR 10672, Docket No. 2016-2), AALL believes that the information technology staff responsible for implementing the Copyright Office's comprehensive modernization efforts should report to the Copyright Office's Chief Information Officer (CIO), who should serve under the Library's CIO. This embedded approach would allow the Copyright Office the agility it needs to address issues as they occur, while maintaining a cohesive IT structure within the Library of Congress.

We also believe that that Copyright Office should be directed to further explore whether the Library's new data center would meet its needs, as it would be an efficient use of already existing resources.

AALL supports not only the use of collected fees to support modernization efforts within the Copyright Office, but also additional appropriations to best position modernization projects from the outset and support them once implemented.



IV. Small Claims

AALL believes that a discussion of a small claims system should be conducted independently of the movement of the Copyright Office, given the potential abuse that could occur in a small claims system. We urge the Committee to consider the small claims issue as a separate matter.

V. Conclusion

AALL thanks the House Judiciary Committee for the opportunity to submit comments on the future of the Copyright Office. We appreciate the Committee's openness in developing proposals on copyright reform, and urge the Committee to continue to be transparent as the process continues. We look forward to continuing to participate in the discussions.

Sincerely,

A handwritten signature in black ink that reads "Ronald E. Wheeler". The signature is written in a cursive, slightly slanted style.

Ronald E. Wheeler, Jr.
President
American Association of Law Libraries