

A COPYRIGHT OFFICE FOR THE 21ST CENTURY

Recommendations to the New Register of Copyrights

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Public Knowledge





EXECUTIVE SUMMARY

The first appointment of a Register of Copyrights in over 16 years provides an ideal opportunity to take a close look at the Copyright Office and determine whether it is effective in fulfilling its core duties, namely registering copyrighted works and serving as the government's copyright advisor. This paper concludes that the next Register must modernize both the operation of the copyright registry and its approach to policymaking.

First and foremost, the next Register of Copyrights should prioritize updating the copyright registration system so that it can meet the demands of modern copyright. There is no reason why, in an era of interconnected computers and sophisticated digital imaging, the registry should have long processing delays, be incomplete, not include visual works, and not be searchable from any Internet-accessible device. A complete copyright registry that takes full advantage of digital technology will reduce costs for copyright holders, those engaging in searches, and taxpayers. Importantly, a complete and widely accessible registry will help to ensure that those seeking to make use of copyrighted works can more easily find and compensate their owners.

Second, the next Register of Copyrights must recognize that copyright policymaking is no longer a sleepy backwater followed by a handful of copyright holders and their lawyers. Thanks largely to the clash of an overwhelmingly pre-VCR copyright law with digital technology, the length and terms of copyright law have become a matter of public debate. Moreover, ubiquitous computers and Internet access have made just about everyone a creator with a stake in copyright policymaking. Thus, the Copyright Office should take its cue from other government agencies and reach out affirmatively to various stakeholder groups and the public at large – not only to inform them of what the Copyright Office is doing, but also to seek their participation in policymaking.

The increased interest, and the public's stake, in copyright policymaking also make it essential that the Copyright Office follow the Obama Administration's goal of a more open and transparent government. At a minimum, this means that the Copyright Office must reveal who is meeting with their staff and why.

Finally, this paper recommends that Congress limit the term of the Register of Copyrights to no more than 10 years. Term limits make political appointees more accountable and reduce the possibility of capture by one or more existing stakeholder groups.

Public Knowledge makes ten specific recommendations to the next Register of Copyrights to modernize the Copyright Office:

Registration Goals

- Minimize Processing Delays
- Bring All Entries Online
- Make the Registry Searchable
- Create a Visual Registry
- Design for the Future

Policy Goals

- Reach Out Beyond Washington
- Increase Transparency
- Involve More Stakeholders
- Increase Public Participation

Other Goals

- Set Term Limits for the Register of Copyrights



The new Register of Copyrights will take office at a time of unprecedented public engagement with copyright law and policy. The expansion of the duration and scope of copyright protection, combined with the widespread proliferation of computers able to make infinite cost-free reproductions of copyright-protected works, is making new demands on copyright law. The rapid rise in the visibility of copyright policy has partially obscured the fact that the basic structures needed for copyright law to function properly, specifically the copyright registry, have failed to keep pace with demand.

The new Register of Copyrights has the opportunity to prioritize the core role of the Copyright Office – to register, track, and make available to the public the records of copyright ownership. All other policy debates seem to begin with the assumption that there are accurate and accessible records for registered copyrights. Unfortunately, as of today, that simply is not the case. The challenges associated with searching the current registry make orphans out of many registered works.

Although the new Register must prioritize creating a modern registry, he or she will also be intimately involved in developing copyright policy. The Digital Millennium Copyright Act created a wide-ranging policy role for the Copyright Office, and the new Register has an obligation to the public to take this role seriously. The number of stakeholders in copyright policy debates has expanded dramatically in recent years, and the new Register must recognize that. An increase in stakeholders and visibility means an increase in the need for transparency and inclusiveness.

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The Register of Copyrights, who is appointed by the Librarian of Congress, directs the Copyright Office.¹ The position was created in 1897 as part of an administrative reorganization of the Library of Congress, which was swamped by a growing collection of copyright registrations and deposit materials.² The President, though exercising no direct power over the Register, has the power to remove the Librarian from office,³ and thus could indirectly exert control over the selection of the Register.⁴

Responsibilities of the Copyright Office

Federal law grants the Copyright Office a wide range of responsibilities relating to copyright. First and foremost, the Copyright Office, under the Register of Copyrights, is required to create and maintain the copyright registry.⁵ In a relatively recent development, the Register of Copyrights is also required to advise Congress and federal departments on copyright-related law and policy, represent the United States in various international copyright-related organizations, and conduct regular copyright-related studies.⁶

Although the day-to-day operation of the copyright registry is essentially ministerial in nature, the policy-advisory roles of the Register and the Copyright Office have the potential to impact copyright law and policy substantively. As a

result, with the exception of policies relating to copies of deposited articles, all actions taken by the Copyright Office are subject to the Administrative Procedure Act (APA).⁷ The APA gives the public the opportunity to participate in rulemakings and adjudications by federal agencies. It also provides for judicial review of Copyright Office decisions.

Specific Legal Authority

There are a number of specific areas where the Copyright Office is permitted or required to issue regulations.⁸ These tend to involve matters relating to the actual functioning of the copyright registry, such as deposit requirements,⁹ corrections to applications,¹⁰ and notice requirements for obtaining compulsory licenses.¹¹ In these cases, the explicit authorization by Congress to create regulations means that Office rules carry the force of law.¹²

General Legal Authority

The Copyright Office also establishes rules under its general grant of authority “to establish regulations not inconsistent with law for the administration of the functions and duties made the responsibility of the Register under this title.”¹³ These are rules such as those regarding the proper treatment of the copyrighted works implicated in streaming music over the Internet or whether words or

1 17 U.S.C. § 701(a) (2006).

2 John Y. Cole, Of Copyright, Men & a National Library, 28 Q.J. OF THE LIBR. OF CONGRESS 1, 24 (1971), available at <http://www.copyright.gov/history/125thanniversary.pdf>.

3 See *Myers v. United States*, 272 U.S. 52, 122 (1926) (“The power of removal is incident to the power of appointment, not to the power of advising and consenting to appointment. . .”).

4 However, this theoretical accountability has not been exercised in practice. With the exception of George D. Cary, whose appointment was nullified by the D.C. District Court, it appears no Register has been forced out of office. See *Ringer v. Mumford*, 355 F.Supp 749, 755-56 (D.D.C. 1973).

5 See 17 U.S.C. §§ 407 - 410.

6 See 17 U.S.C. § 701 (b).

7 17 U.S.C. § 701 (e).

8 E.g., 17 U.S.C. §§ 108(d)(2) (requiring establishment of regulations defining “warning of copyright” to be displayed by libraries and archives), 407(c) (permitting issuance of regulations exempting certain categories of material from deposit requirement), 408(c)(1) (authorizing issuance of regulations defining categories of works for registration and deposit), 408(c)(2) (requiring establishment of regulations permitting a single registration for a group of works under particular circumstances).

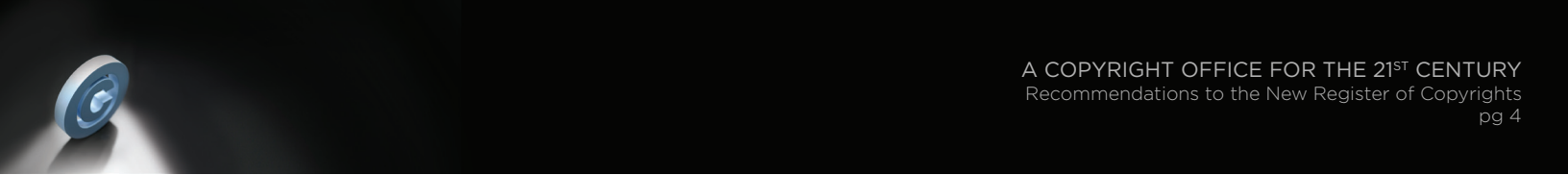
9 17 U.S.C. §§ 407(c), 408(c).

10 *Id.* § 408(d).

11 *Id.* § 115(b)(1).

12 *Muench Photography, Inc. v. Houghton Mifflin Harcourt Pub. Co.*, 2010 WL 1838874, at *5, 95 U.S.P.Q.2d 1489 (S.D.N.Y. 2010).

13 17 U.S.C. § 702.



phrases can be registered. The appropriate level of judicial deference is less clear for rules promulgated under this general authority. Recently, the U.S. Court of Appeals for the Third Circuit decided two cases involving rules enacted under this section, but it has yet to decide how much deference should be afforded.¹⁴

Other Interpretations of Copyright Law

Of course, formal rulemaking is not the only context in which the Copyright Office has interpreted the Copyright Act. For example, the Copyright Office has published many circulars and brochures summarizing various aspects of the law,¹⁵ and has made available a compendium of its internal practices and statutory interpretations.¹⁶ Though such summaries, explanations, and interpretations do not have the force of law, courts have tended to give them deference to the extent they are persuasive and not in conflict with the plain language of the law.¹⁷

14 See *Bonneville International Corporation v. Peters*, 347 F.3d 485 (3d Cir. 2003); *Southco, Inc., v. Kanebridge Corp.*, 390 F.3d 276 (3d Cir. 2004) (en banc).

15 See, e.g., U.S. Copyright Office, *CIRCULAR 1: COPYRIGHT BASICS* (August 2010), <http://www.copyright.gov/circs/circ01.pdf>.

16 U.S. Copyright Office, *COMPENDIUM II: COPYRIGHT OFFICE PRACTICES* (1998) (“Compendium II”), available at http://www.ipmall.info/hosted_resources/CopyrightCompendium/.

17 See, e.g., *Broadcast Music, Inc. v. Roger Miller Music, Inc.*, 396 F.3d 762, 778 (6th Cir. 2005) (finding Register’s opinion letter regarding widow’s and children’s shares in renewal copyright not persuasive); *Morris v. Bus. Concepts, Inc.*, 283 F.3d 502, 505–06 (2d Cir. 2002) (deferring to “persuasive” Office Circular position as to whether copyright registration of collective work constitutes registration of constituent work); *Muench Photography, Inc.* at *6–9, (giving no deference to Office’s “relaxed interpretation” because it conflicted with statutory language).



THE DUTY OF THE COPYRIGHT OFFICE TO REGISTER COPYRIGHTS

For much of its existence, the Copyright Office had one job: registering and tracking copyright ownership. This was critical to the proper functioning of the copyright system. Without a clear way to track ownership and rights, it was impossible to properly compensate rightsholders. A trustworthy registry could also be used to determine when a work was no longer protected by copyright.

Congress has established the general outline of copyright registration and delegated the implementation to the Register of Copyrights. Broadly, registration requires a deposit, a fee, and an application,¹⁸ but the Register is afforded some leeway to implement the system.¹⁹ Some of the Register's authority is discretionary—the Register *may* make certain regulations²⁰—and some is mandatory—the Register *shall* establish the regulations.²¹ Furthermore, it is the Register who, after examination of an application for copyright registration, formally registers the claim and issues the applicant a certificate of registration.²²

The deposit requirement is established by statute, which defines the kinds of copies or phonorecords that applicants for registration must deliver to the Copyright Office along with their fees and applications.²³ However, this section also grants the Register the authority to classify works into different categories, with different deposit requirements for each category,²⁴ and requires the Register to establish rules allowing individual authors to deposit and register a year's worth of contributions to periodicals in a single transaction.²⁵

18 17 U.S.C. § 410.

19 Of course, the Librarian of Congress must ultimately approve regulations established by the Register. *Id.* § 702.

20 See, e.g., 17 U.S.C. §§ 408(c)(1), 708(a).

21 See, e.g., *id.* §§ 408(c)(2), 704(e).

22 17 U.S.C. § 410.

23 *Id.* § 408(b).

24 The Register may, for example, require the deposit of only one copy of a work instead of two, or of only identifying information rather than the work itself. *Id.* § 408(c)(1).

25 *Id.* § 408(c)(2).



THE ADVISORY ROLE OF THE COPYRIGHT OFFICE

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As already noted, the Copyright Office was originally created for the purpose of centralizing the process of registering and tracking copyright ownership. Over time, some Registers used their position to weigh in on pressing issues of copyright policy, or even influence the creation of new copyright legislation. This informal role was dramatically elevated and formalized with the passage of the Digital Millennium Copyright Act (DMCA) in 1998.

The DMCA amended the then-existing copyright laws by, among other things, engaging in “Clarification of Authority of the Copyright Office.”²⁶ This “[c]larification” consisted of giving the Register of Copyrights several extra advisory duties,²⁷ and placing the Copyright Office at the center of developing copyright policy.

The new responsibilities were wide ranging, and included instructions to “[a]dvice Congress on national and international issues relating to copyright. . . and related matters”;²⁸ to “[p]rovide information and assistance to Federal departments and agencies and the Judiciary on national and international issues relating to copyright... and related matters”;²⁹ to “[p]articipate in meetings of international intergovernmental organizations and meetings with foreign government officials relating to copyright. . . and related matters, including as a member of United States delegations”;³⁰ and to “[c]onduct studies and programs regarding copyright. . . 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.”³¹

In addition to these general duties to advise and provide information, Congress has also indicated specific circumstances where federal officers must consult the Register. For example, the Register is guaranteed a seat on the advisory panel for the Intellectual Property Enforcement Coordinator;³² the U.S. Trade Representative is required to consult the Register of Copyrights in preparing annual reports on “priority” countries that do not provide effective intellectual property protection³³ and in conducting investigations into the practices of those countries;³⁴ and the Comptroller General was required to consult the Register when it conducted a study of the effects on the motion picture industry of new rules governing “residual” payments.³⁵ Even when giving other officers certain powers and responsibilities, Congress has been careful not to impinge on the duties of the Register of Copyrights.³⁶

The Register’s advice-giving power is further delegated to other officers within the Copyright Office. The Office of General Counsel is responsible for “providing liaison on legal matters between the Office and the Department of Justice and other agencies of the Government, the courts,

26 Digital Millennium Copyright Act, Pub. L. No. 105-304, § 401(b), 112 Stat. 2887 - 88 (1998).

27 In giving the Register these explicit duties, Congress claimed to be doing nothing more than “set[ting] forth in express statutory language the functions presently performed by the Register of Copyrights under her general administrative authority,” recognizing the Copyright Office’s “longstanding role” as advisor to Congress and to federal agencies, and as a “key participant in international meetings of various kinds;” and “describ[ing] the studies and programs that the Copyright Office has long carried out”. H.R. Rep. No. 105-796, at 76-78 (1998).

28 17 U.S.C. § 701(b)(1) (2006).

29 Id. § 701(b)(2).

30 Id. § 701(b)(3).

31 Id. § 701(b)(4).

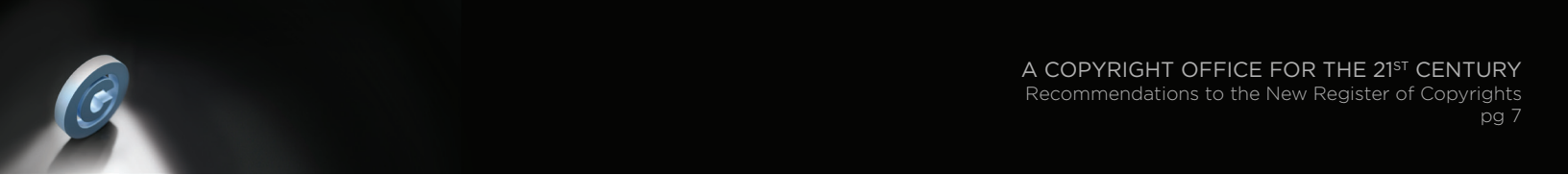
32 Prioritizing Resources and Organization for Intellectual Property (PRO-IP) Act of 2008 § 301(b)(3)(A)(ii), 15 U.S.C. § 8111(b)(3)(A)(ii).

33 19 U.S.C. § 2242(b)(2)(A) (2006).

34 Id. § 2412(b)(2)(D).

35 DMCA § 406(a), 28 U.S.C. § 4001(h) (2006). For the report itself, see JIM WELLS, U.S. GEN. ACCOUNTING OFFICE, MOTION PICTURES: LEGISLATION AFFECTING PAYMENTS FOR REUSE LIKELY TO HAVE SMALL IMPACT ON INDUSTRY, GAO-01-291 (2001), available at <http://www.gao.gov/new.items/d01291.pdf>.

36 See, e.g., 35 U.S.C. § 2(c)(3) (2006) (“Nothing in [specific grant of powers to Patent & Trademark Office] shall derogate from the duties and functions of the Register of Copyrights or otherwise alter current authorities relating to copyright matters.”).



and the legal community on a wide range of legal interests affected by the copyright law.”³⁷ The Office of the Associate Register for Policy and International Affairs, meanwhile, is responsible for “representing the Copyright Office at meetings of government officials concerned with the international aspects of intellectual property protection, and for working with Congress and its committees on matters concerning future and pending legislation.”³⁸

The DMCA significantly altered the role of the Copyright Office, creating a host of obligations not directly connected to registering and tracking copyright ownership. Today there are few, if any, explicit checks on the giving of advice by the Copyright Office. To the contrary, “Congress relies extensively on the Copyright Office to provide its technical expertise in the legislative process.”³⁹

Historically, one of the most important checks has been the Register’s “tradition of extreme caution in taking policy roles.”⁴⁰ Any such self-imposed restrictions might well vary from one Register to the next. More importantly, that culture of self-restraint developed before Congress gave the Register the affirmative *obligation* to take a policy role through the DMCA.

37 LCR 215 1 § 3(A)(1).

38 Id. § 3(A)(2).

39 S. REP. NO. 101-268, at 6 (1990).

40 Jessica Litman, Revisiting Copyright Law for the Information Age, 75 OR. L. REV. 19, 30 (1996).



Registration Procedures in Practice

In 2000, the Copyright Office began researching what technological improvements it might make to the registration process. In 2007 it began testing electronic copyright registration (eCO), and in 2008 it fully implemented the program. There are three ways to register a work with the Copyright Office:

- **eCO** allows an applicant to create a profile with the Copyright Office, and to submit works for registration over the Internet. Some works must also be sent in original/best form, which is determined by the Library of Congress. The Copyright Office considers eCO to be the “primary” registration method.
- **Fill-in form CO** is a system that uses a 2-D barcode to allow the Copyright Office to process paper applications more quickly. However, it cannot be used for group registrations. The Copyright Office considers fill-in Form CO to be the “next best” alternate registration method.
- **Paper registration** requires that the packet be delivered via mail, courier, or in person. Security rules require that submissions be sent to an off-site location for irradiation before going to the Copyright Office for processing. The off-site security processing delays the start of actual application processing. However, the registration process start date is the day when the application arrives off-site, not when it is passed on to the Copyright Office.

After only two years of operation, the eCO program now has a backlog of approximately 6 months. This backlog is tremendously shorter than that for the paper filing process, which currently has a backlog of 22 months. These backlogs only apply to properly submitted applications. If the application is not organized correctly, or is incomplete, it is sent back to the applicant and must be resubmitted.

Researching Registration

Today, individuals can conduct an online search of the copyright registry for works registered after 1978. That search can be undertaken by title, author, keyword, registration number, or document number. As such, it is most effective for works in which this information is readily available (such as written works). Although it is possible to search for visual works such as photographs and graphic illustrations by title, author, keyword, registration number, or document number, there is no way to simply submit an image and see if there is a matching image in the registry. This makes searching significantly less useful for visual works like photographs, graphic illustrations, and films.⁴¹

For works registered prior to 1978, an individual must have access to the Catalog of Copyright Entries. Copies of the Catalog exist in various libraries across the United States. Use of the Catalog requires familiarity with the various “idiosyncrasies” that vary depending upon when the original work was registered.⁴²

Alternatively, individuals can request that the Copyright Office conduct a search. When someone requests that the Copyright Office conduct a search through its records (usually for information about registrations, renewals, transfers, and other matters relating to the legal status of a work), the Copyright Office can first estimate the total cost of the search if the requester fills out an online Search Request Estimate form. This estimate costs a non-refundable \$115 and is good for one year after completion of the request form.⁴³

41 Although there are a number of potential technical challenges related to creating a useful visual registry, there do not appear to be any intractable legal barriers to its creation. The Copyright Office is required to make its records of registration “open to public inspection,” and is given the authority to establish the conditions under which it will furnish reproductions of deposited works to the public. See 17 U.S.C. § 705(b); 706(b).

42 See Circular 23, The Copyright Card Catalog and the Online Files of the Copyright Office, at 3-4.

43 See Circular 4, Copyright Office Fees, at 2-3; Circular 22, How to Investigate the Copyright Status of a Work, at 2



The actual search costs \$165 per hour with a two-hour minimum. The time taken for preparation of the search report is added to hourly calculation of the search.⁴⁴ Certification of the search report is also available for an additional fee.⁴⁵

There are several limitations upon the Copyright Office's research. First, the standard \$165 per hour search fee does not cover the cost of additional certificates, photocopies of deposits, or other Copyright Office records. In order to procure those items, the user has to make a separate request to the Records Research and Certification Section of the Office.⁴⁶

Additionally, the Copyright Office does not keep listings of works by subject or works that are in the public domain, which naturally increases the search time and the cost to the user. The Copyright Office also does not have separate records for individual contributions to a copyrighted collective work. Searches are limited to cataloged registrations, which means that newly registered copyrights may not be found since they have yet to be cataloged, and searches also do not investigate the work's legal status in foreign countries.⁴⁷

Finally, each and every Copyright Office search begins anew. There is no catalog of completed searches available either to the public or for internal purposes. There is no way that a member of the public can determine if a search has been previously requested or completed. As a result, identical searches may be completed and paid for multiple times if different parties request the same information.

44 See Circular 4 at 3; see also Search Request Estimate form.

45 See Circular 22 at 2.

46 See Circular 6.

47 See Circular 22 at 3-4.



Prioritize Modernizing the Registration System

The appointment of a new Register of Copyrights brings an opportunity to reexamine the role of the Copyright Office and how the Copyright Office functions. Whatever policy goals a new Register hopes to achieve should be secondary to the most important function of the Copyright Office: receiving, organizing, and making available to the public copyright registrations. Over one hundred years ago, the Copyright Office was created because policymakers recognized that, in order for copyright to function properly, there needed to be a centralized, accurate, accessible registry of works.

The above review of the current functioning of the Copyright Office suggests that this role has not received the attention that it deserves. Unlike the Patent and Trademark Office, the Copyright Office does not need to extensively evaluate whether a work seeking registration deserves copyright protection. There is no reason that a 22-month backlog should exist for paper registrations. There certainly is no reason that the “new” eCO registration process should have a 6-month backlog after only two years of operation.

These delays are symptoms of a system that is not designed to handle the demands of modern copyright. A new Register of Copyrights must have the technical understanding required to redesign – from the ground up if necessary – the copyright registry to accommodate today’s requirements.

Furthermore, as the authoritative list of copyright registrations in the United States, the registry must be searchable by the public. The high fees and complicated process for searching today are manifestations of inadequate design. There is no reason that any person should not be able to search the entirety of the Copyright Office’s records from a publically accessible website. The current inefficiencies hinder the public’s ability to find and

compensate rightsholders. Inefficiency is also expensive. Modernization will reduce transaction costs and make the Registry less expensive to maintain. The long term cost savings created by an easy-to-use, comprehensive registry should easily outweigh the costs associated with its creation.

To that end, the first priority of the next Register of Copyrights must be to redesign the registry to achieve the following goals:

- **Minimize Processing Delays.**

Most applications should be entered into the registry immediately upon submission. If there are technical deficiencies with the application, applicants should be notified immediately.

- **Bring All Entries Online.**

Works published before 1978 are still protected by copyright. Any useful registry must include them.

- **Make the Registry Searchable.**

A search of the copyright registry should not cost hundreds of dollars. The registry should be designed to allow public searching from an Internet-accessible portal. This may require a clarification of Copyright Office rules to allow public access to the information.

- **Create a Visual Registry.**

Copyright protects far more than the written word. Until it is as easy to find the registration for a visual work as it is to find the registration for a written work, both visual artists and the public are disadvantaged.

- **Design for the Future.**

Just as the registry has changed from written to typewritten to microfilm to searchable image, technology will force it to change again. The Copyright Office must recognize this inevitability in designing the registry to try and minimize freezing itself in time.



Make Policymaking More Inclusive

Although the new Register should put a priority on modernizing the registration system, he or she will also have a role in developing policy. When approaching policy questions, the new Register must recognize that there is more interest in copyright policy among the general public today than at any other time in our history. Copyright policy is no longer the exclusive concern of large media conglomerates. Large copyright holders cannot be allowed to control copyright policy while smaller rightsholders and the general public are forced to beg for indulgences at the margin.

As a result, the Register must focus on encouraging greater public participation in copyright policy discussions. The telecommunications industry, consumer electronics manufacturers, and online content producers of all sizes rely on balanced copyright and are impacted by decisions made at the Copyright Office. Small, independent creators in a wide range of fields are increasingly concerned that larger competitors can use threats of copyright infringement to stifle them. Similarly, copyright law has been used against individuals and organizations engaged in protected speech. In an unprecedented age where nearly everyone with a computer becomes a creator with a stake in copyright policy, the Copyright Office must carefully balance the competing purposes of copyright.

Along with an increased number of stakeholders comes an increased need for transparency. The Copyright Office should make it clear with whom it is meeting and when those meetings occur. This notice can take any number of forms, be it a public visitor log, a formal visitor- or staff-prepared *ex parte* notice system, or some sort of summary produced by Copyright Office staff. No matter how it is achieved, all stakeholders should have an easy way to know who is advocating what position before the Copyright Office.

The role of the Copyright Office is not to expand the influence of the Copyright Office, or even to expand the scope of copyright. Instead, the policy role of the Copyright Office must be to advance the purposes of copyright. That requires finding the proper balance between the legitimate needs of copyright owners and the legitimate needs of the public.

Balancing is always hard. Rapid technological change makes it even harder. Because of that, the Copyright Office cannot cut itself off from the public. Instead, it must strive to bring the public deeper into its policy deliberations. Only then will it be able to give the comprehensive, thoughtfully considered advice that other agencies and branches of government deserve. In light of this, the next Register of Copyrights should strive to:

- **Reach Out Beyond Washington.**

There are millions of Americans who are affected by copyright policy, but are unfamiliar with the Copyright Office's role. The Copyright Office should hold open meetings across the country in order to better understand the public's concerns.

- **Increase Transparency.**

Although the Copyright Office decisionmaking is subject to the APA, historically the Copyright Office has not necessarily prioritized public involvement in, and review of, decisionmaking. By making visitor logs or meeting summaries available to the public, the Copyright Office can help the public understand how policies were developed and finalized.

- **Involve More Stakeholders.**

The Copyright Office's decisions have impacts beyond traditional rightsholders like movie studios and record labels. The Register must hear from Internet companies, device manufacturers, Internet service providers, and small, independent creators who do not have a history of consultation with the Copyright Office.



- **Increase Public Participation.**

Copyright is a delicate balance between the needs of content creators and the public. In addition to understanding the importance of strong copyright protections, the Copyright Office must strive to understand and advance the importance of access to culture and the iterative nature of creativity. It should also strive to understand criticism and objections to its decisions and decisionmaking process and work to address them going forward.

Impose Term Limits on the Register

As described above, the discussions surrounding copyright policy impact more constituencies than ever before. Decisions made in copyright policy influence people, technologies, and business at the cutting edge. In light of this, it is critical that the Register of Copyrights have a nuanced understanding of all the various parties influenced by copyright policy.

Unfortunately, each year that the Register is head of the Copyright Office makes it harder to maintain that type of connection. Furthermore, it increases the possibility that he or she will favor one or more existing stakeholders groups over newly emergent ones. Effective policymaking requires the regular infusion of new blood and new ideas.

As such, Congress should move to impose term limits on the Register of Copyrights. The term can be generous, but should not exceed 10 years. This will create an opportunity to refresh the Copyright Office leadership, and hopefully to reconnect with the needs of the public.



CONCLUSION

The appointment of a new Register of Copyrights provides an enormous opportunity for the Copyright Office to rethink both how it registers copyrights and conducts its role as copyright policy advisor to all branches of government. With a focus on modernizing the registration system, greater public involvement, increased transparency, and active outreach to the many different parties with a stake in the outcome of copyright debates, the Copyright Office can fulfill its duties effectively while becoming a model for modern governance.