

December 14, 2016

The Honorable Chuck Grassley  
Chairman, Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510-6050

The Honorable Patrick Leahy  
Ranking Member, Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510-6050

The Honorable Bob Goodlatte  
Chairman, Committee on the Judiciary  
United States House of Representatives  
2138 Rayburn House Office Building  
Washington, DC 20515

The Honorable John Conyers  
Ranking Member, Committee on the Judiciary  
United States House of Representatives  
2138 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Grassley, Ranking Member Leahy, Chairman Goodlatte, and Ranking Member Conyers,

We are 42 copyright lawyers, scholars, and expert librarians who work in and for libraries, and we write in our individual capacities in regards to Chairman Goodlatte's and Ranking Member Conyers's recent call for comments on the future of the Copyright Office. Specifically, we write to share our thoughts on the relationship between copyright and libraries, and why we believe the Copyright Office should continue to be housed in the Library of Congress. Other aspects of the House Judiciary Committee's proposal are of interest to us, as well; for example, we believe members of our community should serve on any advisory board that serves the Office. We would be happy to discuss this and other aspects of reform with you. This letter, however, focuses on continuing the close relationship between the Copyright Office and the Library of Congress.

We were first prompted to write you because of the alarming letter dated November 28, 2016, sent to you from former Registers of Copyright Ralph Oman and Marybeth Peters. We disagree profoundly with Mr. Oman and Ms. Peters' suggestion that, among other things, the interests of libraries are at times "hostile to the effective administration of our copyright system." Copyright law and libraries do not have "competing interests" and "different priorities." Rather, libraries in

all their richness and complexity reflect and serve the range of values embodied in the Copyright Act, values that should be shared by the Copyright Office.

Cultural institutions and the Copyright Office are natural allies. The Constitution tells us in Article I, Section 8, Clause 8, that copyright's purpose is "to promote the Progress of Science and the useful Arts." Libraries share this core purpose and promote cultural progress in numerous ways, from massive financial investments in the acquisition and licensing of copyrighted works to the curation and preservation of our cultural heritage. 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.

While the former Registers acknowledge the important mission of libraries, and the law's recognition of that importance, they seem to see the Copyright Office on the side of authors and media companies, with libraries and the public on the other side. They suggest, for example, that the Register was safe from undue influence so long as the Librarian was an author and not a professional librarian. Their descriptions of the benefits and beneficiaries of copyright focus almost exclusively on "individual creators and businesses." For example, their letter highlights the impact of the Varsity Brands case (regarding the scope of copyright protection, if any, for certain fashion designs) on the "fashion industry," not the public the law is required to serve.

We reject this false dichotomy between copyright and the public interest, and we are disappointed to see two former leaders of the Copyright Office suggest that the position they once occupied is identified primarily with a narrow conception of the interests of a limited set of commercial copyright holders. Most disappointing is the notion that the interests of copyright law itself are somehow in "tension" with the "laudable but limited" mission and priorities of our national library, or of any library. It would be a troubling indictment of copyright law, and of the Copyright Office, if its priorities were inimical to the institution charged with supporting the intellectual and creative endeavors of Congress, the government, and the American public.

Our experience as copyright experts in cultural institutions reveals a more balanced approach to the law, and a mission that is anything but "limited." In our education and outreach efforts, we teach librarians and library users respect for every aspect of the law and appreciation for its complex but fundamentally public-serving character. We embrace fair use, first sale, interlibrary loan, and other important users' and owners' rights, as these are crucial parts of the copyright system. Without them libraries as we know them in this country could not exist. At the same time, we work hard to ensure respect for the ways copyright limits what we and our patrons can do without payment or permission. Our library colleagues respect and appreciate our roles as guardians of the rights of authors whose works our institutions shepherd.

We also serve creators and copyright holders directly. Libraries help writers and other creators not only by providing collections, but also by offering valuable copyright services. Universities,

for example, are major producers of copyrighted works, and not all are texts or even academic scholarship. The faculties on our campuses include U.S. Poet Laureates, Academy Award-winning filmmakers, Pulitzer Prize-winning journalists, and Grammy Award-winning composers and musicians. Our students are the next generation of creative pioneers. In our services we assist authors and creators with understanding their rights under copyright, understanding and negotiating publishing agreements, choosing whether and how to publish their works online, and also when and how to seek permission from others. And of course, public and academic libraries support copyright holders by investing more than \$4 billion per year acquiring content in print, electronic and digital formats.

We routinely consult with teachers and students who are creating films and showing films, creating music and performing music, creating art and displaying artworks, writing plays and performing plays. We educate these creators on various aspects of copyright, supporting them in maximizing the impact of their work and making lawful use of others'. Since creators are also users of copyrighted content, balance is essential for a robust creative culture and economy. We understand that copyright is a complex ecosystem of people who occupy different roles at different times (and often at the same time), not a zero-sum struggle between opposing sides. That ecosystem thrives in our libraries.

More and more libraries are hiring people like us, with legal training and copyright experience, to foster copyright literacy and awareness at our institutions and to facilitate exciting new initiatives that support the fundamental mission of higher education: teaching and research. The rich and complex nature of this work is extremely attractive to copyright practitioners. We cannot imagine the Library will have any difficulty recruiting a talented expert to occupy the position of Register of Copyrights.

The relevant GAO Reports and former Register Maria Pallante's own public statements indicate that the Office's challenges have little to do with politics or ideology. Ms. Pallante was concerned primarily about the Office's budget and funding model and its acquisition and use of information technology. The Office needs desperately to improve the systems it uses to create and make accessible its registration and recordation collections, which together form a powerful map of the genome of human creativity. That map belongs to the American people, and the value of this information, both for commerce and for scholarship, is hard to overestimate. We hope Congress will support the Library and the Office as they seek the resources necessary to make this information useful to all.

Librarians are experts in organizing and managing information using cutting-edge technologies. We anticipate that the technological and bureaucratic challenges Ms. Pallante identified will benefit greatly from Dr. Hayden's oversight, and that the Copyright Office's struggles with management of its records will likewise benefit from professional librarian involvement. Rather than "tension," there can be, and should be, symbiosis between the Office and the Library. Far from "historical accident," the Office's location as part of the Library reflects an acknowledgment of this symbiosis, and of the importance a free country should attach to a national library with a

broad, deep, and well-described collection. Interference in this long-running relationship would be ill-advised.

Sincerely,

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