

AIPLA

American Intellectual Property Law Association

January 30, 2017

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, Jr.
Ranking Member
Committee on the Judiciary
United States House of Representatives
2142 Rayburn House Office Building
Washington, DC 20515

Re: House Judiciary Committee First Policy Proposal on Review of U.S. Copyright Law

Dear Chairman Goodlatte and Ranking Member Conyers:

The American Intellectual Property Law Association (“AIPLA”) is pleased to provide comments in response to the House Judiciary Committee’s policy proposal, titled “Reform of the U.S. Copyright Office,” arising from the Committee’s review of U.S. copyright law, released on December 8, 2016 (“Policy Proposal”). AIPLA welcomes the proposed reforms, as set forth in more detail below.

AIPLA is a national bar association of approximately 14,000 members who are primarily lawyers engaged in private or corporate practice, government service, and the academic community. AIPLA members represent a wide and diverse spectrum of individuals, companies, and institutions involved directly or indirectly in the practice of patent, trademark, copyright, trade secret, and unfair competition, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property. Our mission includes helping to establish and maintain fair and effective laws and policies that stimulate and reward invention and authorship while balancing the public’s interest in healthy competition, reasonable costs, and basic fairness.

AIPLA previously provided testimony before the Committee at the February 26, 2015 hearing on “U.S. Copyright Office: Its Functions and Resources.”¹ Consistent with that testimony and with positions developed by AIPLA following the hearing, AIPLA favors, in principle, legislative action to appropriately modernize the U.S. Copyright Office (the “Office”), enabling it to meet the ever-expanding needs and expectations of Congress, its stakeholders, and the public.²

With respect to the Committee’s proposal outlined in the “Register of Copyrights and Copyright Office Structure” section of the Policy Proposal, AIPLA believes that the Office

¹ *U.S. Copyright Office: Its Functions and Resources: Hearing Before the Comm. on the Judiciary*, H.R., 114th Cong. 36-51 (2015) (testimony of Nancy J. Mertz, Schoeman Updike Kaufman & Stern LLP, on behalf of the AIPLA (Feb. 26, 2015)) (“Mertz Testimony”), available at https://judiciary.house.gov/wp-content/uploads/2016/02/114-4_93529.pdf.

² AIPLA, *Copyright Law Committee Resolution on U.S. Copyright Office*, as approved by the Board of Directors, Sept. 11, 2016, available at http://www.aipla.org/committees/committee_pages/Copyright-Law/Recent%20Resolutions/Copyright%20Law%20Committee%20Resolution%20on%20U.S.%20Copyright%20Office%20as%20approved%20by%20the%20Board%20of%20Directors%2009.11.16.docx.

should be led by an individual who is appointed by the President and confirmed by the Senate. AIPLA supports a strong and balanced copyright system with an Office managed and directed by an individual having the highest qualifications. These include: in-depth knowledge of U.S. copyright law and international obligations of the United States under copyright treaties; thorough knowledge of the administrative laws and regulations that apply to the Office; and extensive experience in other relevant fields of law. AIPLA has developed a white paper setting forth its recommended qualifications for the next Register of Copyrights.³

As set forth in its white paper, AIPLA believes that the Register of Copyrights must possess significant managerial and administrative skills to: (1) direct and oversee several hundred employees performing a wide range of legal and administrative duties; (2) navigate inter-agency and other federal administrative concerns; and (3) address the backlog of copyright applications which could risk substantive rights of copyright holders.

Regarding the Policy Proposal's discussion on "Copyright Office Advisory Committees," while AIPLA does not have a specific position on the Committee's proposal, it is something we believe merits further consideration. The composition and mission of any such committees needs to be carefully considered, but our experience is that the Patent Public Advisory Committee and the Trademark Public Advisory Committee have proven valuable and to the stakeholder community and have had a positive impact on the USPTO's operations.

With respect to the Policy Proposal's recommendations on "Information Technology Upgrades," AIPLA believes that the Office should have control over its own budget, staffing, and IT, and copyright policy. We believe it should be adequately funded through appropriations, which should be comprised of both user fees and taxpayer dollars, and it should be given the authority to set appropriate fees as necessary to carry out its responsibilities and modernize, with a proper level of Congressional oversight of the fee structure. Further, the Office should be given sufficient control over the use of its fees, subject to appropriate Congressional oversight, and should have access to such funds over multiple years and through a multi-year budget cycles (*i.e.*, a revolving fund). It should be authorized and adequately funded to improve the registration and recordation processes, including the re-design and re-structure of its IT system to provide accurate, up-to-date, searchable, and comprehensive public records.

AIPLA supports funding the Copyright Office's modernization efforts, including the goals reflected in the IT modernization plan, through a blend of fees for services and dedicated appropriated dollars. The ideal formula should advance the goals of the copyright laws without discouraging registration. AIPLA further believes that the Office needs increased resources and autonomy to modernize and fund future investments, including the ability to plan for the future by ensuring that collected fees and appropriated dollars remain available to the Office to spend on multi-year modernization projects and other future capital improvements.⁴

³ AIPLA, *AIPLA Recommendations Regarding the Qualifications for the Next Register of the U.S. Copyright Office* (Sept. 2015), available at http://www.aipla.org/committees/committee_pages/Public-Appointments/Committee%20Documents/AIPLA%20White%20Paper%20on%20Copyright%20Register%20Board%20Approved%20Sept%202015.pdf

⁴ AIPLA, *Comments Regarding "Information Technology Upgrades for a Twenty-First Century Copyright Office," Submitted in Response to U.S. Copyright Office's Mar. 1, 2016 Notice of Inquiry* (Mar. 31, 2016), available at

With regard to the need for a searchable, digital database of copyright ownership information, AIPLA has previously provided feedback on suggested improvements to the registration and recordation systems. Such suggestions include creating an electronic recordation system, moving away from reliance on original signatures or other hyper-technical requirements, expanding the scope of persons entitled to record a document, implementing a user-friendly and effective system to follow up on the status of a recordation, and linking document records pertaining to registered works to the registration records of those works.⁵ AIPLA would welcome the opportunity to provide further comments on any proposed upgrades to the Office's registration and recordation systems.

Finally, regarding the Policy Proposal's recommendations on "Small Claims," AIPLA anticipates providing substantive feedback on this issue—including thoughts on proposals similar to those contained in the bills on copyright small claims introduced in the 114th Congress—in the near future.

Sincerely,



Mark L. Whitaker
President
American Intellectual Property Law Association

<http://www.aipla.org/advocacy/executive/Documents/AIPLA%20Comments%20on%20IT%20Modernization%20Plan.%203.1.16.%20FINAL.pdf>

⁵ Mertzel Testimony at 46; AIPLA, *Comments Regarding "Strategic Plan for Recordation of Documents," Submitted in Response to U.S. Copyright Office's Jan. 15, 2014 Notice of Inquiry* (Mar. 14, 2014), available at <http://www.aipla.org/advocacy/executive/Documents/AIPLA%20Comments%20to%20Copyright%20Office%20on%20Recordation%20-%203.14.14.pdf>; AIPLA, *Comments Regarding "Technological Upgrades to Registration and Recordation Functions," Submitted in Response to U.S. Copyright Office's Mar. 22, 2013 Notice of Inquiry* (May 20, 2013), available at <http://www.aipla.org/advocacy/executive/Documents/AIPLA%20Comments%20to%20Copyright%20Office%20on%20Technological%20Upgrades-5.20.13.pdf>.