

March 31, 2016

Honorable Maria A. Pallante  
Register of Copyrights  
U.S. Copyright Office  
101 Independence Avenue, SE  
Washington, DC 20559-6000

Via: <http://copyright.gov/policy/itupgrade/index.html>

**Re: Comments Submitted Pursuant to “Information Technology Upgrades for a Twenty-First Century Copyright Office Notice of Inquiry,” 81 Fed. Reg. 10,672 (Mar. 1, 2016)**

Dear Register Pallante:

The American Intellectual Property Law Association (AIPLA) is pleased to offer comments in response to the above-referenced U.S. Copyright Office Notice of Inquiry concerning its Provisional Information Technology Modernization Plan (“IT Plan”).

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

Generally speaking, AIPLA supports the Copyright Office’s modernization efforts and IT improvement goals. Given the time allocated for public comment and the particular expertise and interests of AIPLA’s members, AIPLA has focused its response at this time to inquiry numbers two and three and offers the following comments:

**2. Should the modernization be funded from fees, appropriated dollars, or a combination of both, and, if both, is there an ideal formula or ratio?**

AIPLA supports funding the Copyright Office’s modernization efforts, including the goals reflected in the IT Plan, through a blend of fees for services and dedicated appropriated dollars.

AIPLA does not, at this time, take a position as to a precise formula or ratio for funding, but the ideal formula should balance the goals of the copyright laws without discouraging registration.

Some of the costs associated with the modernization should fall on customers of the Copyright Office's services. Certain fee increases may therefore be appropriate. As the Copyright Office has noted, however, registration is encouraged, and fee increases that are too high would subvert the goals of the copyright laws by discouraging registration. Registration confers a valuable public benefit, and the financial incentive to register (including the incentives provided under the Copyright Act) must remain available to all creators.

Further, registrants will not be the only beneficiaries of an improved, modern Copyright Office. The changes under consideration would enhance the recordation process as well as the registration process. A fully searchable database populated with complete copyright and ownership information, as well as timely, easy access to deposit copies, will benefit and assist not just creators, but all users of copyrighted content—including litigants and businesses and individuals seeking to make informed decisions regarding works and material they may wish to consider licensing. AIPLA therefore believes it is appropriate to use some amount of dedicated appropriated dollars to cover the costs of modernization.

**3. What authorities or flexibilities, if any, should be included in 17 U.S.C. 708 regarding whether and how the Office may recover its reasonable costs of operation (including in the aggregate as opposed to based upon individual services), differentiate between customers or users, and/or fund future investments, not only as to the five-year plan but on an ongoing basis?**

AIPLA believes that the Copyright Office needs increased resources and autonomy to modernize and fund future investments. It is our understanding that Copyright Office fees have not been set at a level that would enable the Office, for example, to purchase its own hardware or develop the type of customized software that is needed to modernize. Further, Section 708 does not expressly authorize the Copyright Office to fund capital expenses. Accordingly, AIPLA supports, in principle, amending Section 708 to the degree necessary to ensure that the Copyright Office has the authority to collect the fees necessary for the user-funded portion of its modernization efforts. Any such amendment should explicitly authorize collection of fees to address all costs inherent in rendering services, including both capital and operating expenses related to IT modernization.

AIPLA further recommends that consideration be given to amending Section 708 so as to allow the Copyright Office to plan for the future by ensuring that collected fees and appropriated dollars remain available to the Copyright Office to spend on multi-year modernization projects and other future capital improvements.

Finally, AIPLA supports, in principle, the Copyright Office's proposal that it be permitted to differentiate between various categories of customers and users in setting fees.

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AIPLA will continue to monitor developments relating to Copyright Office modernization, and it welcomes the opportunity to provide the Copyright Office with assistance and comments in the future.

Respectfully submitted,

A handwritten signature in blue ink that reads "Denise W. DeFranco". The signature is written in a cursive style with a long horizontal flourish at the end.

Denise W. DeFranco

President

American Intellectual Property Law Association