



American Intellectual Property Law Association

March 19, 2020

The Honorable Carla Hayden
Librarian of Congress
Library of Congress
101 Independence Avenue, S.E.
Washington, D.C. 20540-1000

Re: Recommendations on the Position of Register of Copyrights

Dear Dr. Hayden:

On behalf of the American Intellectual Property Law Association (AIPLA), I want to thank you for the opportunity to share our views on the next Register of Copyrights. The vacancy created by the recent departure of Karen Temple has again focused attention on this key position.

Founded in 1897, AIPLA is a national bar association of approximately 12,000 members who are engaged in private or corporate practice, in government service, and in 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 (utility and design), trademark, copyright, trade secret, and unfair competition law, 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 but that also balance the public's interest in healthy competition, reasonable costs, and basic fairness. Our members have a key interest in an efficient and effective Copyright Office.

As you undertake consideration of filling the Register position, we would like to share our views on some of the leadership traits that we believe are important for that position. Several years ago, AIPLA's Board of Directors developed a report describing the important responsibilities of the Register and outlining the specific skills and experience we believe are necessary to ensure an efficient and effective U.S. Copyright Office. A copy of the full report is attached for your consideration. A strong intellectual property system requires strong leadership, which demands the appointment of a qualified executive to serve as the Register of the U.S. Copyright Office.

While the entire report provides more detail, in summary some of the traits we believe essential for the position are as follows:

- Have in-depth knowledge of U.S. Copyright Law and international obligations of the U.S. under copyright treaties is paramount;
- Be familiar and have experience with the legislative process and be able to advise Congress;

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- Have the technical and legal skills to advise and provide information and technical assistance on copyright and related rights to other offices of the federal government (USPTO, DOJ, State, USTR, etc.);
- Have high intellect, significant legal skills, professional and personal integrity, sound judgment, judicious temperament, and an ability to balance competing interests; and
- Have significant managerial and administrative skills and be able to lead and oversee the Office.

Thank you for taking the time to consider our views. We look forward to continuing to engage with the you as this process moves forward. AIPLA would be happy to meet with you and discuss our views further and looks forward to working with your Office to ensure that our intellectual property system continues to thrive, providing benefits to both the U.S. economy and the public at large.

Sincerely,



Barbara A. Fiocco

President

American Intellectual Property Law Association



THE AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION

**RECOMMENDATIONS REGARDING QUALIFICATIONS FOR
THE NEXT REGISTER OF THE U.S. COPYRIGHT OFFICE**

Revised and approved, September 2015

AIPLA RECOMMENDATIONS REGARDING QUALIFICATIONS FOR THE POSITION OF REGISTER OF COPYRIGHTS

The American Intellectual Property Law Association (“AIPLA”) is a national bar association of approximately 13,500 members engaged in private and corporate practice, government service, and the academic community. AIPLA members represent a diverse spectrum of individuals, companies and institutions involved directly and indirectly in the practice of copyright and other fields of law affecting intellectual property. AIPLA members represent both copyright owners and those who use copyrighted works.

AIPLA has a continuing interest in seeing that the Copyright Office is managed and directed by an individual having the highest qualifications: 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 Copyright Office, and extensive experience in other relevant fields of law. Such an individual should have high intellect, significant legal skills, professional and personal integrity, and sound judgment. In addition, the successful candidate must possess significant managerial and administrative skills to: 1) direct and oversee approximately 400 employees performing a wide range of legal and administrative duties; 2) navigate inter-agency and other federal administrative concerns; and 3) address the significant backlog of copyright applications which potentially threatens the substantive rights of copyright holders.

Because of the many challenges facing the Office, it is important that the Register possess a high degree of managerial and administrative skills. In particular, the next Register must be able to lead the Office in developing and implementing new technology, including a user-friendly online registration system and an electronic database of recorded documents. The next Register should also be able to advise Congress and guide the Office in developing new deposit procedures that will streamline the registration process while ensuring that the Library of Congress retains the opportunity to select and collect the works it desires to add to the nation’s collection.

In addition to an ability to advise domestic agencies on copyright and related rights, the successful candidate should possess the inter-personal skills and abilities to meet with copyright

owners and user groups to readily explain and convey the policies and decisions of the Copyright Office. The Register should, therefore, be able to fulfill his or her official duties in a manner responsive to the wide variety of stakeholders who use the services of the U.S. Copyright Office. This capability requires recognition of the realities of the marketplace for copyrighted works, including business realities implicated by various registration decisions.

The Register should also be able to exercise a high degree of independence in administering the Copyright Act and carrying out the responsibilities for related intellectual property rights expressly delegated to the Register and the Office by Congress including, but not limited to deciding novel questions of law referred by the Copyright Royalty Judges. The ideal candidate should display a sound, judicious temperament that will allow him or her to balance competing interests when considering not only royalty issues but also contentious public issues, such as the exemptions under the Digital Millennium Copyright Act.

The successful candidate should also have the technical and legal skills to advise and provide information and technical assistance on copyright and related rights to the Department of State, the Office of the U.S. Trade Representative, U.S. Customs and Border Protection, the U.S. Intellectual Property Enforcement Coordinator, the Department of Justice, and the U.S. Department of Commerce, as well as to the Congress, e.g., to appropriate committees, members and congressional staff. In addition, the successful candidate must have the skills and abilities to be able to work effectively with the Department of Justice on questions involving the registrability of works, the constitutionality and applications of provisions of the copyright and related rights laws, and important issues of copyright policy.

The successful candidate must also be able effectively to participate as a member of United States delegations in meetings and conferences with officials from other nations, and international organizations such as WIPO. Relevant experience in the private sector in the protection and utilization of copyrighted works, as well as experience in the Copyright Office, would be highly desirable.

The successful candidate should possess the ability to motivate and lead a diverse workforce. The successful candidate also should have demonstrated experience in managing a complex organization, including budgeting and managing resources, leading and administering

diverse and inter-connected functions and operations, and adjusting operations and planning to meet the rapidly changing challenges of the Copyright Office in the digital era.

Given the important and growing role that copyright and related rights play in the U.S. economy, AIPLA urges that the individual selected to be the Register of Copyrights possess most of the qualifications outlined above.