

**UNITED STATE SENATE
COMMITTEE ON RULES AND ADMINISTRATION**

**TESTIMONY OF JONATHAN BAND
ON REGISTER OF COPYRIGHTS SELECTION AND ACCOUNTABILITY ACT**

Chairman Blunt, Ranking Member Klobuchar, members of the Committee, my name is Jonathan Band. I am an Adjunct Professor at the Georgetown University Law Center. I also serve as Counsel to the Library Copyright Alliance (“LCA”). LCA consists of three major library associations: the American Library Association, the Association of College and Research Libraries, and the Association of Research Libraries.¹ These associations represent over 100,000 libraries in the United States employing more than 350,000 librarians and other personnel. An estimated 200 million Americans use these libraries over two billion times each year.

I appreciate this opportunity to express our opposition to the “Register of Copyrights Selection and Accountability Act of 2017,” S. 1010. The bill would make the position of the Register of Copyrights subject to Presidential appointment and Senate confirmation. Under current law, 17 U.S.C. § 701, the Librarian of Congress selects the Register.

The Register Should Not Be A Presidentially-Appointed Position

As explained in detail in the attached report prepared by LCA member the American Library Association,² Congress has repeatedly considered the best locus for the U.S. Copyright Office and has consistently reaffirmed that the Library of Congress is its most effective and efficient home. While S. 1010 would not technically remove the Copyright Office from the Library, it would effectively achieve that result by ceding to the President the power to select the head of the Office.

The rationale for S. 1010 is elusive. Why Congress would voluntarily cede its own Librarian’s authority to select and oversee a key Congressional advisor on copyright matters to the Executive Branch is hard to comprehend. Recognizing the illogic of the legislation, the House amended H.R. 1695, as introduced, to require the President to appoint the Register from three candidates recommended by a panel consisting of the Congressional leadership and the Librarian. Limiting the President’s authority in this manner, however, raises serious questions regarding the separation of powers.

Moreover, it is difficult to understand how the public or Congress itself would benefit from politicization of the Register’s position by making it subject to presidential appointment and Senate confirmation, as this legislation proposes. Such politicization of the position necessarily

¹ The Library of Congress is a member of ARL, but it did not participate in the preparation of this testimony.

² Alisa Holahan, *Lessons from History: The Copyright Office Belongs in the Library of Congress* (2017), <https://districtdispatch.org/wp-content/uploads/2017/08/Lessons-From-History.pdf>.

would result in a Register more actively engaged in policy development than in competent management and modernization. Additionally, a politicized selection process likely would result in a Register who does not balance the competing interests of all stakeholders in the copyright system.

Further, politicizing the process of appointing the next Register would severely delay his or her installation. Indeed, the introduction of this legislation as a practical matter has already prevented the appointment of a Register for over a year and half.

S. 1010's 10-year term for the Register of Copyrights also would lead to less accountability to Congress and the public. That contradicts the stated intent of the bill made plain in its title.

Copyright Office Modernization Is Proceeding Without This Legislation

One of the claimed rationales for the legislation is that more autonomy from the Library would enhance the Copyright Office's ability to modernize its technology. In fact, the technology-related progress made jointly by the Library and the Office over the past eighteen months proves that this legislation is not needed.

There is broad consensus that the Copyright Office must improve its information technology capabilities.³ In 2015, the Government Accountability Office found that the Library's information technology systems were outdated, and that the Library's lack of coordination with the Copyright Office impeded the Office's ability to serve its customers. However, under the leadership of the current Librarian, Dr. Carla Hayden, the Library has made significant advances in addressing these issues.

Last year, the Library's Chief Information Officer, Bernard Barton, reported to Congress that he was working with the Acting Register of Copyrights to further the modernization process. As Mr. Barton explained, the Library provides all of its service areas with umbrella IT support. The Office thus can focus on its mission-specific needs rather than worrying about general systems issues, such as staff computer problems or server maintenance.

This past May, Acting Register Karyn Temple testified to the Senate Subcommittee on Legislative Branch Appropriations that "developing and deploying modernized systems that facilitate and enhance the Office's work and provide a positive experience for the public is...one of the Office's highest priorities." To that end, last September, the Copyright Office and the Library's Office of the Chief Information Officer ("OCIO") jointly submitted to the House and Senate Committees on Appropriations a revised Copyright Office IT modernization plan that

³ The challenges faced by the Copyright Office's IT systems are not unique to the Copyright Office or the Library. Many government agencies have experienced serious IT problems ranging from massive data breaches (*e.g.*, the Office of Personnel Management data breach affecting the records of over 20 million current and former government employees) to system crashes (*e.g.*, the State Department's system for processing visas) to cost overruns (*e.g.*, the Federal Aviation Administration's NextGen air traffic control system) to systemic failures (the roll-out of the Affordable Care Act).

focused on leveraging resources within the Library to take full advantage of possible economies of scale. That revised plan supplemented the Office’s 2016 Provisional Information Technology Modernization Plan and Cost Analysis, and drew upon “the collaborative work of the Office and the OCIO to identify possible synergies that might exist now or in the future, as both the Office and the Library engage in dual modernization efforts.”

Acting Register Temple explained that in partnership with the Office, the Library’s OCIO developed detailed cost projections and timelines for full IT modernization that align with the revised provisional IT modernization plan. The OCIO took full responsibility for the technical IT responsibilities for the Office, as the Library consolidated all Office information technology positions within the OCIO in December 2017. At the same time, in accordance with the revised plan, in January 2018 the Copyright Office established the Copyright Modernization Office (“CMO”), which complements the OCIO’s technical support by “providing the business direction necessary to ensure that modernization projects are continuously aligned with the Office’s mission and strategic goals.” Consistent with the plan’s “dual-governance approach,” the Acting Register of Copyrights and the Library’s Chief Information Officer jointly chair a Copyright Office Modernization Governance Board, “which provides the executive direction critical to meeting the Offices’ long-term modernization goals.”

Numerous projects are already underway under the supervision of the CMO and Governance Board, including preliminary work on:

- the Copyright Office’s new automated recordation system, which will overhaul the current manual recordation of documents;
- the Office’s next-generation enterprise registration system, which will provide the user interfaces that will unify how end users experience the Office’s applications;
- release of the Office’s “proof of concept” Virtual Card Catalog, which provides preliminary and accelerated public access to historical copyright records in advance of full digitization of all Office records; and
- a data management model that will provide for a federated search technology to allow users to search across registration, recordation, and licensing databases, and that will establish chain-of-title sequencing that can link registrations to recordations or other documents.

Under the timeline developed by the Library’s OCIO, Copyright Office IT modernization activities planned for the next five years include development and unification of public interfaces and all Office workflows through an enterprise solution. This enterprise solution will consist of modular applications including the next-generation registration system, the recordation system, the public interfaces, back-end processes, and future incorporation of statutory license processing.

All these improvements are occurring without the legislation. Accordingly, Copyright Office modernization does not require the Register to be a Presidentially-appointed, Senate-confirmed position.

For all these reasons, we oppose the Register of Copyrights Selection and Accountability Act, and urge the Committee to do the same.

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