

December 12, 2016

The Honorable Chuck Grassley
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 201510-6050

The Honorable Patrick Leahy
Ranking Member, Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, D.C. 201510-6050

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

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

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

I am writing to express my concern with the letter you received from former Registers of Copyright Ralph Oman and Marybeth Peters suggesting the removal of the Copyright Office from its current position under the supervision of the Librarian of Congress. Their letter argues that libraries, and the Library of Congress in particular, are biased and inappropriate leaders of our nation's copyright system. I could not disagree more.

I have a strong interest in how our copyright system is administered. Its Constitutional purpose, to promote the progress of science and the useful arts, closely matches our own mission as a university and library. Duke University is an engine for innovation, manifested clearly in the tens of thousands of scholarly articles, books, and other creative works that Duke faculty and students create and publish each year and upon which so much industry and economic growth is based. Duke University Libraries are at the heart of every step of that research and creative process. Likewise, the Library of Congress stands and should remain at the heart of our national system to promote progress in science and the arts.

The Oman and Peters letter contains two inaccuracies that I feel compelled to correct. The first is the tension they claim exists between libraries and other actors within the copyright system. Libraries like ours have perhaps the most well-rounded and balanced relationship

with copyright of any group of institutions in the world. Duke Libraries, like many other libraries, spends millions of dollars every year on services for our faculty and students to help them navigate the legal, technological, and economic choices they face as creators. Our libraries partner with those creators both on publishing traditional scholarship and on developing new and innovative ways to package and distribute their work so it can have a broader impact. Duke Libraries also administer the rights to thousands of works for which we own copyright, primarily in our rare book and archival collections. Our libraries are faced weekly with permissions requests for those works, and are often confronted with challenging questions about how to address infringing or unauthorized uses. Duke Libraries also invest millions of dollars each year into the publishing system by purchasing content and supporting new and emerging publishing platforms. Through those purchases, our Libraries have developed an impressive collection, for which we now spend even more money on developing strategies to carefully respect the rights of copyright owners as we seek to preserve and provide access to those materials in forms that are useful to researchers.

While I am extraordinarily proud of Duke Libraries, the broad and balanced roles we play within the copyright system are not unique among libraries. This is what libraries do. Oman and Peters suggest that Libraries have only a “limited goal” of “offering to the public the greatest possible volume of material, often at little or no direct cost to their patrons.” Oman and Peters fundamentally misstate the role of libraries and suggest a bias with respect to copyright that just does not exist.

The second inaccuracy I seek to correct is the impression that the Office has acted impartially in recent years when it has operated without intervention from the Library of Congress. For nearly 150 years the Library of Congress has administered portions of the Copyright Act. For most of that time, it did an admirable job. However, in recent years and without meaningful Library of Congress oversight, the Copyright Office has drifted into a markedly content industry-centric approach to copyright policy while at the same time failing in its core function of promoting and making accessible copyright registration information.

Former Copyright Office employees are now routinely hired out by organizations such as the MPAA, the Authors Guild, the Copyright Clearance Center, and other content industry groups. Likewise, the Office’s current policy-setting employees are largely hired from among the ranks of similar—and sometimes the same—organizations. The result has been an Office that has so skewed its approach that it has publicly supported policy and proposed legislation, such as SOPA and PIPA, roundly rejected by almost all other interested groups such as consumers, higher education, the technology industry, and many others. It has also led to the Office taking incorrect legal positions favoring rights holders, for example by asserting that statutory safe harbors are unavailable to users of pre-1972 sound recordings, which courts have subsequently rejected as “arbitrary and without logical foundation.”¹

While spending significant time and energy promoting its vision of copyright policy, the Office has done little to support its core registration function. The copyright registration and recordation system is woefully out of date, impeding licensing and permissions because users are unable to efficiently find information about copyright owners. Easy, simple, low-cost registration and recordation, searchable databases, and integration with other

¹ Capitol Records, LLC v. Vimeo, LLC, 826 F.3d 78, 91 (2d Cir. 2016).

databases of copyright information are all within reach. Those things should have been in place long ago.

The Office has not offered for some time the “straight and true” copyright policy advice that Oman and Peters suggest it should, nor has it adequately worked to achieve its core function of facilitating registration information. I am aware of the Copyright Office Reform Proposal released by Chairman Goodlatte and Ranking Member Conyers that would maintain the Office as a Legislative Branch agency. Merely locating the Office within the Legislative Branch without oversight from the Library of Congress would make these problems worse. The solution for the Copyright Office is not *less* oversight from the Library of Congress but more. Leadership from an experienced administrator such as Dr. Hayden who can guide the Office back to a position of impartiality and to a focus on its core function is a welcome development for Duke Libraries and for the public that has been so often ignored by the Office in favor of the content industry.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Jakubs", with a stylized flourish at the end.

Deborah Jakubs, Ph.D.
Rita DiGiallonardo Holloway University Librarian
Vice Provost for Library Affairs
Adjunct Associate Professor of History