



Statement of

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before the

HOUSE COMMITTEE ON ADMINISTRATION

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The Copyright Alliance submits this written testimony for the record for the House Committee on Administration’s hearing titled *The U.S. Copyright Office: Customers, Communities, and Modernization Efforts*. We applaud the Committee for holding this important hearing to ensure that the U.S. copyright system is effective and working to meet the needs of creators, copyright owners, and others in the copyright community whose businesses and livelihoods depend on both the administration of the Copyright Act and the operations of the U.S. Copyright Office.

We strongly support the Copyright Office and its ongoing efforts to modernize its operations and infrastructure—especially those directly related to the copyright registration system. It is our hope that, by focusing on this very important issue, this hearing will help to ensure that the Copyright Office and the Library of Congress’ Office of the Chief Information Officer (OCIO) have the necessary resources and that those resources are targeted to modernizing the Copyright Office’s copyright registration system and positioning the Copyright Office to successfully fulfill its responsibilities under 17 U.S.C. §701. As customers and users of Copyright Office’s services, our members care deeply about the status of copyright registration system updates and about the successful execution and delivery of such updates that results in marked improvements for

copyright owners. Pursuant to the Committee request on June 10th, we submit this written testimony to assist the Committee in its oversight of Copyright Office operations and in particular those operations related to the modernization of the copyright registration system.

The Copyright Alliance is a non-profit, non-partisan public interest and educational organization representing the copyright interests of over 2 million individual creators and over 15,000 organizations in the United States, across the spectrum of copyright disciplines. The Copyright Alliance is dedicated to advocating policies that promote and preserve the value of copyright, and to protecting the rights of creators and innovators. The individual creators and organizations that we represent rely on copyright law to protect their creativity, efforts, and investments in the creation and distribution of new copyrighted works for the public to enjoy. All of our members depend on the copyright system, and in particular, the copyright registration system, as the means by which they are able to enjoy and enforce their Constitutionally protected rights.

I. The Critical Role Played by the U.S. Copyright Office

As the office responsible for administering all matters relating to copyright, few other government offices are more important to the growth of creative commercial activity in our nation than the U.S. Copyright Office. The Copyright Office plays a pivotal role in fortifying the creative economy through the registration of creators' works and the recordation of documents pertaining to those works. The ability of our nation's independent creators and the businesses that support their work to promptly register and record copyright interests with the Office, and of the public to obtain copyright information to facilitate licensing, creates new industries and spurs the economy. That, in turn, advances our nation's global competitiveness and technological leadership.¹

¹ Based on a 2022 report, the value added by the total copyright industries to U.S. GDP exceeded \$2.9 trillion, accounting for 12.52% of the U.S. economy while the total copyright industries employed nearly 16.1 million workers and accounted for 8.14% of all U.S. employment in the U.S. *See* COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY: THE 2022 REPORT, INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE, 13-18 (2022), <https://www.iipa.org/files/uploads/2020/12/2020-IIPA-Report-FINAL-web.pdf>.

In view of the ongoing and rapid changes in the information, entertainment, and technology sectors, the Copyright Office has never been more important than it is today. Given the global and dynamic characteristics of the creative economy, the Office must be able to rapidly adapt to ensure it is able to carry out its statutorily mandated duties and meet the needs of the users of its services.

We appreciate and strongly support all the important and valuable work of the Copyright Office and its ongoing efforts to modernize all its operations, systems, and infrastructure. The evolving nature of the digital content marketplace requires a Copyright Office that can accommodate market changes and is sensitive to the business needs of the creative community. There is little doubt that a modern and efficient Copyright Office is critical to a robust and efficient 21st century copyright system, and we commend the Office for its commitment to modernization efforts.

Under Register Perlmutter's expert leadership, the Copyright Office has continued its excellent work to support the creative community and the progress of the arts. Some of the Office's more recent operational achievements that have greatly benefited the copyright community include the appointment of the Office's first-ever Chief Economist, historically quick application processing times, modernization of the recordation process, and the successful launch of the Copyright Claims Board (CCB). The Copyright Office has also continued to be the leading voice on the most important copyright policy issues facing creators today, such as novel questions raised by generative artificial intelligence (AI).

Modernization of the Copyright Office's most important system, the registration system, however, continues to be a matter of critical concern for the creative community. Under structural changes adopted nearly a decade ago, modernization efforts are jointly managed by the Copyright Office and the Library of Congress.² The Copyright Office relies on Congressional

² See U.S. COPYRIGHT OFFICE, Modified U.S. Copyright Office Provisional IT Modernization Plan, 4 (2017), <https://www.copyright.gov/reports/itplan/modified-modernization-plan.pdf>; LIBRARY OF CONG., Office of the Inspector General Semiannual Report to the Congress 12 (2017), <https://www.loc.gov/static/portals/about/office-of-the-inspector-general/reports/documents/March-2017-OIG-Semiannual-Report-to-Congress-5-17-17.pdf>.

appropriations for a portion of its operations and for the resources necessary to modernize its systems. The Copyright Office also acts under the direction of the Library of Congress' Office of the Chief Information Officer (OCIO) for all the technical aspects of its modernization efforts.

The OCIO is “the centralized IT organization working to transform the Library of Congress (and therefore, the U.S. Copyright Office, which is housed within the Library) into a data-driven and digitally enabled institution.”³ The OCIO is responsible for “build[ing] and sustain[ing] the technology necessary for the Library to meet its mission to Congress and the American public and provides the leadership, governance and management for technical innovation. It also delivers IT security, network operations and end-user services for all Library employees,” including the U.S. Copyright Office.⁴

While we have been told that the lines of communications between the Library and the Copyright Office are much improved from years past, the stark reality is that any such improvements have yet to result in the necessary updates to the copyright *registration system* that are required by and critical to the creative community and of a 21st century Copyright Office. It is our impression that this is because, until recently, the OCIO had not been prioritizing the *copyright registration system*, relative to other projects.

We do note that in the Copyright Office's FY2023 Annual Report the Office states that last fiscal year, it “*began* prioritizing work on the new and improved online registration system.”⁵ While the copyright community had hoped for registration modernization to be prioritized earlier, it is up to all of us—the Copyright Office, OCIO, the copyright community, and other stakeholders—to seize the moment and move forward by working together expeditiously, efficiently, effectively, and successfully to modernize the copyright registration system.

³ LIB. OF CONG., *How We Are Organized* (Jun. 21, 2020), <https://www.loc.gov/careers/working-at-the-library/how-we-are-organized/>.

⁴ *Id.*

⁵ U.S. Copyright Office, *Annual Report*, 10 (2024), <https://copyright.gov/reports/annual/2023/ar2023.pdf>.

Modernization of the copyright registration system is a top priority for the creative community. As customers of the Copyright Office, whose legal rights are conditioned on timely registration of copyrights (as described further below), our members need complete and prompt transparency about the status of the system they are required to use. It is paramount to ensuring a vibrant creative economy.

We are grateful for the strides made on modernization generally by the Copyright Office over the years, as discussed further below. Though these efforts should in no way be minimized, the fact remains that there is still much work to be done to ensure robust participation in our nation's copyright registration system—the most crucial aspect of the copyright system. In statements made by the Library and the Copyright Office during congressional testimonies, speeches, rulemaking procedures, and meetings of the Copyright Public Modernization Committee (CPMC)⁶ over the past several months and beyond, a noticeable dwindling of clear and frequent communications on the progress and timelines of registration modernization, along with other communications have caused us to become concerned about the status of efforts to modernize the copyright registration system. It would be immensely helpful to the creative community to better understand the timelines, status, extent, and scope of the Office's progress on copyright registration modernization efforts, both now and on an ongoing basis.

Through this hearing we encourage the Committee to seek a better understanding of:

- why modernization of the registration system itself has been slow and whether it has been delayed beyond previous projections;

⁶ The CPMC is a public committee convened by the Library of Congress “to enhance communication and provide a public forum for the technology-related aspects of the Copyright Office’s modernization initiative. It is critically important to the copyright community and the public. The committee is managed by the Office of the Chief Information Officer (OCIO), with support from the Copyright Office and other Library offices as necessary. The committee’s goal is to expand and enhance communication with external stakeholders on IT modernization of Copyright Office systems and to provide an ongoing public forum for sharing information and answering questions related to this initiative.”

- what the Library and Copyright Office have done, are doing, and still need to do to modernize the registration system and when we can expect the various stages of that work to be completed;
- how resources are allocated and who coordinates the allocation of resources to specific projects and modernization efforts;
- whether there are statutory hurdles (in addition to those mentioned in the eDeposit discussion below) to the Library and Copyright Office developing and implementing crucial registration features for the Enterprise Copyright System (“ECS”), especially those identified in section III of this testimony;
- whether there is a need for additional funding or resources that are targeted specifically toward modernization of the copyright registration system; and
- when the new rule that is urgently needed to allow news media publishers to register updates to their news websites in a group registration format will be implemented.

We applaud the Committee for holding a hearing to shed light on the status of the registration modernization process, and to specifically address questions relating to (i) what challenges and obstacles the Copyright Office faces with regard to implementing various features or rules related to the registration modernization process; (ii) what practical, administrative, regulatory, or legislative solutions exist or are needed to proactively address those issues; (iii) what the next steps are; and (iv) how Congress and the creative community can assist. Understanding and knowing the answers to these questions can ensure that the Copyright Office is adequately equipped and funded so that it can comprehensively modernize the system upon which millions of individual creators and the thousands of businesses that support them rely on to protect, enforce, and enjoy their rights.

II. Efforts to Modernize the U.S. Copyright Office

Efforts to modernize the U.S. Copyright Office have been ongoing for at least eight years, throughout the tenures of several Registers of Copyrights. During that time, the Office achieved remarkable milestones in modernizing the copyright system for copyright owners and users, and in increasing accessibility to records for the public. Over the past several years, the Copyright Office launched its pilot electronic recordation system for the public; launched the new Copyright Claims Board (the CCB), promptly promulgated adjustments, extensions, and other provisional actions to allow for electronic submissions during the pandemic,⁷ created several new group registration options, and launched a digitized copyright historical record books collection.

In particular, we appreciate and recognize the improvements made by the Library of Congress and the Copyright Office in the copyright recordation system and the Copyright Public Records System (CPRS). The recordation system is a system by which the Copyright Office accepts documentation for filing and indexing transfers of copyright ownership, notices of termination, and other documents pertaining to a copyright. Before it was modernized, *all* documents had to be submitted in paper form. Starting in July 2022, the Copyright Office publicly launched its online recordation system, which allows certain types of documents for recordation to be electronically submitted.⁸ The appetite for a modernized recordation system was apparent, as the Office reported that in the first year of operations of the modernized recordation system, the Office recorded 8,875 documents in fiscal year 2023—a 49% increase in the number of documents over fiscal year 2022.⁹ Additionally, the Office reported that 77% of all recordation activities, from document submission to payment, were conducted online.¹⁰

⁷ Technical Amendments Regarding Electronic Submissions to the Copyright Office, 85 Fed. Reg. 19, 666 (Apr. 08, 2024) (Codified at 37 C.F.R. pt. 201, 202) <https://www.govinfo.gov/content/pkg/FR-2020-04-08/pdf/2020-07353.pdf>.

⁸ U.S. Copyright Office, *Rules for Electronic Recordation in the Expanded Pilot*, <https://copyright.gov/recordation/pilot/rules.pdf>.

⁹ U.S. Copyright Office, *Annual Report*, 9 (2024), <https://copyright.gov/reports/annual/2023/ar2023.pdf>.

¹⁰ *Id.*

Similar to the improvements made to the recordation system, the Copyright Office has also made great progress in modernizing the CPRS, converting physical registration records, assignments, notices of use, and other documents into digital, readable formats. In fiscal year 2023, the Office reported that it passed a major milestone in adding more than one million digitized card catalog records to the search engine in its CPRS pilot since its launch at the end of 2020.¹¹ These improvements took a lot of hard work and resources. We commend the Office and the Library for these outstanding efforts.

While improvements to recordation and public records are very much appreciated, **what the creative community needs most is a revitalization of the copyright *registration* system.** There can be little doubt that the most important operational duty that the Copyright Office performs is the examination and issuance of registrations of copyright claims—commonly referred to as the copyright registration process. The Office routinely receives about a half million registration applications each year. In fiscal year 2023, the Office received 481,038 claims to register a copyright (which is significantly more than the 16,592 recorded documents it processed).¹² It is clear that copyright registration is the heart of the Copyright Office’s administrative duties. Despite this, *it appears* that modernization of the copyright registration system is lagging way behind other modernization efforts. If that is the case, it is cause of great concern for the creative community.

A. The Need for Improved Transparency and Targeted Resources for Copyright Registration Modernization Efforts

We emphasize and highlight our use of the phrase “it appears” in the paragraph above because the copyright community does not know the status of the ongoing efforts to modernize the registration system or what the upcoming modernization benchmarks are. Our hope is that this

¹¹ *Id.* at 10.

¹² *Id.* at 7. This difference in numbers is due, in part, to the fact that recordation is typically not mandatory whereas copyright registration is a necessary prerequisite to both enforcing a copyright owner’s rights and being able to seek statutory damages in an enforcement action.

hearing will result in on tangible timelines and expectations for creators and copyright owners whose everyday business and legal operations, including securing and clearing rights, licensing, enforcing, and litigating, greatly depend on the Copyright Office’s registration modernization efforts.

Years ago, the Copyright Office created a webpage¹³ that was devoted to keeping the copyright community apprised of its efforts to modernize the Copyright Office’s systems—including the registration system. This webpage has served as the primary resource for the copyright community to learn about the status of modernization efforts. While occasional updates are provided by Copyright Office and Library leadership in testimony and speeches and sometimes during the bi-annual Copyright Public Modernization Committee (CPMC) meetings, in recent years the webpage has grown vague and not been kept up to date.¹⁴ The page also does not include any detailed references to future target deadlines or explain what modernization benchmarks are upcoming in future years. As a result, this webpage, which is intended to make the registration modernization process more transparent, is falling short of that goal.

The creative community’s concern over the lack of up-to-date information on the status of modernization has been exacerbated by various statements and actions over the past several months that have caused the copyright community to become worried that efforts to modernize the Copyright Office’s registration system may be delayed. Some of these include:

- Toward the end of the bi-annual February 15th CPMC meeting, Kristin Laurente, Director of IT Governance at the Library of Congress, announced¹⁵ that the CPMC would not meet again for an entire year—with the next meeting scheduled to take place in February 2025. Many, if not all, of the CPMC members have consistently and collectively urged

¹³ *Modernization*, U.S. Copyright Office, <https://copyright.gov/copyright-modernization/>.

¹⁴ The first updates, starting in 2020, are broken down into quarterly updates, but then the updates devolve into one or two single-line updates for each year. The final entry includes this simple, nondescript statement: “continuous development in support of internal and external examination workflows.” There is no update yet for 2024. *See id.*

¹⁵ *Copyright Pub. Modernization Comm. Public Meeting*, LIB. OF CONG., at about the 1:20 mark (Feb. 15, 2024) <https://www.loc.gov/item/webcast-11256/>

that CPMC meetings be convened more frequently.¹⁶ Ms. Laurente and David Brunton, then-Special Advisor to the Register of Copyrights, both acknowledged that request during the meeting.¹⁷ So, it came with some surprise that the Library chose to move in the opposite direction and convene the CPMC even less frequently—and not for an entire year.¹⁸ Moreover, because the Federal Register notice re-authorizing the CPMC was not published until mid-May—which is almost two months after the March 15th date announced during the meeting¹⁹—it is unclear whether the meeting may occur even later than February 2025. The apparent lack of urgency here is very worrisome. Such actions give the appearance that copyright registration modernization is not a priority.

- On January 30, 2024, in response to a formal protest filed by Deloitte Consulting LLP and Softrams LLC with regard to the Library of Congress’ bid process, the U.S. Government Accountability Office (GAO) issued a bid protest decision, in which it ruled that the Library’s \$450 million software development contracts must be revisited.²⁰ In its decision, the GAO recommended that the Library reopen discussions, seek any necessary revised proposals, and reevaluate such proposals. It appears that the software contracts at issue likely cover at least some Copyright Office modernization work. While protests are not uncommon with respect to large government contracts, the copyright community is concerned nonetheless that this decision (and its aftermath) will slow modernization even

¹⁶ These comments were made by members of the CPMC. *See e.g., Copyright Pub. Modernization Comm. Public Meeting*, LIB. OF CONG., <https://www.loc.gov/item/webcast-11256/>.

¹⁷ *Supra*, note 15.

¹⁸ U.S. Copyright Office, NewsNet Issue 898 (June 22, 2021) <https://www.copyright.gov/newsnet/2021/898.html>. (Even if the delay reflects the need to vet and select new and/or additional CPMC members, it seems that that task could be completed in far less than a year. Indeed, the current CPMC held its first meeting five months after the initial Federal Register notice inviting applications to join the Committee).

¹⁹ Toward the end of the bi-annual meeting of the CPMC meeting on February 15, 2024, Laurente announced that there would be a notice published in the Federal Register to re-authorize the CPMC and request interested parties (including existing CPMC members) to apply. She specifically stated that the notice would be published on March 15, 2024. The notice was not published until mid-May—almost two months after the announced date and only after the CPMC members sent a letter requesting an update. Neither the Library nor the Copyright Office have explained why the notice—which was virtually identical the same notice issued three-years earlier—was delayed.

²⁰ Decision in Matter of Deloitte Consulting, LLP; Softrams, LLC (Jan. 30, 2024) <https://www.gao.gov/products/b-421801.2%2Cb-421801.3%2Cb-421801.4%2Cb-421801.5%2Cb-421801.6>.

further. We are also concerned that the decision will negatively impact the financial resources the Library is able to devote to modernization efforts. When this concern was raised at the last CPMC meeting, neither the Library nor the Copyright Office responded during the meeting or afterwards, which heightened our concerns.

- Several statements made in a recently published Notice of Proposed Rulemaking (NPRM) relating to a new Group Registration for Two-Dimensional Artwork that relate directly or indirectly to the status of modernization raised additional concerns.²¹ For example, there are several instances in the NPRM where the Office addresses certain modernization issues and says that the Office “*will consider*” addressing these issues, instead of saying that the Office has *already considered* these issues—or at the very least *is in the process of considering* these issues.²² Once new systems are built and implemented it may very well be too late in the process to consider making these improvements. In one instance, the Office states that it “*will take* these interests into account when it *begins* to develop features... of its next-generation system” (emphasis added).²³ Given that the Copyright Office and the OCIO are at least eight years into

²¹ Group Registration of Two-Dimensional Artwork, 89 Fed. Reg. 11,794 (Feb. 15, 2024) (to be codified at 37 C.F.R. pt. 201, 202) <https://www.govinfo.gov/content/pkg/FR-2024-02-15/pdf/2024-03063.pdf>. In the NPRM, “the U.S. Copyright Office is proposing to create a new group registration option for two-dimensional artwork. This option will allow applicants to register up to ten works published within a thirty-day time period by submitting a single online application with a digital deposit copy of each work.”

²² We are also very concerned with the Office’s numerous statements throughout the NPRM about its very limited resources. It is essential that the Office have enough resources to modernize. If resources are limited such that it has slowed or restricted modernization efforts those difficulties should be shared with members of Congress, CPMC members, and stakeholders to ensure that the Office has the resources it needs. The lack of resources is a grave concern for to us and other stakeholders, and we would like to work with the Office, the Library and members of Congress to help address that.

²³ *Id.* at 11,795. *But see* U.S. Copyright Office, *Annual Report*, 13 (2022) <https://www.copyright.gov/reports/annual/2022/ar2022.pdf> (although the NPRM for Group Registration of Two-Dimensional Artwork states that group registrations have not yet been considered, the 2022 annual report seems to indicate otherwise, stating “...the Office continued developing new features to enhance the registration process for both staff and users. This included a demo environment for testing and training, and moderated user testing of a *prototype of the group registration application for unpublished works.*” (emphasis added)).

development of the Enterprise Copyright System (ECS), it is concerning that they have yet to begin developing crucial registration features for the ECS.²⁴

Regardless of whether modernization of the registration system is delayed or on schedule, we wish to note how long the process seems to be taking. A prototype of the standard application was first demonstrated internally in December 2020.²⁵ It is now over *three years later* and the copyright community has yet to see any tangible deliverable on the standard application or any other application. In testimony before the Senate Judiciary Committee’s IP Subcommittee in 2019 the Copyright Office seemed to indicate that the registration modernization process would be mostly, if not entirely, completed by the end of 2024.²⁶ As best we can tell, it does not seem that that target is going to be met.

It seems that the modernization timeline—which already seems like an unduly lengthy process (now at *least eight years*)—may be extended further due to delay. In testimony, the Office and Library have stated several times that the Office hopes to “ultimately retire the legacy eCO Registration system by the end of calendar [year] 2026.” With no visible signs of registration modernization to point to and no publicly disclosed benchmarks regarding copyright registration modernization, we worry that this deadline seems unlikely to be met.

Not only does the copyright community not know the status of *existing efforts* to modernize the registration system, but we also do not know *when to expect future efforts* to modernize the registration system or what those elements are. When will the pilot for the standard application

²⁴A list and discussion of many of these crucial registration features can be found in our position paper. See U.S. Copyright Office Modernization: Improvements to the Registration System, COPYRIGHT ALLIANCE, <https://copyrightalliance.org/policy/position-papers/registration-system-improvements-copyright-office/>.

²⁵ See U.S. Copyright Office, *Annual Report*, 6 (2021) <https://www.copyright.gov/reports/annual/2021/ar2021.pdf> (stating that a “prototype of the Standard Application was successfully demonstrated internally in December 2020.” And that the “second version of the prototype ... was completed in March 2021....”).

²⁶ *Oversight of Modernization of the U.S. Copyright Office: Before the Subcomm. on Intellectual Prop. of the Comm. on the Judiciary*. 116th Cong. 6 (2019), <https://www.copyright.gov/laws/testimonies/121019-testimony-harry.pdf> (Written Statement of Jodi Harry, Chief Financial Officer and Acting Chief of Operations) (stating that “[w]ork on this prototype is scheduled for October 2019 through April 2020, with the intent of providing limited public testing to obtain feedback for the larger registration development effort that will continue through September 2024.”).

be ready? When will a pilot for the group applications be ready? Will the new applications use a dynamic fee structure, as we hope? Will a tiered fee structure be implemented, and if so when and how? Will an API and a subscription option be available, and if so, when? Will the new system include any new tools to allow applicants to track their applications as they progress through the process? These are just a sampling of the questions we have been asking for many years. It is possible that the answers to these questions (and others) will demonstrate that the Copyright Office has made great progress. Unfortunately, it is not possible for copyright owners to know because of the lack of transparency on the status of copyright registration modernization. We are hoping this hearing will lead to answers to these and other important modernization questions.

B. The Importance of the Copyright Registration System

The creative economy depends on a well-functioning copyright registration system. The ability of our nation's creators and copyright owners to easily register their copyright claims with the Copyright Office, and of the public to obtain copyright information that enables them to license copyrighted works, creates new industries and spurs the economy. This, in turn, advances our nation's global competitiveness and technological leadership. As we point out further below, the ability to register works is more crucial now than ever before to enable copyright owners to enforce and license their rights in the context of generative AI technologies and the systematic, large-scale unauthorized use of copyright-protected works by AI developers.

Copyright law does not require a copyrighted work to be registered with the U.S. Copyright Office in order for that work to receive protection. But as a practical matter, copyright registration is necessary because one cannot enforce their rights in a copyrighted work in federal court or obtain a final determination from the new Copyright Claims Board unless the work is first registered with (or, in the case of federal court, rejected by) the Office.²⁷ Therefore, without a copyright registration, a copyright owner has a right without a remedy.²⁸

²⁷ See generally 17 U.S.C §1505(a)(1)-(2).

²⁸ See 17 U.S.C § 507(b). Also, the ability of creators and copyright owners to register in a timely manner is crucial, as the Copyright Act has a three-year statute of limitations from the time a claim accrues.

Registering a work also plays a vital part in a copyright owner's ability to license or otherwise transfer and exercise their rights. Without a registration, a copyright owner may not be able—or at the very least, be hesitant—to negotiate a license for their works. On the flip side, a potential licensee may not want to conclude license negotiations until the work has been registered by the Office, as a registration certificate can provide the necessary proof and assurances of a valid copyright to close a licensing deal. The inability to effectively and easily register one's work with the Office should never be an obstacle to productive, free-market deals and hold up commerce.

The registration system doesn't only benefit copyright owners and creators. The public also benefits from an effective and modern copyright registration system because it results in a more complete, robust copyright record for determining authorship and other information about works; contacting owners for licensing or other usage; and determining whether works are in the public domain and freely usable. A decrease in registrations makes it increasingly difficult for potential licensees, archives, libraries, historians, and others to identify and locate copyright owners.

Over the past several years, the Copyright Office has addressed concerns with the registration system by enacting new rules that make registration easier and more efficient, including new rules relating to group registrations for unpublished and published photographs, online literary works, works on an album of music, newsletters and serials, unpublished works, newspapers, and contributions to periodicals. Within the last six months, the Office has issued two Notices of Proposed Rulemaking (NPRMs)—proposed new group registration options for online updates to newspapers (discussed in more detail below) and for two-dimensional artwork. We very much appreciate these proposed rules and thank the Office for all the hard work and time that went into drafting and/or enacting them.

While these changes are significant and welcome, they are also just the tip of the copyright registration-modernization iceberg. As we discuss below, much more needs to be done. Depending on who you talk to, the Office is anywhere between almost 8 and 25 years into the modernization process. Regardless of exactly when modernization efforts technically started, the

creative community hoped to be further along on modernization of the copyright registration system by now.

To give the Committee some sense of what the rest of the iceberg entails, below is a list of improvements to the registration system that we and our members have requested and have been told will be implemented.²⁹ In addition, we address two ongoing rulemakings in more detail below.

III. Necessary Improvements to the Copyright Registration System

When the new copyright registration system is launched it is imperative that it include the following improvements—improvements which the Copyright Alliance and/or our members have been requesting for a decade or more:

- *Tiered Fee Structure*: Under the present fee structure, an individual creator pays as much—if not more—to register their copyrighted works than a multi-billion-dollar company does.³⁰ That needs to change. Implementing a tiered fee structure that permits small businesses and individual creators to pay a reduced fee to register works, similar to the U.S. Patent and Trademark Office’s small and micro-entity options, should be a top priority of the Copyright Office. If implemented in conjunction with other improvements, this can and should be accomplished without the need to increase fees charged to larger entities.

²⁹ See e.g. *infra* note 35; see e.g. *Oversight of the Copyright Office: Before the S. Comm. on the Judiciary* 117th Cong. (2022) (Answer of Shira Perlmutter, Registrant of Copyrights, for Question for the Record) (“We expect in the next year to begin user testing for various components of the registration system including the handling of electronic deposits. We are also going to start recording Notices of Termination online which we have not yet been able to do and that will start in the next year.”).

³⁰ For example, a standard application to register a single work costs \$65 to file. A group registration can cost upwards of \$85 to file. Thus, an individual photographer may pay \$85 to register a group of photographs taken during a one-day photoshoot, while a movie studio might pay \$65 to register this year’s summer blockbuster.

- *Dynamic Pricing Models*: Implementing a dynamic pricing model that is both efficient and cost-effective should be a top priority of the Copyright Office. In addition to scaling the fees based on the number and type of works, the fees should be prorated. For example, if a photographer wishes to register 1,500 images, the fee should not merely be double the fee for registering 750 photographs because the processing and examination of the application will take less time—and thus cost the Office less—since only one application, rather than multiple, will need to be processed. Other approaches that would reduce the burden on applicants may also be appropriate, such as a deferred examination system.³¹
- *Streamline the Registration Process*: For certain works that incorporate elements of different types of copyrighted works—like video games, which combine elements of computer software, audiovisual works, musical works, and 2D artworks—the registration process should be streamlined by adopting policies that would effectively reduce registration redundancy so that multiple applications are no longer required to separately register the various elements encompassed within a single work. For example, for video games this would mean registering all works associated with one game title at one time, including multiple platforms, music, and 2D design elements (including box art).
- *APIs*: Developing Application Programming Interfaces (APIs) is critical to modernization of the registration system and should be a top priority for the Office. Third parties, especially those that file a large volume of copyright applications, should be able to interoperate with the Office’s API in a way that would integrate registration into a creator’s workflow to streamline and simplify the registration process. An Office interface that allows rightsholders to seamlessly upload and register their work “with one

³¹ Deferred examination is a process whereby the Copyright Office could defer examination of a copyright registration application until examination is later requested (similar to the USPTO’s provisional application process). Such a process would help lower registration fees for creators and copyright owners. Importantly it would also reduce the administrative and cost burdens placed on the Copyright Office by having to examine every registration filing. See generally Copyright Alliance, *Comments to the U.S. Copyright Office on Deferred Registration Examination*, (Jan. 24, 2022) <https://copyrightalliance.org/wp-content/uploads/2022/01/Deferred-Exam-NOI-Comments-FINAL-Jan-24.pdf>.

click” would create a registration process that is easier, less time consuming, and that would increase registrations.³²

- *Subscription Option*: Implementing a subscription option that would let rightsholders register a specific number of works over a designated period should be a top priority of the Office. For example, by paying an annual fee, instead of a fee for each registration application, a rightsholder would be permitted to submit a certain number of registration applications during the year depending on the type of subscription they are signed up for. If necessary, an upper limit could be placed on the number of applications filed. A subscription service model would work well with the development of an API that allows rightsholders to apply to register their works concurrent with creation. Now that the Copyright Office has a Chief Economist on staff, implementing this in a way that is efficient and cost effective for the Office and users should be a priority.
- *Group Registration for Illustrations*: Similar to other group registrations that are available, the Copyright Office should offer a group registration for illustrations and other two-dimensional artwork. It is important that any limit placed on the number of works permitted within the group registration be set based on an understanding of the dynamics and workflow associated with the creation of these works. A dynamic pricing model would also be beneficial in this context (see above). The Office recently issued a NPRM to make this change,³³ but we were concerned that the proposed rule did not adequately or effectively address the needs of creators and copyright owners of two-dimensional works because it required use of the current registration system (eCO), which inherently limited the efficacy and responsiveness of the rule to visual artists’ needs. While this

³² A modernized application process should allow for the data for multiple applications to be managed and submitted in a structured, more data driven process, rather than manually field-by-field on multiple screens and tabs as is done today. It should also streamline the process of submitting content/product files to the Office so that it can be sent via API.

³³ See *supra* note 21.

remains a priority, we urge the Office to implement this rule with the necessary changes commensurate with the launch of the new ECS system.³⁴

- *Expanded Group Registrations for Photographs:* The 750-limit on the number of photographs that can be registered in group applications for published photographs should be increased. This can easily be accomplished through a dynamic pricing model (see above).
- *New Electronic Application Forms:* New registration forms should be simplified and more intuitive and responsive than existing forms. This can be accomplished by (i) using dropdown menus to maximize consistency and searchability; (ii) incorporating branching logic so that when an applicant gives a specific answer to a question, the potential responses to follow-up questions could change and be limited in the context of their earlier answer; (iii) requiring applicants to submit only the information that is absolutely essential to completing the registration and be aimed at fact-finding rather than legal conclusions so an applicant can complete the registration application without the assistance of an attorney; and (iv) utilizing help dialogue boxes throughout the form to guide applicants to provide more accurate answers.
- *Improved Application Support:* A live chat support feature—to complement expanded live phone support—would be an especially helpful tool to assist copyright owners with specific or unique questions while also allowing the Copyright Office to track and monitor the contents of chat sessions to better understand and respond to any widespread issues or areas of confusion that may arise. Additionally, applicants would benefit from a centralized, online portal where all correspondence regarding an application resides in the portal to more easily monitor and track communications with the Office.

³⁴ Copyright Alliance, *Comments to the U.S. Copyright Office on Deferred Registration Examination* (Apr. 1, 2024), https://copyrightalliance.org/wp-content/uploads/2024/04/AS-FILED-Copyright-Alliance-Comments_NPRM-GR2D.pdf.

- *Transition to Electronic Registration Certificates:* The Copyright Alliance supports the Copyright Office issuing electronic certificates in lieu of paper copies, provided that the Office ensure that electronic certificates will be accepted by the courts and the CCB. Not only should this change facilitate greater efficiency and minimize the amount of time it takes for a registrant to receive her certificate, but it should also result in a reduction of the application fee since the cost of issuing a paper certificate is presently included in the application fee. The Office could offer various types of paper certificates—for example, a basic certificate, and various specialized certificates for framing and display—as an additional source of revenue to offset other costs.
- *Changes to the Best Edition Requirements:* It is essential that requirements to deposit a “best edition” of a work be changed and made more transparent to make the registration process less burdensome for creators and copyright owners who may not end up registering their works because of the inflexibility of these requirements. This issue is discussed in more detail in section VI of this testimony.

In an oversight hearing in 2022, the Office stated that it is was looking at several of the aforementioned improvements to the copyright registration system, including a dynamic fee structure, subscription pricing options, API integration, and increasing the maximum limit of works registrable in a group registration application.³⁵ No update has been provided since, other than in the aforementioned NPRM for a Group Registration for Two-Dimensional Artwork, in which the Office vaguely states that it “*will consider*” addressing these issues or “*will take* these interests into account when it *begins* to develop features... of its next-generation system.”

There are two very important additional points we want to make about these necessary improvements to the copyright registration system.

³⁵ *Oversight of the Copyright Office: Before the S. Comm. on the Judiciary* 117th Cong. (2022) (Oral testimony of Shira Perlmuter, Registrant of Copyrights) (“We currently don’t see the statute as a barrier to any of the proposals we are considering, but they do require some technological changes...we are looking at the possibility of a dynamic fee structure going forward... and also the possibility of subscription fee pricing options... we are also looking at increasing maximum limit of photographs that can be registered as a part of one group application... we are also looking at the technology necessary for APIs, to enable hardware and software and third party organization to achieve integration with our system.”).

First, *if the Office thinks that any of these of other changes would require amendment of the Copyright Act, it should notify stakeholders and Congress immediately.* If the Office articulates that a change in the law may be necessary, then stakeholders and the Office can work with Congress to immediately evaluate whether an amendment to the statute is necessary and if so, expeditiously work on amending the statute as necessary. This could be done simultaneously with the Office’s modernization efforts so that the law will not be an obstacle to implementing these efforts. Any delay in notifying Congress and stakeholders will only serve to delay modernization and will further frustrate rightsholders who have been requesting the aforementioned improvements for many years. Additionally, swiftly enacting the necessary rules or statutory changes will help the Copyright Office’s customers—copyright registrants—by giving them the necessary regulatory clarity to adapt their business operations, licensing, and enforcement activities which depend on copyright registration practices and guidelines set forth by the Office.

Second, we also want to ensure that efforts to modernize the registration system will not hinder current improvements that can occur today—especially when modernizing the registration system seems so far away.³⁶

IV. Group Registration of Updates to News Websites

There is a pending NPRM that would allow news media publishers to register updates to their news websites in a group registration format. ***It is imperative that this NPRM be implemented immediately.***

³⁶ A great example of an improvement that can take place immediately is the new group registration of updates to a news website. See Group Registration of Updates to a News Website, 89 Fed. Reg. 311 (proposed on Jan. 3, 2024) (to be codified at 37 C.F.R. pts. 201 and 202) <https://www.govinfo.gov/content/pkg/FR-2024-01-03/pdf/2023-28724.pdf> (“The U.S. Copyright Office is proposing to create a new group registration option for frequently updated news websites.” “This option will enable online news publishers to register a group of updates to a news website as a collective work with a deposit composed of identifying material representing sufficient portions of the works, rather than the complete contents of the website.”).

On January 3, 2024, the Copyright Office published a notice of proposed rulemaking in the Federal Register, regarding the creation of a new group registration option for frequently updated news websites.³⁷ The rule, which would allow news media publishers to register their ever-changing, dynamic websites and the news works contained therein, was widely supported in the comments that were submitted.³⁸

We applaud the Copyright Office for taking this important step toward modernizing the copyright registration system to align with news publishers' business realities and operational practices, as well as reader preferences, and to encourage participation in the copyright registration system. The current copyright registration system—which was created for print newspapers—has not been able to meet the demands arising from the changes in the ways that copyrightable news content is delivered and consumed. News media publishers throughout the United States are in dire need of an immediate and effective solution to resolve the registration obstacles they face due to the current registration system that is technologically challenging and cost-prohibitive.

As mentioned earlier in our testimony, copyright registration is critical to copyright owners. This is because, most significantly, it is a prerequisite to suing in federal court and is often a necessary or key element in licensing negotiations. Particularly in the context of technological challenges like those posed by generative AI technologies which train on scraped and unauthorized copies of copyrighted works, news media publishers are pressed, more now than ever, to expediently and efficiently register their online works.

The current registration system is simply failing news media publishers by preventing them from effectively protecting and enforcing their rights, including by impacting AI licensing markets. In the NPRM, the Copyright Office does not dispute, and in fact, confirms these challenges and

³⁷ Group Registration of Updates to a News Website, 89 Fed. Reg. 311 (Jan. 03, 2024) (to be codified at 37 C.F.R. pt. 201-202) <https://www.govinfo.gov/content/pkg/FR-2024-01-03/pdf/2023-28724.pdf>.

³⁸ See e.g. Copyright Alliance, *Comments to the U.S. Copyright Office on Group Registration of Updates to a New Website* (Feb. 20, 2024) <https://copyrightalliance.org/wp-content/uploads/2024/02/Copyright-Alliance-Comments-NPRM-Group-Reg.-of-Updates-to-News-Websites-1.pdf>; News Media Alliance, *Comments to the U.S. Copyright Office on Group Registration Updates to a News Website* (Feb. 20, 2024).

difficulties of news media publishers.³⁹ This is why *it is critical for the rule to be implemented without further delay*.⁴⁰

V. Access to Electronic Deposit Copies of Copyright-Protected Works

We have very significant specific concerns about the Library’s and Copyright Office’s transition to a system where electronic deposit (eDeposit) copies are preferred over physical copies. The Copyright Alliance and our members support efforts of the Library of Congress and the Copyright Office to transition to an eDeposit preferred system, so long as the Copyright Office and Library act consistently with the Copyright Act and within the statutory authority delegated to them by Congress and the Library meaningfully engages with the creative community in the development of Library programs and practices that affect copyright-protected digital deposit copies.

The Copyright Office published an NPRM that would expand the categories of eDeposits of published works submitted to the Office that the Library of Congress could select and transfer to its collections.⁴¹ The proposed rule conflates possession of eDeposit copies with authority to provide access to the works embodied in those copies. Nothing in the Copyright Act permits the Copyright Office to authorize the Library of Congress to reproduce eDeposit materials it has acquired and make them publicly accessible in ways that implicate the exclusive rights of copyright owners.

³⁹ *Supra* note 37, at 312.

⁴⁰ Our detailed feedback and comments on this proposed rulemaking is included in our comments to the Copyright Office. See Copyright Alliance, *Comments to the U.S. Copyright Office on Group Registration of Updates to a New Website* (Feb. 20, 2024) <https://copyrightalliance.org/wp-content/uploads/2024/02/Copyright-Alliance-Comments-NPRM-Group-Reg.-of-Updates-to-News-Websites-1.pdf>.

⁴¹ Access to Electronic Works, 88 Fed. Reg. 60413 (Sept. 1, 2023). The [notice of proposed rulemaking](#) proposes to: (i) grant the Copyright Office authority to make and transfer electronic deposit copies of published copyrighted works—submitted by rightsholders for registration purposes—to the Library of Congress for the purposes of its digital library operations, without licenses or technological protection measures (TPM) or digital rights management (DRM) protections; and (ii) grant the Library authority to make yet further copies and provide access to the protected works including over the Internet, without licenses or TPM or DRM protections.

Historically, copyright owners have not been consulted by the Library and have had no opportunity for meaningful public engagement on Library programs and practices in which their deposit copies are used. That must change as the Library converts to an eDeposits preferred system. It is crucial to meaningfully engaging copyright owners in the development of Library programs and practices that affect copyright-protected digital deposit copies. The Library and the Copyright Office should table its rulemaking on access to eDeposits while it seeks statutory authority from Congress and consults with copyright owners.

VI. Deposit Copy Issues: Best Edition and the Impact of the *Valancourt* Decision

In addition to the list of improvements in section III of this testimony, it is also imperative that requirements to deposit a “best edition” of a work⁴² be changed and made more transparent to make the registration process less burdensome for creators and copyright owners who may not register their works because of the inflexibility of these requirements.

At present, the best edition requirements conflate two different purposes: (i) submitting copies necessary to facilitate the Copyright Office’s examination of works that are submitted for registration and (ii) building the Library of Congress’ collections with archival-quality “best edition” copies as an adjunct to the Copyright Office registration process.⁴³ While acquisition of the best edition benefits the Library in building its collections, the Copyright Office does not need archival quality “best edition” copies to complete the registration process.

⁴² The Copyright Act requires copyright owners to deposit copies of the “best edition” of a work with the U.S. Copyright Office and the Library of Congress. Specifically, for works published in the United States, section 408 of the Copyright Act requires an applicant to deposit two copies of the “best edition” of the work with the Copyright Office when the rightsholder registers their work with the Office, and, for works first published in the United States, section 407 of the Copyright Act requires the submission of two copies of the “best edition” of the work for the use or disposition of the Library of Congress. “Best edition” is broadly defined as the edition that is published in the United States at any time before the date of deposit that the Library determines to be most suitable for its purposes. Importantly, the Library establishes criteria to determine what is the best edition for different types of copyrighted works.

⁴³ There are certain instances where the Office only requires an examination deposit, not a best edition version. This section obviously is discussing where that is not the case.

The best edition requirements can be burdensome for copyright registrants and bog down the registration process, further disincentivizing creators and copyright owners from registering their works. In many cases, the Library chooses not to add the deposit copy to its collections and instead donates or otherwise disposes of the copies. Despite the fact that there are many classes of works that the Library's curators have no interest in acquiring, the registration and best edition requirements still require submissions of best editions of works in those classes. The present system results in a considerable waste of time, money, and resources for all those involved in the copyright registration and collections systems. But these inefficiencies and burdens fall primarily and inequitably on the shoulders of rightsholders who register their copyrighted works with the Copyright Office. Moreover, there is no transparency to the best edition requirements—rightsholders have no idea what the Library needs best edition copies of and how the Library decides what the best edition is and why. It should not be the case that these rightsholders, the customers of the registration system, are the ones to shoulder the burdens created by inefficiencies of the best edition system.

The best way to fix the system is for the Library to work with rightsholders to assure the system works correctly and efficiently. The present system is a one-size-fits-all system. But there is a plethora of different types of copyrighted works and different formats and, therefore, it is essential that they each be treated differently. Moving forward, it is essential that the responsibility for adequately and appropriately supplying the Library's collections through the copyright registration system be more equitably divided between the Library and rightsholders. That can be achieved by requiring that the Library articulate which deposits, and in which formats, it wants to add to its collections and which it does not rather than indiscriminately demanding all deposit copies and then disposing of copies it does not want, as is presently the case.

Under this new system, if a type of work is not needed by the Library for its collections, then only one copy of that work would need to be deposited for examination purposes (and that copy need not be a best edition copy); but if a type of work is needed by the Library for its collections, a best edition copy of that work would need to be deposited (so that the Library can include that copy in its collections), and when practicable and permissible under the Copyright Act, in a

digital format to facilitate Copyright Office registration examinations and to suit the Library’s collection needs.⁴⁴

After the Library specifies what types of works it needs and does not need, the next step would be for rightsholders groups to meet with Library and Copyright Office officials to discuss whether and how the best edition requirements for those types of works that are needed by the Library should apply. These meetings would help ensure that rightsholders understand precisely what the Library is looking for and that the Library understands how easy or difficult it is for rightsholders of various types of works to prepare and deposit best edition copies.

Improvements to the system would benefit all parties, as the Library would retain its ability to obtain deposit copies in best edition format through the Copyright Office registration system and could permit electronic copies. The Copyright Office would be able to further reduce (i) registration pendency times because digital (non-best-edition format) copies will be easier and quicker for examiners to access and examine and (ii) the burden on examiners caused by rightsholder confusion about best edition requirements, since examiners would no longer have to examine for compliance with the best edition requirement in every case and would correspond with rightsholders about best edition requirements less frequently. Rightsholders would be able to more easily and affordably comply with deposit requirements when registering their works with the Office.⁴⁵

Finally, Copyright Alliance members are concerned with how the Office plans to implement Section 407 of the Copyright Act—including possible adjustments to deposit requirements and modifications to its deposit demand letters—following the D.C. Circuit Court’s recent *Valancourt Books, LLC v. Garland* decision.⁴⁶ That decision held that Section 407’s mandatory

⁴⁴ At present, one deposit satisfies the deposit requirements of sections 407 and 408 of the Copyright Act. Nothing in our comments should be construed as supporting changing that. After the application and deposit systems are modernized, one deposit should continue to satisfy the deposit requirements of sections 407 and 408.

⁴⁵ Copyright Alliance, *Comments to the U.S. Copyright Office on Best Edition Study*, <https://copyrightalliance.org/wp-content/uploads/2022/07/Best-Edition-Study-Comments-FINAL.pdf>.

⁴⁶ See generally *Valancourt Books, LLC v. Garland*, 82 F.4th 1222 (D.C. Cir. 2023).

deposit requirement violates the Just Compensation Clause because it allows “the government [to] directly appropriate[] private property for its own use.”⁴⁷ Notably, the decision only addressed the demand for physical copies of books, expressly disclaiming any holding as to electronic copies.

In a letter to Congress advising that it would not seek Supreme Court review of the decision, the Office of the Solicitor General argued that the significance of the decision is limited because the decision only held that Section 407’s deposit requirements were unconstitutional as applied to the plaintiffs in *Valancourt* and “left open the possibility that Section 407 may be constitutionally applied to other persons subject to the deposit requirement.”⁴⁸ Further, the letter explains that in circumstances where copyright in particular works was not obtained through voluntary commercial transactions, the Solicitor General believes the Copyright Office can continue to implement Section 407 by modifying its practices “in a manner that will avoid the concerns identified by the D.C. Circuit while still effectuating Section 407’s goal of supporting the Library of Congress’s collections.”⁴⁹

While the letter confirms that the Copyright Office intends to provide compliance flexibility, including the option to provide deposits in electronic form, it includes a reference to troubling guidance the Office plans to provide to demand letter recipients who “do[] not wish to retain copyright protection in a work.”⁵⁰ The letter explains that the Office will modify its deposit demand letters to “direct recipients who have questions to public resources that discuss cost-free steps to abandon a copyright” and then will “withdraw its demand for copies if the recipient provides the Office with information reflecting the recipient’s abandonment of its copyright.”⁵¹

⁴⁷ *Id.* at 14. (quoting *Tyler v. Hennepin Cty.*, 143 S. Ct. 1369, 1376 (2023)).

⁴⁸ Letter to the Speaker of the House from the U.S. Department of Justice, Office of the Solicitor General (April 12, 2024); <https://www.justice.gov/d9/2024-04/04.12.24.--ValancourtBooksLLC530DLetter.pdf>.

⁴⁹ *Id.* at 2.

⁵⁰ *Id.* at 3.

⁵¹ *Id.*

The copyright community believes such guidance is extremely problematic and improper, in that it could be easily interpreted as encouraging copyright owners to abandon their rights. It should also be noted that the concept of abandonment lacks a statutory basis, with the Copyright Office itself recently stating that “the Office will record an abandonment as a document pertaining to copyright without offering an opinion as to the legal effect of the document.”⁵² We strongly caution against the Copyright Office adjusting deposit requirements in any way that would encourage copyright owners to relinquish their rights or imply that doing so is beneficial. *We request that stakeholders be consulted before any change is made to section 407 deposit practices to account for the Valancourt decision.*

Conclusion

Though the Copyright Office has made considerable progress on modernizing the copyright recordation and public records systems, prompt and continual modernization of the copyright registration system is crucial to ensure maximum participation from and access for creators and copyright owners to fully enjoy and enforce their rights. Registration modernization efforts must anticipate and address challenges and offer solutions *before* a new registration system is launched, and continue to be flexible, transparent, and collaborative to encourage strong public-private partnerships dedicated to strengthening this critical government service. This would help make our copyright system be more efficient and responsive to the ever-changing challenges posed to creators and copyright owners’ rights.

We reiterate our deep appreciation and strong support for the important and valuable work of the U.S. Copyright Office and its ongoing efforts to modernize all its operations, systems and infrastructure. In particular, we thank and commend Register Perlmutter and her staff for their dedication and hard work on these important issues.

We thank the Committee for examining how our copyright systems can better support and service the creators and organizations who depend on copyright law protections to continue creating the expressive works that fuel our creative economy. We also thank the Committee for

⁵² COPYRIGHT OFFICE COMPENDIUM, Chapter 2300, 2311 (2021).

examining how to better enable and empower the U.S. Copyright Office, including whether it has adequate resources to implement the necessary changes in our copyright system—especially in the copyright registration context. Please let us know if we can provide any additional information or answer any questions regarding our views in this matter.