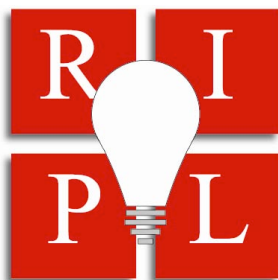


THE JOHN MARSHALL REVIEW OF INTELLECTUAL PROPERTY LAW



REVIEW AND REFLECTION: COPYRIGHT HEARINGS AND RELATED DISCOURSE IN THE
NATION'S CAPITAL

MARIA A. PALLANTE

ABSTRACT

On February 28, 2014, the Register of Copyrights of the United States and Director of the U.S. Copyright Office Maria A. Pallante delivered a keynote speech on the copyright hearings and related discourse in the nation's capital. The speech was given at The John Marshall Law School's 58th Annual Intellectual Property Conference. This article is based on her speech at the Conference.

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Cite as Maria A. Pallante, Review and Reflection: Copyright Hearings and Related Discourse in the Nation's Capital, 13 J. MARSHALL REV. INTELL. PROP. L. 487 (2014).

REVIEW AND REFLECTION: COPYRIGHT HEARINGS AND RELATED DISCOURSE IN THE NATION'S CAPITAL

MARIA A. PALLANTE*

It is an honor to join you today at The John Marshall Law School for the 58th Annual Intellectual Property Law Conference. I have enjoyed speaking with the many professors and practitioners who have gathered here around so many important issues of copyright, patent, and trademark law. Even in the February cold, I have enjoyed the bright sun and public art that make this city so spectacular.

As you all know, the immeasurably talented Harold Ramis died a few days ago, and it seems both timely and appropriate to refer to his legacy as a writer, actor, and director, including for such major works as *National Lampoon's Animal House*, *Caddyshack*, and *Groundhog Day*. "Chicago still remains a Mecca of the Midwest," he once said. "People from both coasts are kind of amazed how good life is in Chicago, and what a good culture we've got. You can have a pretty wonderful artistic life and never leave Chicago."¹

Of course, where there are artists, there are copyright issues. In my remarks, I would therefore like to describe for you the copyright conversation that is taking place in the Nation's Capital this year, a conversation that is suddenly and remarkably active. It is best characterized as a state of purposeful review, in which government actors are working with a broad variety of stakeholders through public comments, hearings, roundtables, discussion documents, policy studies, and regulatory proceedings for the purpose of identifying gaps in the law and considering or revisiting possible solutions.

Across the government, the process is collaborative and complementary. It involves the Congress, the Copyright Office, the Department of Commerce (including the Patent and Trademark Office), and other federal agencies (in addition to a number of important cases moving through the courts). This kind of activity has been building for some time. Indeed, on some issues we have had more than a decade of deliberation. Nonetheless, the amount of governmental focus in the past twelve months is remarkable in both its breadth and pace. And many people seem to agree that a 21st century copyright law will require a mix of legislative updates, regulatory improvements, and voluntary agreements or other private orderings amongst core industries.

I believe there is wide recognition that the U.S. statute is showing the strain of its age, but among reasonable people there is also disagreement as to whether this is merely frustrating or inherently problematic. The Copyright Act as written is a law about copies. It was negotiated in the 1950s and 1960s and enacted in 1976. Its Internet overlay—the Digital Millennium Copyright Act ("DMCA")—was enacted in

* Maria A. Pallante is the Register of Copyrights of the United States and Director of the U.S. Copyright Office. This is a version of the lecture delivered on February 28, 2014 at The John Marshall Law School's 58th Annual Intellectual Property Law Conference.

¹ See *Harold Ramis—Biography*, INTERNET MOVIE DATABASE, http://www.imdb.com/name/nm0000601/bio?ref_=nm_dyk_qt_sm#quotes (last visited May 13, 2014).

1998, long enough ago that cloud storage, personal tablets, and the software in our automobiles were futuristic. Both the underlying statute and the DMCA have served us well, but we should not be surprised that they are an imperfect fit today. Thus, the question becomes whether and how to make adjustments.

Last March, I asked Congress to reflect on the copyright law of the past two centuries and think about “the next great copyright act.” In my view, it is no longer viable to proceed piecemeal with solutions. Rather, we need to consider the ways in which provisions of the law relate to one another and to the statute as a whole. Further, we must consider whether they are flexible and forward-leaning enough to meet the challenges of our digital world. Moreover, because the dissemination of content is so pervasive to life and business in the 21st century, I believe it is important to make the law as clear and certain as possible for those who need to navigate it.² As Register, I am also concerned that the copyright law is not working very well for authors. Consider this statement from Scott Turow, President of the Authors Guild. Speaking in the context of the *Kirtsaeng* decision³ and the impact of cheap imports on the U.S. market, he said, “It seems almost every player—publishers, search engines, libraries, pirates and even some scholars—is vying for position at authors’ expense The value of copyrights is being quickly depreciated”⁴

At the same time, the posture of ongoing litigation in the area of fair use (with respect to activities by commercial entities as well as libraries and universities) has complicated policy efforts in the area of exceptions and limitations.⁵ Most copyright exceptions were enacted in the analog era and require updating so that good faith institutions acting in the public interest can carry out certain narrowly-tailored activities regarding books, films, music, photographs, and software without the need to seek the prior express permission of copyright owners. More generally, activities of the past decade, like mass digitization and the display and dissemination of copyrighted works, call out for a recalibration of the legal framework, not only to provide parameters for compelling activities but also to ensure the ongoing viability of the exclusive rights of Section 106 and corresponding remuneration for authors, which is also in the public interest.⁶

² *The Register’s Call for Updates to U.S. Copyright Law, Hearing Before the Subcomm. on Courts, Intell. Prop. and the Internet of the H. Comm. on the Judiciary*, 113th Cong. 7 (2013) (statement of Maria A. Pallante, Register of Copyrights) [hereinafter *Register’s Call*]; see also Maria A. Pallante, *The Next Great Copyright Act*, 36 COLUM. J.L. & ARTS 315, 323 (2013) (emphasizing that “we need a clearer copyright act for a rather simple reason: more and more people are affected by it”).

³ *Kirtsaeng v. John Wiley & Sons, Inc.*, 133 S. Ct. 1351, 1371 (2013).

⁴ Scott Turow, *The Slow Death of the American Author*, N.Y. TIMES, Apr. 7, 2013, at A21.

⁵ See generally *Authors Guild, Inc. v. Google Inc.*, 954 F. Supp. 2d 282, 293–94 (S.D.N.Y. 2013); Brief for Appellees, *Authors Guild, Inc. v. Google Inc.*, Nos. 12–2402, 12–3200 (2d Cir. Feb. 8, 2013); *Authors Guild, Inc. v. HathiTrust*, 902 F. Supp. 2d 445, 456, 464 (S.D.N.Y. 2012); Brief for Higher Education Ass’ns as Amici Curiae Supporting Appellees, *Authors Guild, Inc. v. HathiTrust*, No. 12–4547-cv (2d Cir. June 4, 2013); *Cambridge Univ. Press v. Becker*, 863 F. Supp. 2d 1190, 1223 (N.D. Ga. 2012); Brief for Am. Ass’n of Univ. Professors et al. as Amici Curiae Supporting Appellees, *Cambridge Univ. Press v. Becker*, Nos. 12–14676, 12–15147 (11th Cir. Apr. 25, 2013).

⁶ See, e.g., U.S. COPYRIGHT OFFICE, REPORT ON ORPHAN WORKS 1, 2, 4, 5, 7 (2006), available at <http://www.copyright.gov/orphan/orphan-report-full.pdf>; U.S. COPYRIGHT OFFICE, THE SECTION 108

On April 24, 2014 (on the occasion of World Intellectual Property Day), House Judiciary Chairman, Bob Goodlatte, announced his intention to assess the law, stating, “a wide review of our nation’s copyright laws and related enforcement mechanisms is timely.”⁷ The Committee has held numerous hearings since Chairman Goodlatte’s announcement and will continue to do so throughout the 113th Congress, covering most of the high-level themes of the day.⁸ While this review process is full of preludes and possibilities, I should be clear that there is no stated agenda or prescription at this time. Rather, the Committee’s Members are taking stock, in my view, reflecting both a fundamental understanding of legal principles and an insightful appreciation for the digital era. This leadership is gratifying, as it is Congress and Congress alone that has the authority to weigh the public good and broader equities of authorship and access, irrespective of any one set of facts. The Supreme Court confirmed both this role and the goal in *Eldred v. Ashcroft*: “As we read the Framers’ instruction, the Copyright Clause empowers Congress to determine the intellectual property regimes that, overall, in that body’s judgment, will serve the ends of the Clause.”⁹

STUDY GROUP REPORT i (2008), available at <http://www.section108.gov/docs/Sec108StudyGroupReport.pdf>; U.S. COPYRIGHT OFFICE, LEGAL ISSUES IN MASS DIGITIZATION: A PRELIMINARY ANALYSIS AND DISCUSSION DOCUMENT i, 2, 8, 9, 15 (2011), available at http://www.copyright.gov/docs/massdigitization/USCOMassDigitization_October2011.pdf; Orphan Works and Mass Digitization, 77 Fed. Reg. 64,555, 64,555 (Oct. 22, 2012); *Copyright Exceptions for Libraries in the Digital Age: Section 108 Reform*, COLUM. L. SCH. (Feb. 8, 2013), available at <http://web.law.columbia.edu/kernoachan/symposia/section-108-reform>; Orphan Works and Mass Digitization, Request for Additional Comments and Announcement of Public Roundtables, 79 Fed. Reg. 7706, 7706, 7707 (Feb. 10, 2014).

⁷ See Press Release, Comm. on the Judiciary, Chairman Goodlatte Announces Comprehensive Review of Copyright Law (Apr. 24, 2013), available at <http://judiciary.house.gov/index.cfm/press-releases?ID=1B5C521A-D006-B517-9949-43E692E1E52E> [hereinafter Goodlatte Announcement].

⁸ On the subject of copyright review, the House Subcommittee on Courts, Intellectual Property, and the Internet has held the following hearings to date: *A Case Study for Consensus Building: The Copyright Principles Project, Hearing Before the Subcomm. on Courts, Intell. Prop. and the Internet of the H. Comm. on the Judiciary*, 113th Cong. (May 16, 2013); *Innovation in America: The Role of Copyrights, Hearing Before the Subcomm. on Courts, Intell. Prop. and the Internet of the H. Comm. on the Judiciary*, 113th Cong. (July 25, 2013); *Innovation in America: The Role of Technology, Hearing Before the Subcomm. on Courts, Intell. Prop. and the Internet of the H. Comm. on the Judiciary*, 113th Cong. (Aug. 1, 2013); *The Role of Voluntary Agreements in the U.S. Intellectual Property System, Hearing Before the Subcomm. on Courts, Intell. Prop. and the Internet of the H. Comm. on the Judiciary*, 113th Cong. (Sept. 18, 2013); *The Rise of Innovative Business Models: Content Delivery Methods in the Digital Age, Hearing Before the Subcomm. on Courts, Intell. Prop. and the Internet of the H. Comm. on the Judiciary*, 113th Cong. (Nov. 26, 2013); *The Scope of Copyright Protection, Hearing Before the Subcomm. on Courts, Intell. Prop. and the Internet of the H. Comm. on the Judiciary*, 113th Cong. (Jan. 14, 2014); *The Scope of Fair Use, Hearing Before the Subcomm. on Courts, Intell. Prop. and the Internet of the H. Comm. on the Judiciary*, 113th Cong. (Jan. 27, 2014); *Section 512 of Title 17, Hearing Before the Subcomm. on Courts, Intell. Prop. and the Internet of the H. Comm. on the Judiciary*, 113th Cong. (Mar. 13, 2014); *Preservation and Reuse of Copyrighted Works, Hearing Before the Subcomm. on Courts, Intell. Prop. and the Internet of the H. Comm. on the Judiciary*, 113th Cong. (Apr. 2, 2014); *First Sale Under Title 17, Hearing Before the Subcomm. on Courts, Intell. Prop. and the Internet of the H. Comm. on the Judiciary*, 113th Cong. (June 2, 2014). Witness statements and video recordings of each hearing are available at <http://judiciary.house.gov/index.cfm/hearings>.

⁹ *Eldred v. Ashcroft*, 537 U.S. 186, 222 (2003).

As we move through the review process and the many competing and challenging issues, we do have some helpful guideposts, for example: how enforcement provisions relate to the scope of an author's exclusive rights; how exceptions relate to fair use; how fair use relates to licensing; how licensing relates to the first sale doctrine; how international developments relate to American jurisprudence; and how legislation relates to voluntary solutions, negotiated practices or codes of conduct in the marketplace.

Meanwhile, our colleagues in the Executive Branch are just as busy. On July 25, 2013, the U.S. Department of Commerce Internet Policy Task Force issued a discussion document entitled *Copyright Policy, Creativity, and Innovation in the Digital Economy* (the "Green Paper"), drawing on the Task Force's 2010 "listening tour" and public process.¹⁰ In announcing the paper, Commerce Secretary Penny Pritzker, who is of course a notable Chicagoan, said: "[e]nsuring that copyright policy provides strong incentives for creativity, while promoting innovation in the digital economy, is a critical and challenging task As the Nation embarks on a fresh debate about how best to strike the copyright balance, this Green Paper is an important contribution."¹¹

The Task Force has proposed and commenced two primary activities that will play out over the course of the next year. These are: (1) establishing a multi-stakeholder dialogue on improving the operation of the notice and takedown system under the DMCA; and (2) soliciting public comment and convening roundtables on a number of policy issues, including, (a) the legal framework for the creation of remixes;¹² (b) the relevance and scope of the first sale doctrine in the digital environment; (c) the application of statutory damages in the context of individual file-sharers and secondary liability for large-scale online infringement; and (d) the appropriate role of government, if any, to help improve the online licensing environment, including access to comprehensive public and private databases of rights information.¹³ On this last point, the Task Force has called the Copyright

¹⁰ See U.S. DEPT OF COMMERCE INTERNET POLICY TASK FORCE, REPORT: COPYRIGHT POLICY, CREATIVITY, AND INNOVATION IN THE DIGITAL ECONOMY (2013), available at <http://www.uspto.gov/news/publications/copyrightgreenpaper.pdf> [hereinafter GREEN PAPER].

¹¹ *Id.* at ii.

¹² This issue has come up in Congressional hearings as well. Compare *The Scope of Fair Use, Hearing Before the Subcomm. on Courts, Intell. Prop. and the Internet of the H. Comm. on the Judiciary*, 113th Cong. 6 (2014) (statement of David Lowery) available at <http://judiciary.house.gov/index.cfm/hearings?ID=8E18A9AA-1AA4-4D7C-8EBF-0284862EC44B> ("Advocates for further expansion of fair use often appeal to the *noncommercial* nature of many remixes and lyrics annotations sites This argument fails to consider that *commercial* intermediaries distribute these works and profit from their widespread dissemination.") (emphases in original), with *The Scope of Fair Use, Hearing Before the Subcomm. on Courts, Intell. Prop. and the Internet of the H. Comm. on the Judiciary*, 113th Cong. 6 (2014) (statement of Naomi Novik) available at <http://judiciary.house.gov/index.cfm/hearings?ID=8E18A9AA-1AA4-4D7C-8EBF-0284862EC44B> ("Congress could add a specific exemption for noncommercial remix that would supplement fair use, the same way that libraries and teachers have specific exemptions that provide a clear safe harbor.").

¹³ GREEN PAPER, *supra* note 10, at 101–03.

Office's role in creating and making available ownership information through its public databases "a keystone for the development of the online marketplace."¹⁴

One issue that is of fundamental importance across the government is whether our existing statute adequately protects the rights of copyright owners to authorize the communication of their works online, as required by the World Intellectual Property Organization ("WIPO") Internet Treaties.¹⁵ The United States implemented these treaties in 1998 when it enacted the DMCA. At that time, the Clinton Administration, Congress, and the Copyright Office all concluded that no express amendments were required because such authority was already governed by the exclusive rights of reproduction, distribution, public display, and/or public performance (any one of which alone or in combination might suffice in a given circumstance).¹⁶ Nonetheless, courts have been inconsistent in their opinions in the intervening years—for example, on the question of whether infringement requires actual distribution—raising questions of whether clarification would be beneficial.¹⁷

Congress rejuvenated the issue in a hearing last month. David Nimmer, a law professor and current author of the *Nimmer on Copyright* treatise, testified that clarification is appropriate but not imperative. He said:

¹⁴ *Copyright Policy, Creativity and Innovation in the Digital Economy, Department of Commerce Public Meeting* 206 (Dec. 12, 2013) (statement of Shira Perlmutter, Chief Policy Officer and Director, International Affairs, United States Patent and Trademark Office), available at http://www.uspto.gov/ip/global/copyrights/121213-USPTO-Green_Paper_Hearing-Transcript.pdf.

¹⁵ WIPO Copyright Treaty art. 8, Dec. 20, 1996, 36 I.L.M. Article 8 states that:

[A]uthors of literary and artistic works shall enjoy the exclusive right of authorizing any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.

Id.; WIPO Performances and Phonograms Treaty arts. 10, 14, Dec. 20, 1996, 36 I.L.M. 76. (noting that Articles 10 and 14 provide the making available right to performers whose performances are fixed in sound recordings (phonograms) and to producers of sound recordings).

¹⁶ See, e.g., *Piracy of Intellectual Property on Peer-to-Peer Networks, Hearing Before the Subcomm. on Courts, Intell. Prop. and the Internet of the H. Comm. on the Judiciary*, 107th Cong. 114 (2002) (letter from Marybeth Peters, Register of Copyrights).

¹⁷ See, e.g., *Diversey v. Schmidly*, 738 F.3d 1196, 1204–05 (10th Cir. 2013) (finding that making a work available to the public through a library constitutes distribution, but declining to apply that principle to Internet file sharing); *A&M Records v. Napster, Inc.*, 239 F.3d 1004, 1014, 1027 (9th Cir. 2001) (concluding that distribution encompasses making works available through a peer-to-peer filing sharing network); *Hotaling v. Church of Jesus Christ of Latter-Day Saints*, 118 F.3d 199, 203 (4th Cir. 1997) (finding that making a work available to the public through a library constitutes distribution); *Nat'l Car Rental Sys., Inc. v. Computer Assocs. Int'l, Inc.*, 991 F.2d 426, 430 (8th Cir. 1993) (rejecting the notion that making a work available without more violates the distribution right); *Capitol Records, Inc. v. Thomas*, 579 F. Supp. 2d 1210, 1218 (D. Minn. 2008) (stating that Congress's failure to mention making available in the statute "indicates its intent that an actual distribution or dissemination is required in § 106(3)"); *Atl. Recording Corp. v. Howell*, 554 F. Supp. 2d 976, 983 (D. Ariz. 2008) ("Merely making an unauthorized copy of a copyrighted work available to the public does not violate a copyright holder's exclusive right of distribution."); *London-Sire Records, Inc. v. Doe 1*, 542 F. Supp. 2d 153, 168 (D. Mass 2008) (asserting that "[m]erely because the defendant has 'completed all the steps necessary for distribution' does not necessarily mean that a distribution has actually occurred.").

Both sides of the “making available” issue recognize that copyright owners enjoy the exclusive right to control distribution of their works; their only point of disagreement concerns the quantum of proof needed to demonstrate that distribution took place (simple uploading for proponents of the right, uploading plus proven downloading for its opponents).¹⁸

Last week, pursuant to a Congressional request, the Copyright Office commenced a policy study and set of public inquiries on these and related points. We ask, for example, how does the existing bundle of exclusive rights cover digital on-demand transmissions such as peer-to-peer networks, streaming services, and music downloads? How have foreign laws interpreted and implemented the relevant provisions of the WIPO Internet Treaties? And a practical question: what is the feasibility and necessity of amending U.S. law to strengthen or clarify our law in this area?¹⁹

Questions like these are especially important to the music marketplace. In the past decade, as the sale of physical formats has declined, songwriters and recording artists have suffered from a one-two punch of online infringement and reduced royalties paid by new companies operating legitimate digital services. The statutory license that governs the reproduction and distribution of musical works (the so-called “Section 115” license) is more than a century old and operates according to a song-by-song, case-by-case framework. By contrast today, the typical online music service may strive to offer consumers access to millions of songs.

With respect to the public performance right, the two major licensing organizations for musical works have long operated under consent decrees because of the inherent anticompetitive nature of collective business models and blanket licensing. Meanwhile, the owners of sound recordings remain locked in a stalemate with broadcasters—awaiting a public performance right that would ensure royalties from both digital transmissions and terrestrial radio—in keeping with worldwide norms. The Copyright Office is currently studying these issues, and more generally, the impact of the various rate-setting standards within and across different music delivery platforms, keeping in mind the complexity and fragmented nature of the music licensing process.²⁰ Exacting a fair and flexible framework for music is an important policy objective and I hope that you will find the time to participate in our public inquiry and forthcoming public meetings.

Enforcement measures are a perennial challenge for music and other works in the online world, especially because the criminal code does not impose felony liability for violations of the public performance right. The Copyright Office sees this as a gap in the law now that streaming is a primary means by which copyright owners offer

¹⁸ *Policy Considerations Relating to Copyright Law’s “Making Available” Right, Hearing Before the Subcomm. on Courts, Intell. Prop. and the Internet of the H. Comm. on the Judiciary*, 113th Cong. 5 (2014) (statement of David Nimmer), available at <http://docs.house.gov/meetings/JU/JU03/20140114/101642/HHRG-113-JU03-Wstate-NimmerD-20140114.pdf>.

¹⁹ Study on the Right of Making Available; Comments and Public Roundtable, 79 Fed. Reg. 10,571, 10,573 (Feb. 25, 2014).

²⁰ Music Licensing Study: Notice and Request for Public Comment, 78 Fed. Reg. 14,739, 14,739 (Mar. 17, 2014).

their music and films to consumers, and correspondingly, a primary means by which criminal actors offer these works illegally. The issue, sometimes shorthanded as “felony streaming,” has been the subject of several Congressional hearings over the past few years.²¹ People at least seem to agree on the basics, namely that law enforcement requires 21st century legal tools, relief should be effective but narrowly tailored, non-infringing expression should be protected, and attention to due process is essential. The Green Paper restates these issues as well, referring to the Obama Administration’s prior call to Congress “to enact legislation adopting the same range of penalties for criminal streaming of copyrighted works to the public as now exists for criminal reproduction and distribution.”²²

On the other end of the enforcement spectrum, the Copyright Office delivered a report to Congress in September 2013, noting the particularly acute impact of small claims issues on individual creators.²³ It also cites the legitimate frustrations of persons and businesses responding to such claims, who themselves may be smaller actors facing substantial litigation costs. In summary, the Office recommends that Congress create a centralized small claims tribunal under the Register’s supervision to administer streamlined proceedings through online and teleconferencing facilities without the requirement of personal appearances. The tribunal would be a voluntary alternative to federal court with a focus on infringement cases valued at no more than \$30,000 in damages, and its decisions should be binding only with respect to the parties and claims at issue.

Voluntary practices are just as important to a functioning law. In general, if one sees the copyright ecosystem as one where everyone benefits, then it follows that everyone, including the Internet Service Providers (“ISPs”), advertisers, payment processors, and search engines, should contribute to making it as robust and lawful as possible. And while the legal framework should ensure effective measures for both civil and criminal liability, voluntary practices can do quite a lot to mitigate online infringement; therefore, they merit support from the U.S. government.

Indeed, voluntary measures were a signature theme of the White House’s Intellectual Property Enforcement Coordinator (“IPEC”) in recent years. As noted in the 2012 IPEC Annual Report on Intellectual Property Enforcement, the Administration has:

adopted the approach of encouraging the private sector (including ISPs, credit card companies, and online advertisers) to reach cooperative voluntary agreements to reduce infringement that are practical, effective,

²¹ See *The “Stop Online Piracy Act,” Hearing on H.R. 3261 Before the H. Comm. on the Judiciary*, 112th Cong. 2 (2011) (statement of Maria A. Pallante, Register of Copyrights); *Promoting Investment and Protecting Commerce Online: The ART Act, the NET Act and Illegal Streaming, Hearing Before the Subcomm. on Intellectual Property, Competition and the Internet of the H. Comm. on the Judiciary*, 112th Cong. (2011) (statement of Maria A. Pallante, Register of Copyrights); *Oversight of Intellectual Property Law Enforcement Efforts, Hearing Before the S. Comm. on the Judiciary*, 112th Cong. 1 (2011) (statement of Hon. Patrick Leahy, U.S. Senator).

²² GREEN PAPER, *supra* note 10, at 3.

²³ U.S. COPYRIGHT OFFICE, COPYRIGHT SMALL CLAIMS: A REPORT OF THE REGISTER OF COPYRIGHTS 1, 3 (2013), available at <http://www.copyright.gov/docs/smallclaims/usco-smallcopyrightclaims.pdf>.

and consistent with protecting the legitimate uses of the Internet and our commitment to principles of due process, free speech, fair use, and privacy.²⁴

The IPEC helped broker a memorandum of understanding among several ISPs, major and independent music labels, and movie studios. This, in turn, helped establish the framework for the Center for Copyright Information (“CCI”) and the Copyright Alert System (through which the parties work together to send notices to ISP subscribers).²⁵ The system has been operational since February 2013 and we are all very interested in seeing the early results.

Back in Congress, the House Judiciary Committee made voluntary initiatives the focus of a September 2013 Congressional hearing.²⁶ In announcing the hearing, Chairman Goodlatte stated the committee’s interest in “how these agreements have been set up, what the benefits and risks are from entering into such agreements, if the law should recognize their existence in some way, and whether there should be some legal benefit to entering into such agreements for a company or its customers.”²⁷

Finally, as the Copyright Office works with both Congress and the Administration, it is looking ahead and reflecting on its own role in the ever-evolving copyright system. As noted by the Chairman: “[t]here is little doubt that our copyright system faces new challenges today Even the Copyright Office itself faces challenges in meeting the growing needs of its customers—the American public.”²⁸

Last fall, the Office completed two years of special projects designed to assess the quality and efficiency of its core services and operations and prepare strategies for future needs.²⁹ The projects acknowledged the expectations of the copyright community (both copyright owners and users of copyrighted works), and called for input regarding certain weaknesses in the registration and recordation systems in particular. Many such challenges are tied to the Office’s limited resources and its

²⁴ EXEC. OFFICE OF THE PRESIDENT, 2011 U.S. INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR ANNUAL REPORT ON INTELLECTUAL PROPERTY ENFORCEMENT 5 (Mar. 2012), available at http://www.whitehouse.gov/sites/default/files/omb/IPEC/ipec_annual_report_mar2012.pdf.

²⁵ See generally *The Copyright Alert System*, CTR. FOR COPYRIGHT INFO., <http://www.copyrightinformation.org/the-copyright-alert-system/>.

²⁶ See, e.g., *Role of Voluntary Agreements in the U.S. Intellectual Property System*, Hearing Before the Subcomm. on Courts, Intell. Prop., and the Internet of the H. Comm. on the Judiciary, 113th Cong. (2013) (statement of Rep. Coble).

²⁷ Press Release, Comm. on the Judiciary, Subcommittee to Hold Hearings on Voluntary Agreements (Sept. 17, 2013), available at <http://judiciary.house.gov/index.cfm/2013/9/subcommittee-to-hold-hearing-on-voluntary-agreements>.

²⁸ Goodlatte Announcement, *supra* note 7.

²⁹ See Register of Copyrights of the U.S. of Am., *Priorities and Special Projects of the United States Copyright Office One-Year Update*, U.S. COPYRIGHT OFFICE 1 (2012), available at http://www.copyright.gov/docs/priorities_oneyear.pdf; Register of Copyrights of the U.S. of Am., *Priorities and Special Projects of the United States Copyright Office*, U.S. COPYRIGHT OFFICE 1 (2011), available at <http://www.copyright.gov/docs/priorities.pdf>.

business and technological capacities, and this was a major point of focus.³⁰ A variety of parties—authors organizations, publishers, music producers, and technologists—addressed the reliability, security, and searchability of the Office’s records. They also discussed recommendations for the user interface, quality of data and public records, global identifiers and other metadata, digital repositories for examined works, information architecture and infrastructure, and customer experience; for instance, dashboards, instant messaging, and assistance during west coast business hours.

Both the Copyright Office and its customers are interested in a more nimble set of services and the collaboration required to get there. For example, new paradigms might facilitate the exchange of business-to-business data between public and private registries or provide an integrated online service by which persons could record copyright transfers and other commercially relevant information with ease, making such information more interoperable with the global marketplace.³¹

I discussed preliminary findings from these projects during a lecture before the Copyright Society of the USA in November 2013. In doing so, I described the increasingly sophisticated framework of copyright law, the dynamic and commercially significant copyright marketplace, and what I trust will be the beginning of an important period in which we plan for and invest in the Copyright Office of the future.³² I encourage all of you to share your recommendations in the current proceedings if you have not already done so.

Thank you for your kind attention and for inviting me to the Mecca of the Midwest.

³⁰ See Technological Upgrades to Registration and Recordation Functions, 78 Fed. Reg. 17,722, 17,722 (Mar. 22, 2013).

³¹ See Reengineering of Recordation of Documents, 79 Fed. Reg. 6636, 6636 (Feb. 4, 2014); Strategic Plan for Recordation of Documents, 79 Fed. Reg. 2696, 2696, 2697, 2698, 2699 (Jan. 15, 2014).

³² See Maria A. Pallante, *The Next Generation Copyright Office: What It Means and Why It Matters*, J. COPYRIGHT SOC’Y U.S.A. (forthcoming 2014).