

November 28, 2016

The Honorable Chuck Grassley
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510-6050

The Honorable Patrick Leahy
Ranking Member, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510-6050

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

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

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

We write to express our concern about the unseemly dismissal of the Register of Copyrights, Maria Pallante. We write as former Registers of Copyrights, having served in that post collectively for the twenty-five years immediately preceding Ms. Pallante's tenure. Our concern is focused on the implications of Ms. Pallante's dismissal for the future of the American copyright system.

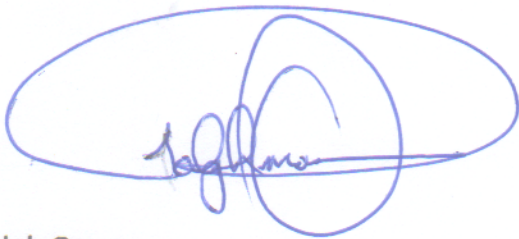
As you know, on October 21, 2016, the newly confirmed Librarian of Congress, Dr. Carla Hayden, abruptly removed Ms. Pallante from her position as Register of Copyrights. That Dr. Hayden's actions were taken without any prior consultation with you or with the affected stakeholders only compounds our already serious concerns. In the 119-year history of the Copyright Office, no other Librarian has treated a Register with such disrespect. But our concern goes deeper than process, or dismay at the poor treatment of a dedicated public servant: the episode makes us question whether any Register, or the Copyright Office itself, can continue to serve the public interest under the current institutional framework. And we are

concerned that in the current environment, many of the most qualified candidates will not seek the position.

Copyright has helped create our unique American culture, and it helps drive our global economic competitiveness. In the enclosed document, we detail the role the Copyright Office plays in the furtherance of both, and in the administration of the law and the development of copyright policy.

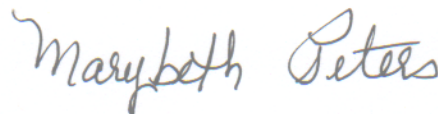
The placement of the Copyright Office in the Library owed more to an accident of 19th Century history than to a carefully considered plan for effective management. Since that time, the role of the Register and the importance of copyright have grown, and the competing missions and differing priorities of the Library and the Copyright Office have increasingly emerged as a source of tension. Neither Ms. Pallante's endorsement in principle of greater autonomy for the Copyright Office nor Dr. Hayden's decision to remove her created these tensions. Rather, they are inevitable given the divergent roles of the two organizations. Stripped to its basics, the choice is stark: Does Congress want modernization and independent copyright advice straight and true from the expert agency, or does it want copyright administration and advice filtered through the lens – and shaped by the perspective – of the head of the national library?

We urge you to give this matter your early consideration -- for the benefit of future generations of artists, authors, entrepreneurs, and the American public. The United States needs a Copyright Office that is built to succeed.



Ralph Oman
Register of Copyrights 1985-1993

Sincerely,



Marybeth Peters
Register of Copyright 1994-2010

cc: The Honorable Orrin G. Hatch
The Honorable Dianne Feinstein
The Honorable Dr. Carla Hayden
Acting Register of Copyrights Karyn Temple-Claggett

ENCLOSURE

Role and Function of the Copyright Office

On a daily basis, copyright affects individual creators and businesses of all kinds, big and small, and the Copyright Office works closely with Congress to help Congress keep our copyright laws meaningful in the digital age. The Copyright Office administers key elements of our copyright system. For example, registration is a prerequisite for American authors who need to vindicate their rights in court, and that registration adds valuable works to the collections of the Library of Congress. The Office examines all claims to copyright and issues a Certificate of Registration that provides *prima facie* evidence of the copyrightability of the work, its authorship, and ownership. Recordation of transfers of copyright ownership provides legal clarity in the chain of title of a work and is regularly used as collateral for loans and other financial matters. The registration and recordation databases also provide a tool for facilitating licensing transactions and a social history of our national culture. The Copyright Office administers the collection and distribution of royalties as prescribed by Congress in certain statutory licenses. The Office writes regulations governing those licenses and participates in litigation through which those and other statutory provisions are interpreted and applied. The Copyright Office receives notices from foreign authors whose works Congress has restored to copyright, and it oversees termination filings from those authors who seek to recapture their rights under the statute, as Congress provided in the 1976 Act. The Office also receives notices of designated agents from internet service providers seeking the protection of safe harbor provisions of the Digital Millennium Copyright Act.

Many of these duties intertwine policy considerations with operations. For example, copyright registration may seem to the outsider as purely mechanical, but every day the Copyright Office is faced with a variety of policy calls on issues of copyrightability. In the current term, the Supreme Court is considering the copyrightability of certain aspects of cheerleader uniforms, which has far-reaching implications for the U.S. fashion industry. The result of that case will reverberate in the Copyright Office's registration practices as described in great detail in its Compendium of Copyright Office Practices, recently updated and expanded under the leadership of then-Register of Copyrights, Maria Pallante. Similarly, when Congress asks the Copyright Office how the United States complies with international obligations, the answer is often a combination of legal principles, government practices, and private sector contractual provisions.

All of this to say that the position of Register of Copyrights is not just another job. These duties and responsibilities are the subject of statutory authorization, pursuant to constitutional imperatives. These responsibilities are too important to be undermined by intra-agency disputes. The Register has a duty to users of Copyright Office services, to Congress, and to the public. When the Copyright Office cannot function as Congress intended, the public interest is ill served.

The Relationship between the Copyright Office and the Library of Congress

The Copyright Office is within the Library of Congress for one reason: deposit copies. In 1870 Librarian Ainsworth Rand Spofford, who had been appointed by President Lincoln, convinced Congress that the copies of works submitted for copyright registration could help build the collection of the Library. Spofford had a vision – that the Library of Congress would become our national library and help unify the nation after the Civil War. Today, the Library of Congress accessions over \$30 million worth of material every year through the copyright registration system. Despite the benefits to the nation of that synergy, which will certainly continue, the arrangement is awkward in many respects.

During our respective tenures as Register, we advised the Library on copyright law – as it pertained to acquisition, Library exhibits, digitization of the collections, handling of born-digital works, and making the Library's vast and unique collections available online. We also had innumerable conversations about budget, staffing, information technology, and other operational matters. Sometimes the Library was frustrated by what we told them. Sometimes we were frustrated by what the Library did.

Libraries, especially the Library of Congress, have a special place in our hearts, our history, and our society. They have the admirable goal of offering to the public the greatest possible volume of material, often at little or no direct cost to their patrons. This mission is manifested in their approach to copyright policy, where the voice of librarians has long been respectfully heard. Congress has responded to the concerns of librarians in shaping copyright law. But an institution with these laudable but limited goals cannot be the keeper of a balanced copyright system that must serve a broader long-term public interest.

So, we invite you to consider: does the current structure enable the Register and the Copyright Office to serve the public interest in a stable and well-administered copyright system?

During our tenures, largely through the Library's deference – born of a recognition of the importance of Copyright Office independence – we were able to make the relationship work, despite occasional tensions. For that reason, we did not support separating the Copyright Office from the Library. It helped that Dr. Boorstin and Dr. Billington were both widely respected authors rather than professional librarians. But we now see that technological demands on the Copyright Office require a greater degree of institutional independence if the Copyright Office is to modernize and fulfill its unique role in promoting learning and culture, while at the same time protecting the vital interests of the Library.

The Present State of Affairs

The Register's duties include a duty of candor, sometimes requiring that the Register tell creators, users, the Library, or even Members of Congress what they do not necessarily want to hear. Facing that choice, Ms. Pallante saw the need to endorse a separation of the Copyright Office from the Library for serious policy reasons. She pursued that goal because she could not

see a way for the Office to serve the larger public interest if it remained an inferior arm of the Library. The Library has its own priorities, which are important, but removed from – or even at times hostile to – the effective administration of our copyright system. If Ms. Pallante's pursuit of that legitimate goal was the cause for her dismissal, as some have suggested, it may, in fact, provide strong evidence that Ms. Pallante's concerns about the need for greater Office independence have merit. If the Register of Copyrights is now subject to instant dismissal by the Librarian, we do not see how the Register can carry out her or his duties or remain the independent voice Congress has relied on since it created the Copyright Office in 1897.

We recognize that the Librarian should have senior staff who share her philosophy. But we see this episode as a teaching moment. It exposed the long-standing reality – that the Library and the Copyright Office have different missions.

In dismissing Ms. Pallante, Dr. Hayden did not create a new conflict of interest or change the fundamental structure of either institution. Rather, she laid bare the institutional tensions that have long existed, and she showed the world exactly how these tensions threaten the integrity of the U.S. copyright system. Having lifted the veil, Dr. Hayden has given a new prominence to the institutional dilemma. If she wants to impose her team to manage the Copyright Office or dictate national copyright policy to the Register, we expect that Congress will want to intervene.