

If Congress enacts this bill we will make a grievous error. It's important to understand the factual and historical context in which this bill is nestled.

Article 1 of the Constitution gives the power to enact laws establishing copyrights in the United States, but it was not until 1870 that copyright functions were centralized in the Library of Congress, claims having previously been recorded by U.S. District Court clerks. In 1897, a separate department in the Library was created and then Librarian of Congress, Mr. Ainsworth Spofford appointed Mr. Thorvald Solberg as the Register of Copyrights to run the office. Ever since, the Librarian of Congress, who is appointed by the President and confirmed by the Senate, has appointed the Register of Copyrights to oversee this division in the Library. Until this bill.

Dr. James Billington, the last Librarian of Congress, was appointed by President Ronald Reagan and served as Librarian of Congress for 42 years. His public service is honored by us all and he accomplished many important things at the Library. However, modernization of the Copyright Office was not among his achievements. After Dr. Billington's retirement in 2015, President Obama appointed and the Senate Confirmed Dr. Carla Hayden. When Dr. Hayden was appointed, Congress enacted legislation which, for the first time, instituted a "term limit" of ten years on the service of the Librarian. Dr. Carla Hayden has made modernization of the Library, including the Copyright Office, a priority.

The last Register of Copyrights testified before the Judiciary Committee as well as the House Administration Committee that the Copyright Office should be an independent office and the Register appointed by the President, essentially an independent agency. The last Register also engaged in public advocacy of this point.¹ However, while advocating for this change and other policy matters, the simple administration of the office was deficient in the area of modernization.

The February 2017 Library of Congress Inspector General report² I entered into the record found that the Copyright Office wasted six years and nearly \$12 million dollars implementing its Electronic Licensing System.³ This was a simple accounting system for distributing royalties collected by the Office and managing royalty investment accounts.

Most tellingly, they found that "Copyright executives at the time did not disclose in the Library's performance management system and annual Congressional Budget Justifications the magnitude of issues and cost"⁴ In other words, this information was hidden from Congress and Library, and false information provided instead.

In 2010 the Copyright Office started the project of digitizing pre-1978 registration records. Seven years later it has managed to digitize just the card catalog and even that is lacking metadata to make it searchable. None of the actual records are available in digital form.⁵

¹ THE NEXT GENERATION COPYRIGHT OFFICE: WHAT IT MEANS AND WHY IT MATTERS (a longer version of the Eleventh Annual Christopher A. Meyer Memorial Lecture delivered by Maria Pallante on November 20, 2013 at George Washington University Law School). <https://www.copyright.gov/about/office-register/meyer-lecture.pdf>

² Library of Congress, Office of the Inspector General's FY 16 Review of Systems Development Life Cycle.

³ Id. at ii.

⁴ Id. at iii.

⁵ <https://www.copyright.gov/digitization/status.html>

It took the Office nearly 20 years to create a system so that online service providers could electronically submit their notice and takedown agents, prior to last December, online service providers had to submit their registrations via paper, which then had to be manually entered in by Office employees.⁶

Finally, while preparing the FY18 appropriations request, the Library noticed that a \$25 million dollar line-item in the Copyright Office's request didn't add-up. When questioned about this, the prior Register stated that this number was no big deal, it was just a placeholder. They would just make adjustments after the money was appropriated. In other words, the Copyright Office gave the Librarian fake budget numbers with the knowledge that she would testify in front of the Appropriations Committee, under oath, to the need of these funds.

Dr. Hayden reassigned the Register and, disagreeing with the reassignment, the Register resigned. It appears that some on the Judiciary Committee have concerns about whether the Librarian was justified in her reassignment of the previous Register. This Committee has not had a hearing on this topic, and I doubt ever will. So I felt that it was important to put into the record just a sample of the problems the Librarian confronted when she made her decision. These are not just my opinions, but are documented by the report of the Inspector General which was entered into the record.

I would also like to correct my colleague who stated for the record their concerns that the Librarian did not notify the Committee before reassigning the previous Register. Both the House Administration Committee and the House Judiciary Committee received phone calls from the Librarian stating her intent to reassign the previous Register, before it was carried out.

This bill removes the Register appointment authority from Dr. Carla Hayden and transfers it to President Donald Trump.

No coherent rationale has been advanced on how this will improve the administration of the Copyright office. The Chairman of the Committee asserted that this would give greater transparency to the Committee in the operation of the Copyright office. He later clarified that it was the advice and consent of the Senate to Presidential appointments that he was referring to.

This is a preposterous statement. Once a Presidential appointee is confirmed, there is no greater attention to the desires of the Congress or transparency than for any other non-Presidential appointee. The frequent conflicts between Republicans in Congress and the appointees of President Obama, ranging from the Environmental Protection Agency to the Internal Revenue Service are testimony of the truth of that.

The Chairman also cites numerous hearings on the issue of copyright as justification for this bill, but having attended every one of those hearings as a Member of the Intellectual Property Subcommittee, I can attest that there was no hearing on this bill nor on its impact on the modernization efforts now being undertaken by Dr. Hayden.

⁶ The Copyright Office's "interim" agent designation regulations went into effect on November 3, 1998. The paper-based system was not replaced until December 1st 2016. <https://www.copyright.gov/dmca-directory/>

An impressive list of supporters of the bill was submitted to the record. I am aware from the many copyright hearings that serious frustrations exist among many copyright holders. Those issues deserve resolution. However, this bill will make matters worse not better.

If this bill becomes law the Library of Congress and the Copyright Office will no longer be able to function as a single organization. This will be a disservice to not only the American public but also to those they are purporting to help, content creators. The public and content creators do not benefit from making the Register appointed by the President, and they do not benefit from making the Copyright Office a separate Executive Branch agency, which is the real goal of this legislation, as backed-up by the statements of many of my Committee colleagues.

What would benefit both the public and content creators is a Copyright Office that uses modern technology to provide electronic registration and deposits of copyrighted works, tools for determining who to pay when you use their work, and greater transparency in both ownership and public domain status of works.

However, this bill will drastically set back both the modernizing of infrastructure and the implementation of new Copyright services. The Library believes that under its current modernization plan that it can save almost two years on the Copyright Office's plan, and significant amounts of money. A private consulting group is currently reviewing this plan, but the Library believes it will be able to start implementation by September of this year.

Until my statements at this markup, it is my understanding, that the vast majority of my colleagues on the Committee had no knowledge of the Library's aggressive progress. Nor were they briefed on how delaying the appointment of a new Register could impact this plan.

Given the speed at which Congress acts, and the backlog of 495 Presidential appointees who haven't even been nominated yet, I doubt that if this bill becomes law, a new Register will be appointed in time to benefit from the efficiency gains made by the Library's hard work and careful planning.

The public and content creators aren't the only ones who will suffer from this shortsighted bill. The Copyright Office staff themselves will be thrown into a "Sophie's choice" every time there is a conflict between the Librarian and the Register. Without the ability to remove the Register, the relationship between the Librarian and the Register is fundamentally altered. It will create uncertainty and ambiguity in the chain of command, and unnecessary hurdles to the modernization effort.

The only possible result of this change is more conflict between the Library and the Copyright Office, not less. It is unfair to put the hardworking employees of the Copyright Office into this lose-lose situation because of the incompetence of previous leadership. Especially when the new Librarian was taking responsibility to remedy the deficiencies created by her predecessor's inaction.

I cannot support legislation that delays Copyright Office modernization, harms the public, harms

content creators, increases tension between the Library and Copyright Office, and harms Copyright Office employees.

This bill is a vote of no confidence in a Librarian who is aggressively pulling the Library and Copyright Office into the 21st century and, by all evidence, justifiably reassigned an ineffective and negligent Register. While I have examined the problems with this bill on the basis of public policy, I cannot help but notice that since 1897, while a series of male Librarians of Congress appointed the Register, it was not until the first female Librarian was appointed that a bill was introduced to remove the power of the Librarian to appoint the Register (as well as new law to limit the term in office of the Librarian). The problems, now being addressed by our new Librarian, festered without remedy—and without legislation marked up by the Judiciary Committee—until that unbroken chain of male Librarians was succeeded by one of the most qualified Librarians ever to serve the Library of Congress, Dr. Carla Hayden.