H. R. 4241, To Establish the United States Copyright Office as an Independent Agency, and for Other Purposes [Discussion Draft], 114th Congress, 1st Session

Tom Marino
United States House of Representatives

Judy Chu
United States House of Representatives

Barbara Comstock
United States House of Representatives

Follow this and additional works at: https://digitalcommons.unl.edu/scholcom

Part of the Intellectual Property Law Commons, Legislation Commons, Public Policy Commons, Scholarly Communication Commons, and the Scholarly Publishing Commons

Marino, Tom; Chu, Judy; and Comstock, Barbara, "H. R. 4241, To Establish the United States Copyright Office as an Independent Agency, and for Other Purposes [Discussion Draft], 114th Congress, 1st Session" (2015). Copyright, Fair Use, Scholarly Communication, etc.. 86.
https://digitalcommons.unl.edu/scholcom/86

This Article is brought to you for free and open access by the Libraries at University of Nebraska-Lincoln at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Copyright, Fair Use, Scholarly Communication, etc. by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.
To establish the United States Copyright Office as an independent agency, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. Tom Marino introduced the following bill; which was referred to the Committee on December 11, 2015

A BILL

To establish the United States Copyright Office as an independent agency, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 SECTION 1. SHORT TITLE.
4 This Act may be cited as the “Copyright Office for
5 the Digital Economy Act”.

[DISCUSSION DRAFT]
SEC. 2. ESTABLISHMENT AND ORGANIZATION OF THE UNITED STATES COPYRIGHT OFFICE.

(a) ESTABLISHMENT AND ORGANIZATION.—Section 701 of title 17, United States Code, is amended to read as follows:

§ 701. United States Copyright Office; organization, powers, and duties

“(a) ESTABLISHMENT.—The United States Copyright Office is established as an independent agency of the United States.

“(b) DIRECTOR AND DEPUTY DIRECTOR.—

“(1) DIRECTOR.—

“(A) APPOINTMENT.—The powers and duties of the United States Copyright Office shall be vested in a Director of the United States Copyright Office, who shall be a citizen of the United States and shall be appointed by the President, by and with the advice and consent of the Senate.

“(B) COMMISSION TO RECOMMEND INDIVIDUALS.—

“(i) ESTABLISHMENT.—There is established a commission to recommend individuals to the President for appointment to the office of Director (in this subsection referred to as the ‘commission’. The com-
mission shall recommend at least three individuals for appointment to such office. The commission shall be composed of—

“(I) the Speaker of the House of Representatives;

“(II) the President pro tempore of the Senate;

“(III) the majority and minority leaders of the House of Representatives and the Senate; and

“(IV) the chairmen and the ranking minority members of the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate.

“(ii) TIMING OF RECOMMENDATIONS.—The commission shall make its recommendations to the President for Director—

“(I) in the case of the first Director appointed under this paragraph, not later than 60 days after the date of the enactment [effective date] of the Copyright Office for Digital Economy Act; and

[Discussion Draft]

3
“(II) in the case of any subsequent vacancy in the office of Director, not later than 60 days after the date on which the vacancy occurs.

“(iii) APPOINTMENTS WITHOUT RECOMMENDATIONS.—If the commission does not make its recommendations to the President within the applicable 60-day period provided in clause (ii), the President may appoint a Director without receiving such recommendations.

“(C) TERM OF OFFICE.—The term of office of the Director shall be 10 years. An individual appointed Director under subparagraph (A) shall not be eligible for reappointment to such office. An individual may serve as Director after the expiration of the term for which the individual was appointed until a successor has been appointed.

“(D) REMOVAL FROM OFFICE.—The President may remove the Director solely for inefficiency, neglect of duty, or malfeasance in office.

“(2) DEPUTY DIRECTOR.—The Director shall appoint a Deputy Director of the United States Copyright Office, who shall be vested with the au-
authority to act in the capacity of the Director in the event of the absence or incapacity of the Director. Before appointing a Deputy Director, the Director shall consult with the commission. The Deputy Director shall be a citizen of the United States and shall be appointed without regard to political affiliation.

"(3) Qualifications.—The Director and Deputy Director shall be persons who have a professional background and experience in copyright law.

"(c) Other Officers and Employees.—The Director shall appoint and fix the pay of such other officers, employees (including attorneys), and agents of the Office as the Director considers necessary to carry out the functions of the Office, define the title, authority, and duties of such officers and employees, and delegate to them such of the powers vested in the Office as the Director may determine.

"(d) Administrative Functions and Duties.—All administrative functions and duties under this title, except as otherwise specified, are the responsibility of the Director.

"(e) Specific Powers and Duties.—In addition to the powers and duties set forth in other provisions of this title, the Office—
“(1) shall advise Congress on national and international issues relating to copyright, other matters arising under this title, and related matters;

“(2) shall provide advice and assistance to the executive branch and the Judiciary on national and international issues relating to copyright, other matters arising under this title, and related matters;

“(3) shall participate in meetings of international intergovernmental organizations and meetings with foreign government officials, and shall serve on United States delegations, relating to copyright, other matters arising under this title, and related matters;

“(4) shall conduct studies and programs regarding copyright, other matters arising under this title, and related matters, the administration of the Copyright Office, or any function vested in the Copyright Office by law, including educational programs conducted cooperatively with foreign intellectual property offices and international intergovernmental organizations;

“(5) shall perform such other functions as Congress may direct, or as may be appropriate in furtherance of the functions and duties specifically set forth in this title; and
“(6) shall adopt a seal to be used to authenticate all certified documents issued by the Copyright Office.

“(f) ROLE AS CONGRESSIONAL ADVISOR.—No officer or agency of the United States shall have any authority to require the Director or any other officer or employee of the Copyright Office to submit legislative recommendations, or testimony or comments on legislation, to any officer or agency of the United States for approval, comments, or review before the submission of such recommendations, testimony, or comments to Congress.

“(g) ADDITIONAL OPERATIONAL AUTHORITIES.—

The Office—

“(1) may acquire, construct, purchase, lease, hold, manage, operate, improve, alter, and renovate any real, personal, or mixed property, or any interest therein, as it considers necessary to carry out its functions;

“(2) may make such purchases, contracts for the construction, maintenance, or management and operation of facilities, and contracts for supplies or services, including information technology, without regard to the provisions of subtitle I and chapter 33 of title 40, division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I
of title 41, and the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.);

“(3) may enter into and perform such purchases and contracts for printing services, including the processes of composition, platemaking, presswork, silk screen processes, binding, and microform, and the products of such processes, as it considers necessary to carry out the functions of the Office, without regard to sections 501 through 517 and 1101 through 1123 of title 44;

“(4) may use, with their consent, services, equipment, personnel, and facilities of other departments, agencies, and instrumentalities of the Federal Government, on a reimbursable basis; and

“(5) may retain and use, to carry out the functions of the Office, all of its revenues and receipts, including revenues from the sale, lease, or disposal of any real, personal, or mixed property, or any interest therein, of the Office.

“(h) ANNUAL REPORT.—The Director shall, not later than 180 days after the end of each fiscal year, make and publish an annual report of the work and accomplishments of the Copyright Office for that fiscal year.”.

(b) DIRECTOR DEFINED.—Section 101 of title 17, United States Code, is amended—
(1) by inserting after the definition of “digital transmission” the following:

“The term ‘Director’ means the Director of the United States Copyright Office.”; and

(2) by inserting after the definition of “copies” the following:

“The terms ‘Copyright Office’ and ‘Office’ mean the United States Copyright Office.”.

SEC. 3. MODERNIZING COPYRIGHT REGISTRATION.

(a) Registration in General.—Section 408 of title 17, United States Code, is amended—

(1) in subsection (a), by striking “the deposit specified by this section” and inserting “any examination copies required by regulations issued under this section”;

(2) by amending subsection (b) to read as follows:

“(b) Examination Copies for Copyright Registration.—

“(1) The Director shall issue regulations specifying the form, quality, and content of examination copies of works to be submitted under subsection (a). Such regulations shall include provisions governing the retention and disposition of examination copies, and may, in the Director’s discretion, include
appropriate administrative classifications, group reg-
istration practices, and other provisions that both fa-
cilitate registration and establish a meaningful pub-
lic record. The administrative classification of works
has no significance with respect to the subject mat-
ter of copyright or the exclusive rights provided by
this title.

“(2) Pursuant to regulations issued by the Di-
rector upon consultation with the Librarian of Con-
gress, the Director shall provide the Library of Con-
gress access to examination copies and related data
solely for the Library’s determination of whether to
demand a deposit under section 407 or to otherwise
engage with copyright owners regarding works of au-
 thorship that may be of curatorial and collection in-
terest to the national library. The Director shall con-
sult with the Librarian of Congress, as the Director
considers appropriate, on other matters of common
interest.”;

(3) by striking subsection (c) and redesignating
subsections (d), (e), and (f) as subsections (e), (d),
and (e), respectively; and

(4) in subsection (e)(3)(B), as redesignated, by
striking “a deposit” and inserting “an examination
copy”.
(b) RETENTION AND DISPOSITION OF ARTICLES DEPO-
SIONED IN COPYRIGHT OFFICE.—Section 704 of title 17,
United States Code, is amended—

(1) by amending subsection (b) to read as fol-
lows:

“(b) In the case of published works deposited pursu-
ant to section 407, all copies, phonorecords, and identi-
fying material deposited are available to the Library of
Congress for its collections, or for exchange or transfer
to any other library according to regulations issued by the
Director that prescribe the period of retention and applica-
ble conditions.”; and

(2) by striking subsections (c) and (d) and re-
designating subsection (e) as subsection (c).

SEC. 4. PAY OF DIRECTOR, DEPUTY DIRECTOR, AND ASSO-
CIATE DIRECTORS.

(a) PAY OF DIRECTOR.—Section 5314 of title 5,
United States Code, is amended by striking “Register of
Copyrights” and inserting “Director of the United States
Copyright Office”.

(b) PAY OF DEPUTY DIRECTOR.—Section 5315 of
title 5, United States Code, is amended by adding at the
end the following:

“Deputy Director of the United States Copy-
right Office.”.
SEC. 5. TRANSFER OF ADMINISTRATIVE FUNCTIONS.

(a) INTERIM ADMINISTRATIVE SUPPORT BY THE LIBRARY OF CONGRESS.—

(1) IN GENERAL.—

(A) SUPPORT BY LIBRARIAN OF CONGRESS.—Until such time as the first Director of the United States Copyright Office is appointed under section 701 of title 17, United States Code, as amended by section 2(a) of this Act, the Librarian of Congress shall continue to perform any administrative functions the Librarian performs, on the day before such effective date, for or to the benefit of the Copyright Office (including the Copyright Royalty Judges).

(B) TRANSFER OF ADMINISTRATIVE FUNCTIONS.—On the date on which the first Director of the United States Copyright Office is appointed under section 701 of title 17, United States Code, the administrative functions described in subparagraph (A) shall be transferred to the Director.

(2) COOPERATION OF LIBRARY.—The Librarian of Congress shall ensure the full cooperation of the Library of Congress with the Director and facilitate access to any records or other information the Direc-
tor requests for purposes of carrying out the transfer of administrative functions to the Director.

(b) Leasing of Space by GSA for the United States Copyright Office.—

(1) In general.—Subject to the availability of funds, the Administrator of the General Services Administration may acquire real property by lease for the use of the United States Copyright Office in the District of Columbia.

(2) Limitation.—No obligation entered into pursuant to the authority of this subsection shall be in advance of, or in excess of, available appropriations.

(e) Status Report.—Not later than 18 months after the date of the appointment of the first Director under section 701 of title 17, United States Code, the Director shall submit to Congress the following:

(1) A status report regarding the transfer of administrative functions under this section and modernization objectives of the Copyright Office, including improvements to staffing, fee schedules, technology, and services.

(2) Recommendations for additional amendments to title 17, United States Code, that are necessary by reason of the enactment of this Act or to
assist the Copyright Office in its modernization efforts.

(3) Such other recommendations that the Director considers appropriate.

(c) DEFINITION.—For purposes of this section, the term “administrative functions” includes, but is not limited to, any operational support, information technology, physical space, and any other support services that the Library of Congress was providing to the Copyright Office as of the day before the effective date of this Act.

SEC. 6. STUDY OF MANDATORY DEPOSIT.

(a) IN GENERAL.—The Director of the United States Copyright Office shall conduct a study on the future administration of mandatory deposit provisions in section 407 of title 17, United States Code. Such study shall cover the following:

(1) The history of the mandatory deposit provisions and their application to the digital era.

(2) The Library’s preferences regarding format or quality when seeking deposits that are appropriate to preservation efforts.

(3) The concerns of copyright owners relating to the Library’s retention of works, copying of works for preservation purposes, and copying or sharing required to make such works, including digital
works, available to Library patrons or the public at large.

(4) Observations regarding the legal and administrative conditions under which the Copyright Office may transfer to the Library the responsibility for administering such section 407.

(5) Relevant experience from foreign countries that have adopted similar or analogous regimes for the benefit of their national libraries, archives, or other institutions.

(6) Such recommendations, including recommendations for statutory changes, that the Director considers appropriate.

(b) Submission of Report to Congress.—The Director of the United States Copyright Office shall, not later than 1 year after the date of the enactment of this Act, submit to Congress a report on the results of the study conducted under subsection (a). The Director shall also publish the report on the website of the Copyright Office.

(c) Public Comment Period.—In conducting the study under subsection (a), the Director of the United States Copyright Office shall provide an opportunity for the submission of public comments on the subject matter
of the study, and shall publish with the study the re-
responses of the Director to those comments.

SEC. 7. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Amendments to Title 17, United States Code.—

(1) Section 111(d) of title 17, United States Code, is amended by striking “Librarian of Con-
gress” each place it appears and inserting “Direc-
tor.”

(2) Section 119(b) of title 17, United States Code, is amended by striking “Librarian of Con-
gress” each place it appears and inserting “Direc-
tor.”

(3) Section 410(d) of title 17, United States Code, is amended by striking “deposit” and inserting “examination copy”.

(4) Section 411(a) of title 17, United States Code, is amended by striking “deposit” and inserting “examination copy”.

(5) Section 704(d) of title 17, United States Code, is amended by striking “deposit” and inserting “examination copy”.

(6) Section 705 of title 17, United States Code, is amended by striking “deposits” each place it ap-
ppears and inserting “examination copies”.

(7) Section 709 of title 17, United States Code, is amended by striking “deposit” and inserting “examination copy”.

(8) Section 801 of title 17, United States Code, is amended—

(A) in subsection (a)—

(i) in the first sentence, by striking “Librarian of Congress” and inserting “Director”; and

(ii) by striking the second sentence;

(B) in subsection (b)(8), by striking “Registrar of Copyrights within the Library of Congress” and inserting “Director”;  

(C) in subsection (d), by striking “Librarian of Congress” and inserting “Director”; and

(D) by striking subsection (e) and redesignating subsection (f) as subsection (e).

(9) Section 802 of title 17, United States Code, is amended by striking “Librarian of Congress” or “Librarian” each place it appears and inserting “Director”.

(10) Section 803 of title 17, United States Code, is amended—
(A) in subsection (a), by striking “Librarian of Congress” the first place it appears and inserting “Director”;

(B) in subsection (b)(6)(A), by striking “Librarian of Congress” and inserting “Director”;

(C) in subsection (c)(6), by striking “Librarian of Congress” or “Librarian” in each place it appears and inserting “Director”; and

(D) in subsection (e)(1), by striking “Librarian of Congress” each place it appears and inserting “Director”.

(11) Section 1201(a)(1) of title 17, United States Code, is amended—

(A) in subparagraph (C), by striking “the Librarian of Congress, upon the recommendation of the Register of Copyrights, who shall consult with the Assistant Secretary for Communications and Information of the Department of Commerce and report and comment on his or her views in making such recommendation” and inserting “the Director, after consulting with the Assistant Secretary for Communications and Information of the Department of Commerce”; and
(B) in subparagraphs (C) and (D), by striking “Librarian” each place it appears and inserting “Director”.

(12) Title 17, United States Code is amended by striking “Register of Copyrights” or “Register” (except when used in the term “Federal Register”) each place it appears and inserting “Director”.

(13) The item relating to chapter 7 in the table of chapters for title 17, United States Code, is amended to read as follows:

“7. United States Copyright Office ........................................ 701”.

(14) The heading for chapter 7 of title 17, United States Code, is amended to read as follows:

“CHAPTER 7—UNITED STATES COPYRIGHT OFFICE”.

(15) The item relating to section 701 in the table of contents for chapter 7 of title 17, United States Code, are amended to read as follows:

“701. United States Copyright Office; organization, powers, and duties.”.

(b) OTHER PROVISIONS OF LAW.—

(1) Section 8111 of title 15, United States Code, is amended by striking “Register of Copyrights” each place it appears and inserting “Director of the United States Copyright Office”.

(2) Section 2 of title 35, United States Code, is amended by striking “Register of Copyrights”
each place it appears and inserting “Director of the
United States Copyright Office”.

SEC. 8. TRANSITIONAL PROVISIONS.

(a) EFFECTIVE DATE.—This Act and the amend-
ments made by this Act shall take effect upon the expira-
tion of the 60th day after the date of the enactment of
this Act, except that the provisions of section 701 of title
17, United States Code, as amended by section 2(a) of
this Act, shall take effect on the date of the enactment
of this Act.

(b) CONTINUATION IN OFFICE OF CERTAIN OFFI-
cers.—An individual serving as a Copyright Royalty
Judge on the day before the effective date of this Act may
continue to serve in that role until the date on which a
Copyright Royalty Judge to replace such individual is ap-
pointed under section 801 of title 17, United States Code.

(c) CARRYOVER OF PERSONNEL.—Effective on the
effective date of this Act, all employees of the Library of
Congress serving in the Copyright Office on the day before
such effective date shall become employees of the United
States Copyright Office, without a break in service.

(d) TRANSFER OF ASSETS.—Except as otherwise
provided in this Act, so much of the personnel, property,
records, and unexpended balances of appropriations, allo-
cations, and other funds employed, used, held, available,
or to be made available in connection with a function that
this Act vests in the United States Copyright Office shall
be available and transferred to the Director.

SEC. 9. MISCELLANEOUS PROVISIONS.

(a) REFERENCES.—Any reference to the Register of
Copyrights in any other Federal law, Executive order,
rule, regulation, or delegation of authority, or any docu-
ment of or pertaining to the Copyright Office, shall be
deemed to refer to the Director of the United States Copy-
right Office.

(b) LEGAL DOCUMENTS.—All orders, determinations,
rules, regulations, permits, grants, loans, contracts, agree-
ments, certificates, licenses, and privileges related to a
function that is vested in the Copyright Office and that
are in effect on the effective date of this Act (or become
effective after such date pursuant to their terms as in ef-
fekt on such effective date), shall continue in effect accord-
ing to their terms until modified, terminated, superseded,
set aside, or revoked in accordance with law.

(c) PROCEEDINGS.—This Act shall not affect any
proceedings or any applications for any benefits, service,
license, permit, or certificate pending on the effective date
of this Act before the Copyright Office or the Copyright
Royalty Judges, but such proceedings and requests shall
be continued. Orders and determinations shall be issued
in such proceedings, appeals shall be taken therefrom, and
actions shall be taken pursuant to such orders and deter-
minations, as if this Act had not been enacted, and orders
and determinations issued in any such proceeding shall
continue in effect until modified, terminated, superseded,
or revoked by a duly authorized official, by a court of com-
petent jurisdiction, or by operation of law. Nothing in this
subsection shall be considered to prohibit the discontinu-
ance or modification of any such proceeding under the
same terms and conditions and to the same extent that
such proceeding could have been discontinued or modified
if this subtitle had not been enacted.

(d) SUITS.—This Act shall not affect suits com-
menced before the effective date of this Act, and in all
such suits, proceedings shall be had, appeals taken, and
judgments rendered in the same manner and with the
same effect as if this Act had not been enacted.