

12-11-2015

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

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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.

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[Discussion Draft]

[DISCUSSION DRAFT]

114TH CONGRESS
1ST SESSION

H. R. 4241

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”.

1 **SEC. 2. ESTABLISHMENT AND ORGANIZATION OF THE**
2 **UNITED STATES COPYRIGHT OFFICE.**

3 (a) ESTABLISHMENT AND ORGANIZATION.—Section
4 701 of title 17, United States Code, is amended to read
5 as follows:

6 **“§ 701. United States Copyright Office; organization,**
7 **powers, and duties**

8 “(a) ESTABLISHMENT.—The United States Copy-
9 right Office is established as an independent agency of the
10 United States.

11 “(b) DIRECTOR AND DEPUTY DIRECTOR.—

12 “(1) DIRECTOR.—

13 “(A) APPOINTMENT.—The powers and du-
14 ties of the United States Copyright Office shall
15 be vested in a Director of the United States
16 Copyright Office, who shall be a citizen of the
17 United States and shall be appointed by the
18 President, by and with the advice and consent
19 of the Senate.

20 “(B) COMMISSION TO RECOMMEND INDI-
21 VIDUALS.—

22 “(i) ESTABLISHMENT.—There is es-
23 tablished a commission to recommend indi-
24 viduals to the President for appointment to
25 the office of Director (in this subsection
26 referred to as the ‘commission’. The com-

1 mission shall recommend at least three in-
2 dividuals for appointment to such office.

3 The commission shall be composed of—

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

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

8 “(III) the majority and minority
9 leaders of the House of Representa-
10 tives and the Senate; and

11 “(IV) the chairmen and the rank-
12 ing minority members of the Com-
13 mittee on the Judiciary of the House
14 of Representatives and the Committee
15 on the Judiciary of the Senate.

16 “(ii) TIMING OF RECOMMENDA-
17 TIONS.—The commission shall make its
18 recommendations to the President for Di-
19 rector—

20 “(I) in the case of the first Di-
21 rector appointed under this para-
22 graph, not later than 60 days after
23 the **【date of the enactment】** **【effective**
24 **date】** of the Copyright Office for Dig-
25 ital Economy Act; and

1 “(II) in the case of any subse-
2 quent vacancy in the office of Direc-
3 tor, not later than 60 days after the
4 date on which the vacancy occurs.

5 “(iii) APPOINTMENTS WITHOUT REC-
6 COMMENDATIONS.—If the commission does
7 not make its recommendations to the
8 President within the applicable 60-day pe-
9 riod provided in clause (ii), the President
10 may appoint a Director without receiving
11 such recommendations.

12 “(C) TERM OF OFFICE.—The term of of-
13 fice of the Director shall be 10 years. An indi-
14 vidual appointed Director under subparagraph
15 (A) shall not be eligible for reappointment to
16 such office. An individual may serve as Director
17 after the expiration of the term for which the
18 individual was appointed until a successor has
19 been appointed.

20 “(D) REMOVAL FROM OFFICE.—The Presi-
21 dent may remove the Director solely for ineffi-
22 ciency, neglect of duty, or malfeasance in office.

23 “(2) DEPUTY DIRECTOR.—The Director shall
24 appoint a Deputy Director of the United States
25 Copyright Office, who shall be vested with the au-

1 thority to act in the capacity of the Director in the
2 event of the absence or incapacity of the Director.
3 Before appointing a Deputy Director, the Director
4 shall consult with the commission. The Deputy Di-
5 rector shall be a citizen of the United States and
6 shall be appointed without regard to political affili-
7 ation.

8 “(3) QUALIFICATIONS.—The Director and Dep-
9 puty Director shall be persons who have a profes-
10 sional background and experience in copyright law.

11 “(c) OTHER OFFICERS AND EMPLOYEES.—The Di-
12 rector shall appoint and fix the pay of such other officers,
13 employees (including attorneys), and agents of the Office
14 as the Director considers necessary to carry out the func-
15 tions of the Office, define the title, authority, and duties
16 of such officers and employees, and delegate to them such
17 of the powers vested in the Office as the Director may
18 determine.

19 “(d) ADMINISTRATIVE FUNCTIONS AND DUTIES.—
20 All administrative functions and duties under this title,
21 except as otherwise specified, are the responsibility of the
22 Director.

23 “(e) SPECIFIC POWERS AND DUTIES.—In addition to
24 the powers and duties set forth in other provisions of this
25 title, the Office—

1 “(1) shall advise Congress on national and
2 international issues relating to copyright, other mat-
3 ters arising under this title, and related matters;

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

8 “(3) shall participate in meetings of inter-
9 national intergovernmental organizations and meet-
10 ings with foreign government officials, and shall
11 serve on United States delegations, relating to copy-
12 right, other matters arising under this title, and re-
13 lated matters;

14 “(4) shall conduct studies and programs re-
15 garding copyright, other matters arising under this
16 title, and related matters, the administration of the
17 Copyright Office, or any function vested in the
18 Copyright Office by law, including educational pro-
19 grams conducted cooperatively with foreign intellec-
20 tual property offices and international intergovern-
21 mental organizations;

22 “(5) shall perform such other functions as Con-
23 gress may direct, or as may be appropriate in fur-
24 therance of the functions and duties specifically set
25 forth in this title; and

1 “(6) shall adopt a seal to be used to authen-
2 ticate all certified documents issued by the Copy-
3 right Office.

4 “(f) ROLE AS CONGRESSIONAL ADVISOR.—No officer
5 or agency of the United States shall have any authority
6 to require the Director or any other officer or employee
7 of the Copyright Office to submit legislative recommenda-
8 tions, or testimony or comments on legislation, to any offi-
9 cer or agency of the United States for approval, com-
10 ments, or review before the submission of such rec-
11 ommendations, testimony, or comments to Congress.

12 “(g) ADDITIONAL OPERATIONAL AUTHORITIES.—
13 The Office—

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

19 “(2) may make such purchases, contracts for
20 the construction, maintenance, or management and
21 operation of facilities, and contracts for supplies or
22 services, including information technology, without
23 regard to the provisions of subtitle I and chapter 33
24 of title 40, division C (except sections 3302,
25 3501(b), 3509, 3906, 4710, and 4711) of subtitle I

1 of title 41, and the McKinney-Vento Homeless As-
2 sistance Act (42 U.S.C. 11301 et seq.);

3 “(3) may enter into and perform such pur-
4 chases and contracts for printing services, including
5 the processes of composition, platemaking, press-
6 work, silk screen processes, binding, and microform,
7 and the products of such processes, as it considers
8 necessary to carry out the functions of the Office,
9 without regard to sections 501 through 517 and
10 1101 through 1123 of title 44;

11 “(4) may use, with their consent, services,
12 equipment, personnel, and facilities of other depart-
13 ments, agencies, and instrumentalities of the Fed-
14 eral Government, on a reimbursable basis; and

15 “(5) may retain and use, to carry out the func-
16 tions of the Office, all of its revenues and receipts,
17 including revenues from the sale, lease, or disposal
18 of any real, personal, or mixed property, or any in-
19 terest therein, of the Office.

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

24 (b) DIRECTOR DEFINED.—Section 101 of title 17,
25 United States Code, is amended—

1 (1) by inserting after the definition of “digital
2 transmission” the following:

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

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

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

9 **SEC. 3. MODERNIZING COPYRIGHT REGISTRATION.**

10 (a) **REGISTRATION IN GENERAL.**—Section 408 of
11 title 17, United States Code, is amended—

12 (1) in subsection (a), by striking “the deposit
13 specified by this section” and inserting “any exam-
14 ination copies required by regulations issued under
15 this section”;

16 (2) by amending subsection (b) to read as fol-
17 lows:

18 “(b) **EXAMINATION COPIES FOR COPYRIGHT REG-**
19 **ISTRATION.**—

20 “(1) The Director shall issue regulations speci-
21 fying the form, quality, and content of examination
22 copies of works to be submitted under subsection
23 (a). Such regulations shall include provisions gov-
24 erning the retention and disposition of examination
25 copies, and may, in the Director’s discretion, include

1 appropriate administrative classifications, group reg-
2 istration practices, and other provisions that both fa-
3 cilitate registration and establish a meaningful pub-
4 lic record. The administrative classification of works
5 has no significance with respect to the subject mat-
6 ter of copyright or the exclusive rights provided by
7 this title.

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

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

23 (4) in subsection (e)(3)(B), as redesignated, by
24 striking “a deposit” and inserting “an examination
25 copy”.

1 (b) RETENTION AND DISPOSITION OF ARTICLES DE-
2 POSITED IN COPYRIGHT OFFICE.—Section 704 of title 17,
3 United States Code, is amended—

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

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

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

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

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

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

24 “Deputy Director of the United States Copy-
25 right Office.”.

1 **SEC. 5. TRANSFER OF ADMINISTRATIVE FUNCTIONS.**

2 (a) INTERIM ADMINISTRATIVE SUPPORT BY THE LI-
3 BRARY OF CONGRESS.—

4 (1) IN GENERAL.—

5 (A) SUPPORT BY LIBRARIAN OF CON-
6 GRESS.—Until such time as the first Director
7 of the United States Copyright Office is ap-
8 pointed under section 701 of title 17, United
9 States Code, as amended by section 2(a) of this
10 Act, the Librarian of Congress shall continue to
11 perform any administrative functions the Li-
12 brarian performs, on the day before such effec-
13 tive date, for or to the benefit of the Copyright
14 Office (including the Copyright Royalty
15 Judges).

16 (B) TRANSFER OF ADMINISTRATIVE FUNC-
17 TIONS.—On the date on which the first Direc-
18 tor of the United States Copyright Office is ap-
19 pointed under section 701 of title 17, United
20 States Code, the administrative functions de-
21 scribed in subparagraph (A) shall be trans-
22 ferred to the Director.

23 (2) COOPERATION OF LIBRARY.—The Librarian
24 of Congress shall ensure the full cooperation of the
25 Library of Congress with the Director and facilitate
26 access to any records or other information the Direc-

1 tor requests for purposes of carrying out the trans-
2 fer of administrative functions to the Director.

3 (b) LEASING OF SPACE BY GSA FOR THE UNITED
4 STATES COPYRIGHT OFFICE.—

5 (1) IN GENERAL.—Subject to the availability of
6 funds, the Administrator of the General Services Ad-
7 ministration may acquire real property by lease for
8 the use of the United States Copyright Office in the
9 District of Columbia.

10 (2) LIMITATION.—No obligation entered into
11 pursuant to the authority of this subsection shall be
12 in advance of, or in excess of, available appropria-
13 tions.

14 (c) STATUS REPORT.—Not later than 18 months
15 after the date of the appointment of the first Director
16 under section 701 of title 17, United States Code, the Di-
17 rector shall submit to Congress the following:

18 (1) A status report regarding the transfer of
19 administrative functions under this section and mod-
20 ernization objectives of the Copyright Office, includ-
21 ing improvements to staffing, fee schedules, tech-
22 nology, and services.

23 (2) Recommendations for additional amend-
24 ments to title 17, United States Code, that are nec-
25 essary by reason of the enactment of this Act or to

1 assist the Copyright Office in its modernization ef-
2 forts.

3 (3) Such other recommendations that the Di-
4 rector considers appropriate.

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

11 **SEC. 6. STUDY OF MANDATORY DEPOSIT.**

12 (a) IN GENERAL.—The Director of the United States
13 Copyright Office shall conduct a study on the future ad-
14 ministration of mandatory deposit provisions in section
15 407 of title 17, United States Code. Such study shall cover
16 the following:

17 (1) The history of the mandatory deposit provi-
18 sions and their application to the digital era.

19 (2) The Library’s preferences regarding format
20 or quality when seeking deposits that are appro-
21 priate to preservation efforts.

22 (3) The concerns of copyright owners relating
23 to the Library’s retention of works, copying of works
24 for preservation purposes, and copying or sharing
25 required to make such works, including digital

1 works, available to Library patrons or the public at
2 large.

3 (4) Observations regarding the legal and admin-
4 istrative conditions under which the Copyright Office
5 may transfer to the Library the responsibility for
6 administering such section 407.

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

11 (6) Such recommendations, including rec-
12 ommendations for statutory changes, that the Direc-
13 tor considers appropriate.

14 (b) SUBMISSION OF REPORT TO CONGRESS.—The
15 Director of the United States Copyright Office shall, not
16 later than 1 year after the date of the enactment of this
17 Act, submit to Congress a report on the results of the
18 study conducted under subsection (a). The Director shall
19 also publish the report on the website of the Copyright
20 Office.

21 (c) PUBLIC COMMENT PERIOD.—In conducting the
22 study under subsection (a), the Director of the United
23 States Copyright Office shall provide an opportunity for
24 the submission of public comments on the subject matter

1 of the study, and shall publish with the study the re-
2 sponses of the Director to those comments.

3 **SEC. 7. TECHNICAL AND CONFORMING AMENDMENTS.**

4 (a) AMENDMENTS TO TITLE 17, UNITED STATES
5 CODE.—

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

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

14 (3) Section 410(d) of title 17, United States
15 Code, is amended by striking “deposit” and insert-
16 ing “examination copy”.

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

20 (5) Section 704(d) of title 17, United States
21 Code, is amended by striking “deposit” and insert-
22 ing “examination copy”.

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

1 (7) Section 709 of title 17, United States Code,
2 is amended by striking “deposit” and inserting “ex-
3 amination copy”.

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

6 (A) in subsection (a)—

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

10 (ii) by striking the second sentence;

11 (B) in subsection (b)(8), by striking “Reg-
12 ister of Copyrights within the Library of Con-
13 gress” and inserting “Director”;

14 (C) in subsection (d), by striking “Librar-
15 ian of Congress” and inserting “Director”; and

16 (D) by striking subsection (e) and redesign-
17 ating subsection (f) as subsection (e).

18 (9) Section 802 of title 17, United States Code,
19 is amended by striking “Librarian of Congress” or
20 “Librarian” each place it appears and inserting “Di-
21 rector”.

22 (10) Section 803 of title 17, United States
23 Code, is amended—

1 (A) in subsection (a), by striking “Librar-
2 ian of Congress” the first place it appears and
3 inserting “Director”;

4 (B) in subsection (b)(6)(A), by striking
5 “Librarian of Congress” and inserting “Direc-
6 tor”;

7 (C) in subsection (e)(6), by striking “Li-
8 brarian of Congress” or “Librarian” in each
9 place it appears and inserting “Director”; and

10 (D) in subsection (e)(1), by striking “Li-
11 brarian of Congress” each place it appears and
12 inserting “Director”.

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

15 (A) in subparagraph (C), by striking “the
16 Librarian of Congress, upon the recommenda-
17 tion of the Register of Copyrights, who shall
18 consult with the Assistant Secretary for Com-
19 munications and Information of the Depart-
20 ment of Commerce and report and comment on
21 his or her views in making such recommenda-
22 tion” and inserting “the Director, after con-
23 sulting with the Assistant Secretary for Com-
24 munications and Information of the Depart-
25 ment of Commerce”; and

1 (B) in subparagraphs (C) and (D), by
2 striking “Librarian” each place it appears and
3 inserting “Director”.

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

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

“7. United States Copyright Office 701”.

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

13 **“CHAPTER 7—UNITED STATES COPYRIGHT**
14 **OFFICE”.**

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

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

18 (b) OTHER PROVISIONS OF LAW.—

19 (1) Section 8111 of title 15, United States
20 Code, is amended by striking “Register of Copy-
21 rights” each place it appears and inserting “Director
22 of the United States Copyright Office”.

23 (2) Section 2 of title 35, United States Code,
24 is amended by striking “Register of Copyrights”

1 each place it appears and inserting “Director of the
2 United States Copyright Office”.

3 **SEC. 8. TRANSITIONAL PROVISIONS.**

4 (a) **EFFECTIVE DATE.**—This Act and the amend-
5 ments made by this Act shall take effect upon the expira-
6 tion of the 60th day after the date of the enactment of
7 this Act¹, except that the provisions of section 701 of title
8 17, United States Code, as amended by section 2(a) of
9 this Act, shall take effect on the date of the enactment
10 of this Act².

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

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

22 (d) **TRANSFER OF ASSETS.**—Except as otherwise
23 provided in this Act, so much of the personnel, property,
24 records, and unexpended balances of appropriations, allo-
25 cations, and other funds employed, used, held, available,

1 or to be made available in connection with a function that
2 this Act vests in the United States Copyright Office shall
3 be available and transferred to the Director.

4 **SEC. 9. MISCELLANEOUS PROVISIONS.**

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

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

20 (c) PROCEEDINGS.—This Act shall not affect any
21 proceedings or any applications for any benefits, service,
22 license, permit, or certificate pending on the effective date
23 of this Act before the Copyright Office or the Copyright
24 Royalty Judges, but such proceedings and requests shall
25 be continued. Orders and determinations shall be issued

1 in such proceedings, appeals shall be taken therefrom, and
2 actions shall be taken pursuant to such orders and deter-
3 minations, as if this Act had not been enacted, and orders
4 and determinations issued in any such proceeding shall
5 continue in effect until modified, terminated, superseded,
6 or revoked by a duly authorized official, by a court of com-
7 petent jurisdiction, or by operation of law. Nothing in this
8 subsection shall be considered to prohibit the discontinu-
9 ance or modification of any such proceeding under the
10 same terms and conditions and to the same extent that
11 such proceeding could have been discontinued or modified
12 if this subtitle had not been enacted.

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