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IP Alert: Copyright Office Focuses on Future with Strategic Plan

COPYRIGHT OFFICE FOCUSES ON FUTURE WITH STRATEGIC PLAN

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"The Congress shall have Power...To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." — CONSTITUTION OF THE UNITED STATES [ARTICLE 1, SECTION 8]

The U.S. Copyright Office has released its strategic vision and plan for 2016-2020. [1] The office presented the draft strategic plan for public comment on October 23, 2015. The draft document is a culmination of several years' work. The Strategic Plan 2016-2020 will take effect on December 1, 2015. With the future in mind, Maria A. Pallante, U.S. Register of Copyrights and the Director of the U.S. Copyright Office, stated that the Copyright Office "must be lean, nimble, results-driven, and future-focused." The Copyright Office hopes the strategic plan "will move us from a 1970s department to a model for twenty-first century government." The goal of this article is to highlight the proposed changes and to outline the trajectory that the Copyright Office will aim for in the future.

Mission Statement

"To administer the Nation's copyright laws for the advancement of the public good; to offer services and support to authors and users of creative works; and to provide expert impartial assistance to Congress, the courts, and executive branch agencies on questions of copyright law and policy."

The U.S. Copyright Office is responsible for the administration of U.S. copyright laws governed by the Copyright Act under Title 17. The office is directed by the Register of Copyrights. Notably, the Librarian of Congress appoints and supervises the Register. The Register and her staff are "impartial advisors" to Congress and work closely with other government agencies such as the Departments of Justice and State. The office is dedicated

to supporting "the exclusive rights, remedies, and remunerations that are afforded authors under the law, and which are essential for publishers, producers, and other entrepreneurs who invest in and bring these works to market."

Strategic Goals of the United States Copyright Office[2]

"The United States Copyright Office must be a model for twenty-first century government ."

The Strategic Plan provides six strategic goals that the Copyright Office intends to implement by 2020:

FIRST STRATEGIC GOAL

Administer the copyright laws of the United States effectively, efficiently, and skillfully for the benefit of authors and the public.

The Copyright Office plans to administer a modern system that establishes new and updated practices for registering emerging forms of digital works, such as software, images, motion pictures, video games, and music. The Copyright Office's modern system will also decrease the total time it takes to issue a registration or refusal from the filing of an application.

The Copyright Office will implement a more efficient and useful commercial and noncommercial copyright recordation system by analyzing policy studies, technology reports, and public comments. The Strategic Plan also highlights a plan to examine more modern issues, such as issues related to "electronic signatures, commercially sensitive or redacted materials, personally identifiable information, and standards and timing of agency review."

In addition, the Strategic Plan provides that statutory copyright licenses "will be efficiently and accurately administered," which includes the "legal review of royalty rate and distribution proceedings." The Copyright Office plans to critically examine the legal requirements of mandatory deposits and "issues relating to the security, terms, and conditions under which deposited works are made part of the [Library of Congress's] holdings and may be made available to the public." The plan further provides that the Copyright Office will assume "greater responsibility for the function and application of copyright laws by accepting new assignments from Congress" and will consider solutions for increasing the efficiency of copyright administration.

SECOND STRATEGIC GOAL

Make copyright records easily searchable and widely available to authors, entrepreneurs, and all who need them.

The Copyright Office will expand the accessibility of copyright records by formalizing metadata standards and by increasing the use of unique identifiers. This includes expanding the online database of contemporary records and using "innovative third-party tools, software programs, registries, and other business models that are interoperable with the Office's records and underlying data."

The Strategic Plan describes deploying a robust public records search engine that will allow the public the ability to view copyright records in a more "cohesive and comprehensive fashion." The plan provides for digitizing pre-1978 copyright records and making these

documents searchable online. Additionally, the Copyright Office will work with businesses "to develop and offer new business-to-business services," which will "share data and connect public and Private copyright records."

THIRD STRATEGIC GOAL

Provide impartial expert assistance to Congress, executive branch agencies, and the courts on questions of copyright law and policy.

The Copyright Office will advise Congress on emerging areas of copyright policy, provide policy studies for Congress to consider, and interact with the public to discuss the "legal and practical aspects of copyright law." The Copyright Office will assist government agencies with interpreting "national copyright laws and the trade and treaty obligations of the United States." The Copyright Office will assist the courts with interpreting the Copyright Act and other provisions of title 17 of the U.S. Code. This advice to the courts will include maintaining "an up-to-date Compendium of U.S. Copyright Office Practices to assist courts with understanding the Office's practices and reasoning."

FOURTH STRATEGIC GOAL

Deliver outstanding information services, educational programs, authoritative publications, and other expert resources to individuals and businesses.

Under the Strategic Plan, the office's web interface will be improved to "assist customers with forms and filings" and to "make registration and recordation filings more intuitive." The office will enhance customer support and also consider opening satellite offices across different regions in the U.S. The plan calls for a complete renovation of the copyright website (copyright.gov) that will "improve the organization and accessibility" of copyright records and publications. The renovated website will be quicker and more secure than the current website and will facilitate "filing public comments and participation in public processes."

The Copyright Office plans to expand training programs, both domestically and internationally, by increasing the number of public seminars and by creating "new educational initiatives for authors, schools, organizations, and businesses." Existing programs, such as the Copyright Academy, Copyright Matters, and the International Copyright Institute, will also be expanded.

The Strategic Plan calls for publishing more resources for public consumption, such as additional web materials, newsletters, and authoritative texts, all of which will act as office resources and will provide guidance on copyright law and office practices. In addition, the Copyright Office plans to expand "the use of social media and audio-visual tools to reach more members of the public regarding the activities of the Office and issues of public interest."

FIFTH STRATEGIC GOAL

Build a robust and flexible technology enterprise that is dedicated to the current and future needs of a modern copyright agency.

The Copyright Office will integrate cloud and mobile capabilities into its enterprise architecture and infrastructure, which will increase the availability, performance, and security of the office's computer systems. The Strategic Plan calls for determining

“premium on-premises and off-premises hosting solutions” and calls for conversing with the public on “security requirements for data exchange and storage of copyright deposits in the Office’s care.” The plan also provides for bolstering the Copyright Office’s process for “proposing, reviewing, and finalizing technology investments.”

SIXTH STRATEGIC GOAL

Recruit a diverse pool of legal, technology, and business experts, including a dedicated career staff, non-career professionals, contractors, and advisory committees.

The Copyright Office will hire qualified technical professions to manage its enterprise systems and projects. The Strategic Plan includes creating many new positions while enhancing training and career development programs for office employees. To retain qualified employees, the Copyright Office will implement several incentives, such as expanding telework and job-share programs, and increasing education support, awards, and distinctions. The plan also calls for strengthening programs for “early career professionals, scholars in residence, student interns, and academic partnerships with law schools and universities” and using contractor support “to meet targeted needs.” The Copyright Office will work with industry experts on technology standards and increase contact with “legal and business advisors from the nonprofit, public sector, and private sector.”

Modernization Efforts and Legal Resources

FAIR USE INDEX

In April 2015, the Copyright Office launched the Fair Use Index. [3] The purpose of this tool is to track and provide quick access to 175 key judicial decisions that provide crucial insight to the fair use doctrine under copyright law. The tool is specifically designed to aid lawyers and non-lawyers in understanding types of uses that a court determined fair or unfair.

ORPHAN WORKS AND MASS DIGITIZATION

In June 2015, the Copyright Office concluded the “Orphan Works and Mass Digitation Study.” The study examined circumstances in which a copyright owner, despite diligent efforts, could not be identified or located. Under current statutory provisions, there is not a clear exception or licensing option for individuals to make productive use of Orphan Works. The Mass Digitization evaluated options for collective licenses for large scale access to works that are otherwise ineligible due to statutory exceptions.

COPYRIGHT AND THE MUSIC MARKETPLACE

In an effort to create a more reasonable music licensing system, the Copyright Office analyzed the current and antiquated music licensing framework. The Office evaluated statutory licenses, the role of performing rights organizations, access to music ownership data, and the individual concerns of artists in the current music marketplace. The office made a number of recommendations that it hopes will streamline music licensing.[4]

RESALE AND ROYALTIES

At the request of Congress and after analyzing resale royalties for visual artists, the office concluded that “certain visual artists, who typically do not share in the long-term financial success of their original works, may operate at a disadvantage under the copyright laws

relative to authors of other types of creative works." Accordingly, the Copyright Office recommended that Congress further investigate the possibility of legislating a resale royalty to compensate these artists.[5]

COPYRIGHT SMALL CLAIMS

Again, at the request of Congress, the Copyright Office reviewed current options for copyright owners to resolve infringement and other copyright issues. The office concluded that "redress" via the federal courts is time consuming and expensive for a copyright owner experiencing a "modest amount of economic harm." As such, the office recommended the creation of a Copyright Office Tribunal as a potential option to resolve copyright disputes outside the federal courts.[6]

FEDERAL COPYRIGHT PROTECTION FOR PRE-1972 SOUND RECORDINGS

Sound recording professionals and Congress spurned the Copyright Office to investigate the possibility of bringing sound recordings made prior to February 15, 1972, under the federal copyright regime. The Copyright Office concluded that the best interests of the public, libraries, and archives would be better served by "federalization of these recordings."[7]

Budget Process and Resources

At the present time, funding for the Copyright Office comes from two main sources: 1) fees paid by authors, corporations, and various customers, and 2) congressionally appropriated funds. One proposal put forth by the Copyright Office is to directly manage office investments and acquisition processes and to submit funds requests and operating plans directly to Congress.

Currently, the funding request of the Library of Congress includes the Copyright Office yearly funding request. Ultimately, the Librarian of Congress has the final decision for budget issues. In Fiscal Year 2015, the Library of Congress budget totaled roughly $631 million and about $54 million was allocated to the Copyright Office. The Fiscal Year 2016 request saw about a 3.5 percent increase in funding, to roughly $57 million.

Conclusion

The proposals in the Copyright Office's Strategic Plan 2016-2020 will help customers and the public gain better access to the office's resources via a twenty-first century web interface. New-age digital mediums, such as videos and software, will be easier to register and protect, which will greatly expand the number of registered works and the potential enforcement of these works. In future litigation, the office's guidance and the advice provided to the courts could aid controversies over statutory interpretation between the courts and the office. Finally, a diverse talent pool of employees will provide a fresh perspective and insight into the issues facing the office and potential copyright owners in today's digitally driven world.

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[1] http://copyright.gov/reports/strategic-plan/sp2016-2020.html

[2] http://copyright.gov/reports/strategic-plan/USCO-strategic.pdf

[3]http://copyright.gov/fair-use/

[4]http://copyright.gov/docs/musiclicensingstudy/

[5]http://copyright.gov/docs/resaleroyalty/

[6]http://copyright.gov/docs/smallclaims/

[7]http://www.copyright.gov/docs/sound/

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