Overview

On September 26, 2018, the Committee on Rules and Administration held a hearing for S. 1010, the Register of Copyrights Selection and Accountability Act of 2017. Chairman Roy Blunt (R-MO) gave a summary about the bill, which Senators Grassley (R-IA), Hatch (R-UT) and Leahy (D-VT) sponsored. The proposed legislation would give the Congress a greater role in selecting the Register by making the position a Presidential appointment subject to the advice and consent of the Senate. Senator Amy Klobuchar (D-MN), the Ranking Member, introduced the substance of the bill and highlighted the importance of copyright and the Copyright Office, and the need to foster an environment of innovation through a modern and efficient Copyright Office.

Witnesses

Keith Kupferschmid, CEO of the Copyright Alliance

Jonathan Band, Adjunct Professor of Law at Georgetown University

Keith Kupferschmid, CEO of the Copyright Alliance, who supports the bill, explained that core copyright industries contribute over 1.2 trillion dollars to the national GDP, and that making the Register a Presidential appointee confirmed by the Senate would show international trading partners how important copyright is to the United States. More importantly, it would also ensure a more transparent and neutral process, compared to the current process.

Mr. Kupferschmid also explained that the existing process does not require any direct input from the Administration or Congress, and the Register is chosen by the Librarian without any input. This bill would allow voices of support or concern to be heard prior to confirmation. Furthermore, recent changes to the organizational structure of the Library of Congress have disrupted the direct line of communication Congress had historically shared with the Copyright Office. Enacting the bill would reinstate this Congressional input into the Copyright Office.

Jonathan Band, an Adjunct Professor of Law at Georgetown University, expressed his opposition to the bill. He explained that Congress has repeatedly stated that the best location for the Copyright Office is in the Library of Congress. Mr Band feared, however, that S. 1010 would change this by giving power to the President, thus enabling the President to move the Copyright Office.

He added that it is difficult to understand how the public would benefit from politicizing the Register’s position by making it subject to Presidential selection. Further, it would delay the Register’s installation. He argued that it would lead to less accountability to both Congress and the public. Mr. Band attacked the claimed rationale for the bill, which states that more autonomy
from the Library would enhance the Office’s ability to modernize its technology. But the technology related progress made by the Library and the Office in the past eighteen months shows that the bill is not needed. The process of improvement is already well underway, he claimed, since numerous projects have been launched, under the supervision of the existing governance; examples include preliminary work on a new automated recordation system and an integrated data management model, all occurring without the legislation.

Questions

After both witnesses gave their opinions, Chairman Blunt opened the panel for questions.

He asked, how is the current system where one person is in charge of the appointment, better than the system that is contemplated in the legislation wherein a broader group chooses and provides input? Band answered, noting that in the current system it is not just the Librarian of Congress that makes the selection, but the incumbent Register also provides advice. The focus of the job is administering the copyright system and Mr. Band argued that as a result it is important to have someone with copyright technical expertise. He fears that if the Register becomes a more political position, then it becomes possible that someone who does not have the requisite experience would get the position, and unfortunately not be able to properly serve in the position.

Sen. Klobuchar then proceeded to question Mr. Kupferschmid, and asked about his assessment of the modernization effort to date. Mr. Kupferschmid said that it is important to understand that it’s not just about IT when it comes to modernizing the office. The other aspect is modernizing copyright registration policy. Those two need to go hand in hand and nothing has happened in that regard. According to Mr. Kupferschmid, the current Librarian of Congress does not have the experience or the vision to do that.

Sen. Klobuchar then asked Mr. Band how the IT needs of the Copyright Office differ from the IT needs of the Library of Congress. He answered that the key under the current system is that as of now, there are appropriate personnel supervising the process, who are familiar with the diverse needs of the different functions that compose the Library, including the Congressional Research Service (CRS), and the Copyright Office. The expertise has allowed them to appropriately manage the different types and needs of IT systems.

Sen. Klobuchar addressed the threat of cybersecurity, and asked Mr. Kupferschmid if he believed the modernization plans at the Copyright Office appropriately considered such threats. Mr. Kupferschmid stated that the Library has a very different mission from the Copyright Office with respect to that matter. The Library is about providing access to different works, while the Copyright Office is more concerned about security because people will stop registering their works if the system is hacked, which hurts historians, the public, and the creative community.

Another important issue that Sen. Klobuchar touched upon was meeting the public interest. She asked both witnesses whether there are other ways the needs of the Copyright Office can be addressed, and how to ensure that the Register of Copyright balances the interest of all stakeholders. Mr. Band answered first, stating that legislation could be amended so that it
provides criteria for the Librarian to use when selecting the Register. It matters who is selected, not so much the structure of the selection. The proposed structure is going to get in the way rather than getting the best person for the job. Mr. Kupferschmid disagreed, and said that the bill would give the Senate the ability to confirm, thus letting the public have a voice. The President would choose off a slate of individuals that is created by leadership from both parties in Congress and the Librarian.

Concluding Thoughts

Mr. Band concluded that one should view this legislation in its broader context. The goal is to avoid a “Washington Solution”, where reorganization occurs just for the sake of reorganization.

Mr. Kupferschmid disagreed, because at the heart of it, he highlighted, the legislation creates a more transparent system, one that would increase the accountability of the Register, which does not exist today. In closing, Mr. Kupferschmid noted that this is currently the perfect window of opportunity to pass this legislation because there is a vacancy in the position, and the Copyright Office is on the cusp of modernization.

Testimony

Chairman Roy Blunt’s statement:

Keith Kupferschmid, CEO of the Copyright Alliance:

Jonathan Band, Adjunct Professor of Law at Georgetown University:

Video of the hearing: