March 10, 2020

The Honorable Carla Hayden
Librarian
The Library of Congress
101 Independence Ave, SE
Washington, DC 20540

Dear Dr. Hayden,

The purpose of this letter is to express the views of the Section of Intellectual Property Law of the American Bar Association (“ABA-IPL Section” or the “Section”) regarding the qualifications that should be required of any person selected to be Register of Copyrights. The views expressed herein are presented on behalf of the Section and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association (the “ABA”). Accordingly, they should not be construed as representing the position of the ABA.

Since 1894, the ABA-IPL Section has advanced the development and improvement of intellectual property laws and their fair and just administration. As the forum for diverse perspectives and balanced insight on the full spectrum of intellectual property law, the Section serves within the ABA as a highly respected voice within the intellectual property profession, before policy makers, and with the public.

Karyn Temple recently resigned her position as Register of Copyrights and we understand that a search for her replacement has begun. The ABA-IPL Section as a matter of policy does not recommend specific individuals for appointment to high government offices such as this. Without endorsing any candidate, we are writing to let you know of the qualifications that the Section believes should be required of any candidate for appointment as Register.

We believe that first and foremost, the Register must have substantial expertise and experience in copyright law, qualifications essential to carrying out the statutory responsibilities of the Copyright Office (the “Office”), as enacted by Congress in the Copyright Act. The Register has long been an internationally recognized position within the United States government, responsible for assisting in the development of U.S. copyright policy. As Congress prescribed in
section 701 of the Copyright Act, the Register directs and executes comprehensive Copyright Office studies, testifies before Congress, and offers guidance and advice to the Justice Department on litigation, all of which may involve national and international copyright issues. As head of the Copyright Office’s many departments, the Register is also responsible for ensuring that the laws in Title 17 of the United States Code concerning copyright registration, deposit and recordation of transfers, and formal notices of various kinds are properly implemented through regulations and Copyright Office practices.

The Copyright Office has long been respected for its deep institutional knowledge of copyright law and copyright history, and any individual selected to be Register must possess that knowledge and command such respect. Moreover, copyright law must adapt to the challenges of new technologies, and leadership in these challenging times requires a Register with a solid understanding of the technological needs of the Copyright Office, and of how numerous and varied copyright interests may be affected by any proposal for change in copyright law, regulations, or Office practices. For all of these reasons, the Office should be led by someone familiar with the copyright law—both in theory and in practice—and familiar also with the history and development of the copyright law.

Given the complexity of copyright law in the modern world, it would be impossible to carry out these duties effectively without many years of working as a copyright lawyer. In other words, the proper candidate would have a commanding knowledge of copyright jurisprudence and experience with complex copyright transactions and litigation. Because copyright law is increasingly international, it is also critical that the Register be knowledgeable not only about national law, but also about international law.

The Register of Copyrights is responsible not just for developing copyright policy, but also for managing a large office of approximately 400 people. It is critical that the Register of Copyrights have the appropriate management skills to run such an office. While some aspects of office management can and should be delegated, certain operational decisions can be made only by someone with an intimate knowledge of the copyright law because the Copyright Office’s operations are inextricably intertwined with the underlying law and regulations.

We urge you to insist upon these high qualifications in your selection of the next Register of Copyrights, and we look forward to a close and cooperative relationship with you and the Register as you carry out the copyright laws, policies, and programs of the United States.

Sincerely,

George W. Jordan III
Chair, ABA Section of Intellectual Property Law