Honorable Robert W. Goodlatte
Chairman, Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Honorable John Conyers, Jr.
Ranking Member, Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Goodlatte and Ranking Member Conyers:

I write on behalf of the Section of Intellectual Property Law of the American Bar Association (“the Section”) to express its support for the enactment of H.R. 4241, the “Copyright Office for the Digital Economy Act” or “CODE Act.” These views have not been submitted to the American Bar Association’s House of Delegates or Board of Governors, and should not be considered as views of the Association.

As you may recall, the Section previously expressed its view that the U.S. Copyright Office requires improvements to its budget, information technology resources, and rulemaking authority. The CODE Act addresses the Section’s concerns and reflects a thoughtful and constructive approach to the needs of copyright owners and users of copyrighted works. Therefore, as discussed below, to the extent the legislation will not cause a material, negative impact on the Law Library of Congress or any other division of the Library, the Section urges the prompt consideration and approval of the CODE Act by the House.

The CODE Act would establish the Copyright Office “as an agency in the legislative branch.” By doing so, it maintains the Copyright Office’s relationship with Congress, and Congress’s oversight of the Office’s operations. These provisions will preserve the Copyright Office’s role as a frank and impartial advisor to Congress on copyright law.

The Act also would make the head of the Copyright Office a position appointed by the President with the advice and consent of the Senate, which emphasizes the importance of the Copyright Office, and the role of its head, within the U.S.
government. Furthermore, by allowing the President to receive the views of a bipartisan commission before selecting a head of the Copyright Office, the Section hopes the President will be more likely to choose an individual with the appropriate experience and expertise. Moreover, the CODE Act includes specific provisions that would give the new Director of the Copyright Office greater authority to modernize the Office’s operations. Critically, the Copyright Office will be able to establish regulations for the electronic formats in which copies of works may be submitted to the Office for examination. This will streamline the copyright registration process and encourage more registrations, which will benefit both copyright owners and users as they will have access to records of more works. It also will provide more income to the Office. Similarly, the Act would maintain Library of Congress’s receipt of examination copies of works to determine whether it would like those works to be added to the Library’s collections, as well as provides for the study of different functions of the independent Copyright Office to address the administration of mandatory deposits and the Office’s technology.

Recognizing the importance of receiving frank advice from members of the copyright community (both owners and users), the CODE Act also provides for the establishment of a Copyright Advisory Board “to advise and consult with the Copyright Office in the exercise of its functions under the copyright laws, and to provide information on emerging practices regarding copyright, including technology practices.” The Section supports this provision as it will encourage communication between the copyright community and the independent Copyright Office, hopefully increasing the Office’s ability to respond expeditiously to the needs of its stakeholders.

In supporting the CODE Act, the Section understands that other divisions currently exist within the Library of Congress, particularly the Law Library of Congress. While the Section is not aware of negative effects that the CODE Act might have on the Law Library or any other division of the Library, to the extent that material, negative effects may be identified in the future, the Section encourages Congress to find a way to ameliorate those concerns to the extent possible while retaining the substance of the CODE Act.

Accordingly, the Section supports the CODE Act and urges its expedited passage. The issue of Copyright Office modernization has been fully debated over the last several years, and all parties agree it is time for Congress to act. The Act will bring necessary and positive change to the copyright system, allowing greater flexibility in addressing concerns of the copyright community. Any further delay is unnecessary and only will contribute to confusion as copyright owners and users alike await Congressional action.

Very truly yours,

Theodore H. Davis, Jr.
Section Chair
American Bar Association
Section of Intellectual Property Law