Overview


Chairman Nadler opened the hearing by noting key statistics about the importance of the core copyright industries to the US economy, including the fact that they employ 5.5 million workers, reflect $1.2 trillion in economic activity (reflecting 7% of US GDP) and bring in $180 billion in foreign sales. He also noted that this was the first oversight hearing of the Copyright Office since 2015. All Members present congratulated Ms. Temple on her recent permanent appointment as the Register of Copyrights. The main topics of discussion during the hearing (including during the Register’s statement and the questions afterwards) included: the Music Modernization Act (MMA) implementation; the CASE Act; the expiration of the distance signal satellite TV compulsory license; Copyright Office modernization (including IT modernization); and IP theft. It should be noted that the purpose of the CASE Act questions was so that this hearing could serve the procedural requirement of having a hearing on the legislation before proceeding to mark-up the legislation, which is anticipated in July.

Music Modernization Act

Mr. Nadler and Ms. Temple both noted that the MMA required several rulemaking processes that were being undertaken by the Copyright Office. Most notably, the Copyright Office must designate a Mechanical Licensing Collective (MLC) by July 8th to administer the mechanical licenses and distribute the royalties. Ms. Temple noted that two organization had come forward to be so designated, and was heartened to note that both of the organizations had a placed a high priority on ensuring the distribution of royalties. Ms. Temple also noted that after designating an entity to serve as the MLC the Copyright Office would commence the statutorily required study on best practices for royalty distribution that will be ready by July 2021. She noted that the first distribution of royalties would not occur until 2023 so that the best practices
can be implemented before then. Also, after designating the MLC, the Copyright Office will craft rules on how the entity will function and operate. Mr. Lieu asked about accountability of the MLC, and Ms. Temple noted that the MMA statute has several safeguards in place, most notably the requirement to furnish both the Copyright Office and Congress regularly with publicly available audits. Ms. Bass and Ms. Jackson-Lee were concerned that the blanket license flipped the burden from the digital services to the right holders to reach out to request royalties, and wanted to know what the Copyright Office was doing to ensure that rightsholders were aware of their new responsibilities. Ms. Temple noted that under the MMA the MLC is required to do outreach to rightsholders to educate them about the new system; she also noted that in the request for MLC designation, the Copyright Office had requested information on the outreach the MLC was planning, and both current candidates provided robust plans for outreach; she also noted that the Copyright Office will also engage in outreach efforts about the new system once the MLC is designated. Both Representatives were also concerned about ensuring diversity on the MLC Board and Ms. Temple noted that by statute the MLC must represent the largest number of musical work copyright holders and the Copyright Office noted that the request for designation also asked the MLC candidates to detail their plans to ensure diversity on their boards.

**CASE Act**

Ms. Temple indicated support for the CASE Act during her opening statement, noting that the bill was largely based on the 2013 Copyright Office study. She noted that the CASE Act was needed due to the high cost of federal litigation which often left small creators without a remedy, and then repeated the now cliché line that “a right without a remedy is not a right.” Mr. Collins, Mr. Jeffries, Ms. Roby and Ms. Garcia also expressed their support for the CASE Act, and asked Ms. Temple questions about why the small claims tribunal was necessary.

**Satellite Compulsory License Expiration**

Chairman Nadler and Ranking Member Collins both mentioned during their opening statements the upcoming expiration of the distance signal satellite TV compulsory license. Ms. Temple referred to a letter sent to the Committee where the Copyright Office recommended the expiration of the compulsory license. This recommendation was based on the fact that royalties under this license had fallen precipitously recently (by 85-99%) in the past five years (2014-2019) thus providing evidence that this license is not being utilized and reflecting that the market has provided solutions to previously under-served markets. She noted that it is Copyright Office policy to support compulsory licenses only when there is a market failure, and since there no longer appears to be a market failure in this situation; she supports letting the satellite compulsory license lapse. Mr. Johnson expressed concern about the 800,000 current satellite TV subscribers and what would happen to them on Jan. 1, 2020; Ms. Temple responded that there are other alternatives on the market, such as streaming services that they could rely upon instead. Mr. Johnson cautioned that broadband had not reached all rural areas yet and therefore internet-based services were not necessarily available to these subscribers. Ms. Lesko also cautioned Ms. Temple to consider the current subscribers who are recreational vehicle owners and truckers who use satellite services. Ms. Temple again referenced the large drop in royalties as evidence that
there will be no significant market harm by allowing the license to expire and she felt confident that the market would fill the void.

**Copyright Office Modernization (including IT)**

Mr. Nadler and Mr. Collins, as well as several members of the Committee, including Mr. Johnson, Ms. Lofgren, Ms. Dean, asked Ms. Temple about the Copyright Office’s modernization efforts, especially in light of the *Fourth Estate v. Wall Street* case, which required registration before the filing of a suit for infringement. Most Members of the Committee were supportive of the Copyright Office’s modernization goals and wanted to ensure that the Copyright Office was receiving the resources necessary to complete the modernization. Ms. Temple noted that a key part of the modernization was the improvement of IT systems, as well as an overhaul of the workflow and processes that went along with all three key parts of the modernization: registration, recordation, and public records access. She also noted that the backlog of registration had been eliminated and current processing times had been reduced by 40% to 5 months on average. When pressed by Mr. Collins on what kept the pendency at five months she noted that it was both human resources and technological resources and expressed optimism that once the IT systems were modernized that these times would be reduced further. She noted that her goal was to make registration more instantaneous and possible to be done via smartphone.

In response to a question from Ms. Lofgren, Ms. Temple noted that a pilot program switching to a digital recordation system (the recordation system is currently still paper based) would launch in the spring of 2020; she also noted that in late 2020 the Office would launch a pilot program with the public records system so that the public would have access to all the applications and registration in the system; and lastly with respect to the registration system they are currently processing the public comments received and testing user interfaces. In short, Ms. Lofgren summarized that it appeared that we were on the verge of “huge change” in the next year, and Ms. Temple concurred with that assessment. Mr. Johnson asked whether the modernization was being negatively impacted by the Copyright Office operating under the Library of Congress, and Ms. Temple noted first that all funds that had been appropriated for Copyright Office IT modernization had been provided to the Copyright Office, but she also noted that since the IT systems were centralized under the Library’s Office of Chief Information Officer (OCIO) the Copyright Office had not had the same access to vendors as systems were being designed; she also noted that the Library was modernizing other systems, and she has been making sure that Copyright Office modernization remains the Library’s top priority in its modernizing efforts.

**IP Theft**

Several members, including Mr. Cline, Mr. Lieu, Mr. Armstrong and Ms. Garcia raised the issue of IP theft and in particular illegal streaming services, and asked Ms. Temple what steps the Copyright Office was taking to deal with this issue. Ms. Temple noted that the Copyright Office was not an enforcement agency, but they did work with the Department of Justice and the US interagency to work on these issues. One recommendation that she provided to the Committee was the need to ensure parity with respect to penalties for the unauthorized public performance, which is currently not a felony, whereas unauthorized distribution and reproduction are. She also noted that the Office was currently working on a study on section 512 of the
Digital Millennium Copyright Act (DMCA) to determine whether the safe harbors and the balance in the DMCA notice and takedown system were still effective in combatting infringement on the internet.

Testimony

Register Temple’s prepared testimony can be found here:


Link to the Webcast of the hearing:

https://judiciary.house.gov/legislation/hearings/oversight-us-copyright-office