The Senate Committee on the Judiciary
Subcommittee on Intellectual Property
Hearing on
“Oversight of the Modernization of the U.S. Copyright Office”
December 10, 2019

The Senate Committee on the Judiciary convened on October 30, 2019 with Chairman Thom Tillis (R-NC), presiding along with Ranking Member Christopher A. Coons (D-DE). Senators Dick Durbin (D-IL) and Richard Blumenthal (D-CT) were also present.

Panel of Witnesses:

The Honorable Dr. Carla Hayden
Librarian of Congress
Library of Congress

Ms. Jody Harry
Chief Financial Officer
Acting Chief Operating Officer
U.S. Copyright Office

Mr. Bernard Barton
Chief Information Officer
Library of Congress

Chairman Tillis. Opened the hearing expressing the goal of the hearing to review the modernization efforts of the “legacy information technology systems” in the Copyright Office which is “essential to maintain America's Creative Economy.” He noted that modernization includes more than just an “upgrade to the information technology system” but also entails, “internal process optimization, organizational change, management to reduce the registry registration, pendency terms and digitizing the recordation and the registration records.” He wanted the Committee to understand: “what has gone well, what can be done better and what Congress can do to make sure modernization is done in a way that meets the needs of those who
use the office daily.” He also noted that modernization must also include “statutory modernization,” which was the goal of the roundtables with stakeholders convened by the subcommittee for the past four months; he mentioned the Copyright Modernization bill discussion draft that was released on Monday, December 9th. Senator Tillis highlighted that “one of the biggest concerns” expressed by the stakeholders was the need for “improved communication and transparency.” Lastly, he noted that the current Register has just announced that she is stepping down and so exhorted that it is “essential that there not be another prolonged period without a Register of Copyrights” given the important work that the Office is doing, on top of modernization, including reducing pendency times, and implementing the Music Modernization Act. He also noted that he had spoken to the Librarian about this issue and appreciated Dr. Hayden’s willingness to consult with Congress in order to select a qualified candidate for the position.

**Ranking Member Coons** started his opening statement by expressing surprise and disappointment about the news that the current Register was leaving and thanking her for her service, and offering his support to Dr. Hayden as she begins the search for a replacement. He noted that all members of the panel play “a key role in supporting our nation’s creative community.” He noted that safeguarding the copyright system is “no small task” and then listed the challenges confronting the Copyright Office, including modernizing the office for the digital era, implementing the Music Modernization Act, and hopefully soon also implementing the CASE Act. He pledged his support to the Copyright Office, “especially during this time of transition.”

**Panel:**

**Dr. Hayden** opened her statement expressing that Copyright Office modernization has “become and remains a top priority” for the Library of Congress. She noted that the Library has changed as an organization recently, having implemented an agency-wide strategic plan and aligned that plan with all the service units within, including the Copyright Office. She noted that the IT infrastructure has been “stabilized and optimized” and that the IT management and governance has been strengthened. She noted that as a result they have implemented 95% of the IT recommendations made by the GAO in 2015, and will be close to 100% compliance soon. As to modernization she highlighted that in 2018 and 2019, they solicited public comment on the design of the new system and have made progress in developing an “online recordation system” which will, “for the first time allow users to record information related to copyright ownership using a digital platform.” She also highlighted that they have launched the development of a “new public records system to allow the public to effectively search for information across the entire database of current and historic copyright records.” She noted that they were “on track” to
release a limited pilot on recordation by the spring of 2020 and the proof of concept for the public records system is scheduled to be released in late fiscal year 2020. Lastly, the “next generation registration system” is scheduled to go into “full scale development” later this fiscal year. She expects to keep aggressively implementing the modernization process and keep it moving forward. She highlighted that the agency’s inspector general (IG) recently identified copyright modernization as a “top management challenge” because of its “complexity, magnitude and the importance of fulfilling the Copyright Office’s mission.” She noted that they are currently acting upon two suggestions of the IG, notably developing a “critical path” of “detailed milestones and outcomes measures” and a “master schedule to monitor the scope, progress and accountability across the projects and to ensure that there is appropriate leadership management of the project.” She currently meets weekly with the Register and the Chief Information Officer (CIO) to review the project, and has also approved the appointment of a senior technical advisor who reports directly to the Register.

Ms. Harry testified on behalf of the Register, who as noted previously had just accepted an offer of outside employment. She noted that modernization “remains the top priority of the Copyright Office, given that it “touch[es] on all aspects of the office’s activities.” She noted that they are “working with [their] staff, the public and contracted outside experts to understand what a new system should include,” and that the office of Copyright Modernization then “distill [s]this information and provide it to the Library’s Office of Chief Information Office (OCIO)” for them to develop the system. She noted that the “current fiscal year in particular is a critical one for this process with three separate software development work streams for the enterprise copyright system—all of them proceeding in parallel.” As a result, they are working closely with the OCIO throughout this process. She explained that in anticipation of this increased activity, they have undertaken several steps to “optimize” their “processes and human resources,” including, “multiple independent reviews of our various workflows and business processes, assessment of our personnel and staffing needs, office wide initiatives to identify the specific features we would like in the new system and […] focusing on change management efforts to engage and empower [their] staff.” She proudly noted several key accomplishments, including completely eliminating the backlog of pending registration claims, reducing registration processing times by more than 40%, completely resolving all claims pending since 2017 and drafted revised regulations to further streamline registration practices and procedures. She noted that the Copyright Office is committed to ensure all users understand the modernization process, and to this end launched a “significant online presence” (which included a dedicated website, a dedicated email account for feedback and a bi-monthly webinar series focusing on modernization issues) to “explain modernization and seek feedback.”
Mr. Barton provided a “technological perspective” on the modernization process. He thanked Senators Tillis and Coons for “facilitating” a meeting, during one of the modernization roundtable, with stakeholders on this issue, which provided transparency on the modernization process and helped clarify the role of the OCIO in that process. He explained the Library has started following “industry best practices for streamlining IT Governance, investments and resources” creating an “entirely new IT Governance structure for the library, a multi-year IT planning process and an IT funding model based on the technology business management model.” He explained that these changes “ensure that technology is strategically aligned to meet the library's needs,” and allows it to now “move forward with an agency wide IT modernization effort.” He noted however that a centralized IT infrastructure does not mean “one size fits all,” noting that the different service units within the Library all have “complex and unique missions.” He reassured the subcommittee that OCIO builds “mission specific solutions” to meet those differing needs. He explained that the OCIO and Copyright Office are collaborating on building the “Enterprise Copyright System” as a “set of shared services combined with applications that support specific copyright business functions like recordation and registration.” He then explained the agile IT building methodology which allows each piece of the system to be updated as needed without extensive or expensive modernization in the future, by keeping it in “continuous development” with updates as often as every three weeks. He also highlighted that IT security is a top priority for the Library and that it is important to secure digital content in their care.

Questions:

Chairman Tillis asked Dr. Hayden her thoughts of updating title 17 to “make the Copyright Office statutory and more or less aligning it with the Congressional Research Service.” Dr. Hayden responded that they have “regarded the centralization and the management of the Copyright Office as analogous to the independence and autonomy of the Congressional Research Service,” including having the ability to “interact directly with Congress.”

Chairman Tillis then asked Mr. Barton how big the modernization project is with respect to people and budget and whether it was on time. Mr. Barton noted that the project is twelve million dollars each year for five years, and noted that the staffing “varies depending on the number of initiatives” that are being supported at any given time. Chairman Tillis next asked Ms. Harry her perspective on the current status of the modernization as the “business stakeholder.” Ms. Harry responded by noting that they were currently in the second year of the five year term and that the status of all projects are currently “green”. She also noted that they
are about to issue a contract to “develop a critical path for the entirety of modernization” to understand the full scope of modernization and will hopefully have a full report on that by the end of this year. Dr. Hayden also added that they will want to work with Congress to ensure that they have the resources to keep “the system up to date.” Senator Tillis agreed that there will need to be continued discussions about the resources needed to ensure the “continuous development and improvement and optimization” of the system.

Sen Tillis then turned to the CASE Act, asking the panel if they are prepared to implement the CASE Act once it passes in terms of “people, technology and infrastructure.” Dr Hayden noted that she has been “assured” that the Copyright Office has been doing the analysis on whether they are “operationally able to do what [they] need to do.” Ms. Harry noted that “yes, the Copyright Office does believe that if implemented, [they] could stand up what [they] need for the CASE Act very quickly,” and noted that “the IT needs would be minimal.” Sen. Tillis asked the panel to come back to the Subcommittee and “specifically report back what potential resources they may need that are not currently authorized or appropriated,” to implement the CASE Act, so that they can be prepared.

Sen Tillis then asked Dr. Hayden about the Technology Strategy Board and its role in Library IT Modernization. Dr. Hayden noted that one of the major recommendations from the GAO review was to “have a way of making sure that the IT investments and management in the Library and with all of the service units is coordinated, reviewed regularly.” She explained that the Technology Strategy Board is composed of the major units in the Library including the Register of Copyright.” They review IT Projects that might have some possible synergies, and they also are mandated to make sure that any project that has a technology component has the proper review, but it is not an approval process.

Ranking Member Coons started his question period by asking “what are the most significant modernization challenges faced by the Copyright Office and how can Congress best support the transformation of the copyright into the digital era?” Dr. Hayden noted that modernizing the system from “papers to pixels” is the biggest challenge, and they have already scanned and digitized “41 million cards,” but at the same time it is an exciting prospect that any person anywhere will be able to check into the register at any time will be helpful. Ms. Harry noted that the biggest challenge for the Copyright Office is “just finding the right ways to be supportive of the staff,” and that is why they are focused on change management and “business process re-engineering.” Sen. Coons asked Mr. Barton how he makes decisions on allocating the Library’s limited resources among competing projects and about the Register's role in
making IT modernization decisions. Mr. Barton explained that prioritization is only important when one has competing priorities and not enough resources; however, with respect to IT modernization for the Copyright Office, there are no competing priorities because Congress has fully funded the modernization. The question only comes in to play with respect to shared services across the Library, such as Human Resources (HR) and other types of IT that cross all of the service units, and that’s why there is a governance board that includes membership from all the different service units.

Sen Coons next asked what happens at the Copyright Office during a government shutdown or lapse in funding, and how does this compare with other organizations that have comparable examination and registration processes, like the PTO. Ms Harry noted that they maintain a small “skeleton” staff of about 10 people who are available for purposes of provided advice to Congress or the Department of Justice, unlike the PTO who are able to operate during a shutdown.

Sen Coons then asked Dr. Hayden about the consequences of decoupling the Copyright Office’s registration deposit requirement from the best edition deposit requirement. Dr. Hayden noted that “first best edition is only operable when it covers what is available for sale or distribution. So it's never anything that isn't already available for sale and distribution. If it's in one format, that's the best edition.” She noted however, with respect to consideration of making it easier for deposit copies to be digital material, that the Library cannot now accept these. Sen. Coons asked whether she had any concerns about decoupling the requirements, and Dr. Hayden responded that she is “optimistic that as more things are born digital” they can “work out some of these things.”

Sen Coons asked whether Dr. Hayden had any concerns about the proposal in the draft bill to give the Copyright office “operational independence and to the extent possible administrative independence.” Dr. Hayden referred to her earlier response to Sen. Tillis, noting that the Copyright Office is “analogous to the Congressional Research Service.”

Sen. Coons also asked Dr. Hayden about the creation of a Copyright Office advisory board similar to the Patent Policy Advisory Board that includes external stakeholders and provides guidance to the Director (in this case the Register). Dr. Hayden responded positively noting that they want to continue engaging stakeholders and the entire community, and that they would be pleased to work with Congress on this idea.

Sen. Coons also asked whether the Copyright Office would have the resources necessary to fully implement the CASE Act, should it become law. Ms. Harry reiterated that they are “confident
that they would be able to stand up [the Copyright Tribunal created by the CASE Act] very quickly.”

Sen. Coons’ last question was on the timing and transition for a new Register and whether it would impact modernization. Dr. Hayden noted that they would be working with Congress on filling that position.

Sen. Durbin, who joined the hearing near the end, asked about CASE Act implementation, and Sen. Tillis noted that a similar question had already been asked and answered.

Lastly, as he closed the hearing, Sen. Tillis noted that next year the Subcommittee will undertake a year long review of the Digital Millennium Copyright Act, with the objective of introducing bills in 2021 to update the DMCA as needed.

Testimony

Librarian Dr. Carla Hayden
https://www.judiciary.senate.gov/imo/media/doc/Hayden%20Testimony.pdf

Ms. Harry

Mr. Barton
https://www.judiciary.senate.gov/imo/media/doc/Barton%20Testimony.pdf

Senate Committee on the Judiciary IP
Subcommittee Hearing –
Full video:
https://www.judiciary.senate.gov/hearings/watch?hearingid=C8E451C2-5056-A066-603C-5C477AC08F64