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March 5, 2021

The Honorable Thom Tillis
113 Dirksen Senate Office Building
Washington, D.C. 20510

Via email: Intellectual_Property@tillis.senate.gov

Re: Comments Regarding Draft Digital Copyright Act of 2021

Dear Senator Tillis:

Intellectual Property Owners Association (IPO) appreciates the opportunity to respond to your request for public comment regarding the draft Digital Copyright Act of 2021 (“DCA”) text.

IPO is an international trade association representing a “big tent” of diverse companies, law firms, service providers and individuals in all industries and fields of technology that own, or are interested in, intellectual property (IP) rights. IPO membership includes over 125 companies and spans over 30 countries. IPO advocates for effective and affordable IP ownership rights and offers a wide array of services, including supporting member interests relating to legislative and international issues; analyzing current IP issues; providing information and educational services; and disseminating information to the public on the importance of IP rights.

IPO’s mission is to promote high quality and enforceable intellectual property rights and predictable legal systems for all industries and technologies. Our vision is that this will result in the global acceleration of innovation, creativity, and investment necessary to improve lives.

As a result, IPO applauds your interest in modernizing U.S. copyright law. Although IPO does not currently have a view on every part of the draft legislation, to the extent that we currently have views, we discuss those views below. We also have asked our Copyright & Related Rights Committee to further consider the aspects of the draft bill on which we do not already have positions. We look forward to working with you and your staff on these issues in the future.

Sec. 4. Appointment of Register of Copyrights and Copyright Office Relocation

IPO strongly supports making the Register of Copyrights a presidential appointee selected with the advice and consent of the Senate, as well as giving the Copyright Office autonomy from the Library of Congress, including having its own budget and information technology systems separate from those of the Library of Congress. Copyright Office independence is essential in ensuring that the Office has the staffing, budget, information technology, flexibility, and autonomy it needs

to meet the current and future demands of copyright owners and the public. Although IPO supports Copyright Office independence, it does not currently have a position on whether the Copyright Office should be part of the Department of Commerce (particularly given that not all copyrighted works are created as part of a commercial endeavor), an independent legislative agency, or an agency with a different form of independence.

Sec. 9. Good Faith Error in Application for Registration

IPO supports legislation precluding the Copyright Office from refusing registration of a work solely because the application contains a good faith error, while penalizing applicants who include inaccurate information in their applications in bad faith or with the intent to defraud the Copyright Office by invalidating their certificates of registration.

Sec. 10. Deposit Copy Retention

IPO supports legislation requiring the Copyright Office either to retain a deposit copy of a registered work, or to notify the copyright owner at least 90 days in advance of its destruction.

Sec. 11. Fee Funding Authority during Lapse in Appropriations

IPO supports legislation permitting the Copyright Office to use collected fees to continue its operations during a lapse in spending authority, as the Copyright Office should have as much flexibility as possible to provide services to its stakeholders. Moreover, the Office should have the ability to build a reserve account from the fees collected, so it has the necessary funds to draw from in order to make capital and other improvements in different budget cycles, including during periods when incoming fee receipts might be lower than typical. As fee revenue can be erratic, it is essential that the Copyright Office maintain an adequate reserve fund to deal with the ups and downs inherent in its fee collections.

Sec. 12. Authority to Set Alternative Fee Structures for Registration and Other Copyright Office Services

As stated above, IPO supports the general principle that the Copyright Office should have more flexibility in its spending authority. While IPO supports the Copyright Office's authority to set its fee structures, IPO is concerned that any possible increase in registration fees could be diverted, sequestered, or used for an externally imposed shared services initiative with other agencies or departments (including other departments of the Library of Congress). Some legislative guarantee that user fees sent to the Copyright Office could not be used for non-Copyright Office purposes would be helpful to address our concerns.

Sec. 19. Copyright Office Public Advisory Board

IPO supports legislation that would establish an advisory board for the Copyright Office, akin to the boards that advise the USPTO. Such a board could provide the Copyright Office with expert support to assist its management and operations, including regarding budget and information technology issues. We, however, question giving the Librarian of Congress the authority to appoint members of the advisory board, as doing so would further erode, rather than promote, the Copyright Office's much needed independence, particularly as libraries likely will be among the stakeholders seeking representation on such a board. This concern is particularly significant if the Copyright Office is no longer to be a part of the Library of Congress.

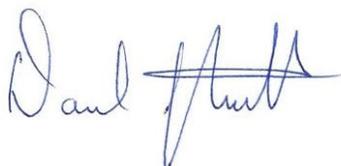
Copyright Office Studies

Although IPO does not have a position on the specific studies called for by the DCA draft, it supports legislation directing the Copyright Office to conduct studies on emerging issues, including adding ancillary copyright for press publishers to U.S. law, acceptance of deposit by means of electronic transmission, the definition of "best edition" as it relates to deposit copies, the definition of the term "publication" for registration, and creating a deferred examination option for the registration of a work. As you know, the Copyright Office's studies are well known for their even-handedness and forward-thinking, and we would look forward to participating in such studies in the future.

In particular, the definition of "publication" under the Copyright Act has proved to be a troublesome concept, as the line between distribution, on the one hand, and display and performance (which the term "publication" is defined not to include), on the other hand, is increasingly thin in the modern, Internet economy. A study of what constitutes publication, whether it continues to serve a helpful purpose in copyright law, and how it should affect registration would be helpful to copyright owners and users alike.

Thank you for permitting IPO to provide comments on your draft. We would welcome any further dialogue or opportunity to provide additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Daniel J. Staudt". The signature is fluid and cursive, with a prominent horizontal stroke across the middle.

Daniel J. Staudt
President