

# Tip-toeing Towards Greatness

How the U.S. Approach to the  
Structure & Function of the  
Copyright Office Compares  
internationally

# A Bold Proposal

- Create a new cabinet level position responsible for Culture
- Combine all Federal Arts Programs, USCO in this new agency – transfer registration & recordation function to USPTO
- Remove USPTO from Commerce & elevate to cabinet level agency for Innovation; appoint a Commissioner of Copyrights to oversee copyright registration
- Benefits:
  - Cabinet level access & accountability
  - Combines numerous small arts agencies often under threat of elimination, thus may be politically palatable to both R's & D's
  - R's have already proposed removing USPTO from Commerce
  - By unifying culture funding & regulatory responsibility ensure expertise & sensitivity to the arts in the cabinet official selected
  - Reflects importance of © and innovation industries to the economy
  - Transferring recordation & registration to USPTO allows reduction in staff & systems
  - Combines all commercial IP functions in one agency

# Current Status

- HR 1695 *The Register of Copyrights Selection & Accountability Act* passed House 4/26
- S 1010 pending in Senate
- Bills would only make the Register a Presidential Appointee subject to Senate Confirmation
- No change to structure or function of USCO
- HR 3945 *Copyright Alternative in Small Claims Enforcement Act* introduced 10/4

# U.S.

- Attracts more registrations than any other country in the world
- In 2016 the USCO processed over 468,000 claims for registration
- It received and forwarded more than 636,000 works with a net value of \$35.6 million to the Library
- It collected and distributed over \$244 million in royalty payments from compulsory licenses under sections 11, 119 and 1003

Source: [copyright.gov/overview](http://copyright.gov/overview) of the copyright office

# Role & Functions of USCO & Register

- Section 701 (a) – Register conducts all administrative functions and duties under Title 17 but is *appointed and acts under the Librarian's general supervision*
- 701(b) – additional functions of Register:
  - Advise Congress on national & international ©
  - Provide info & assistance to Federal departments & the Judiciary on ©
  - Participate in international intergovernmental meetings & organizations
  - Conduct studies & programs
  - Perform other duties as *Congress shall direct*
- Section 702 - establish regulations subject to approval of Librarian

# How Do We Compare Internationally?

- Surveyed copyright laws and regulations of 208 countries in 9 regions worldwide
- Determined
  - Name/oversight of office
  - Registration/recordation
  - Mandatory/voluntary
  - Benefits of registering/recording works
  - Fees
  - Statistics on registration/recordation
  - Deposit functions/how managed
  - Other powers of office  
(rulemaking/adjudicatory/enforcement)

# Worldwide trends

- Of 208 countries surveyed, more than  $\frac{1}{2}$  - 142 are authorized to oversee deposits to their national library or archive
- Close to  $\frac{1}{2}$  - 94 are empowered to conduct rulemaking, conflict resolution or can carry out administrative enforcement activities
- Trend worldwide is to locate the © function in a cultural or IP focused ministry
- At least a handful of countries maintain self standing independent © offices

# All EU Member States have some office which deals with Copyright

- 12 Countries have a ©office in their Ministry of Culture
- 6 Have one in their Ministry of Justice
- 5 Countries have Unified IP Offices
- 2 In Ministry of Commerce
- Romania is the only country with an Independent © office, but is funded through the Ministry of Culture.





# Registration

## & Recordation

- 13 Countries have Copyright Registration Regimes
- 3 are **Privately** run
- 10 are **Government** run
- Of the 10 Government Run, 3 are part of a regional organization (**Benelux**)
- Recordation is uncommon – Identified in Italy, Slovenia & Portugal



# Deposit

- Extremely Common
- Legal Deposit: Requirement that a publisher furnish copies to receiving organizations or pay a fine. (Consequently mandatory)
- Overwhelmingly for cultural preservation purposes.
- Support National Libraries



# History of U.S.C.O

- © registration originally decentralized and handled by the Federal District Courts
- 1870, Librarian Ainsworth Spofford convinces Congress to centralize the registration and deposit functions in the Library of Congress
- Copyright Office created in 1897
- Expertise and scope of copyright office grows with every Register

# Recent Attempts to Restructure

- *1986 Intellectual Property in an Age of Electronics and Information* – New IP Agency proposed by Office of Technical Assessment
- *Copyright Reform Act of 1993*- Rep. William Hughes included provision making Register a Presidential Appointee – opposed by Billington
- *1996 Omnibus Patent Act*- Sen. Orrin Hatch proposed creating a single government corp. to formulate policy and oversee all forms of IP – opposed by USCO and stakeholders

# How Small Claims Fit

- USCO structure is anomalous both domestically & internationally
- Modernized © office as part of larger cultural agency within Executive would insulate against constitutional challenges
- Harmonize with dominant trends internationally

# Internet Courts

- China's Hangzhou Court of the Internet
- U.K online court pilot program
- Canada's Civil Resolution Tribunal

# Thank You!

To share further thoughts after the event

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