



Why Copyright Office Needs A Makeover

Interview with Keith Kupferschmid, Copyright Alliance

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KENNEALLY: HR 1695 enjoys bipartisan support on Capitol Hill. Introduced in the US House of Representatives one week in March, the bill was approved by the Judiciary Committee the next week. So what is going on?

Welcome to Copyright Clearance Center's podcast series. I'm Christopher Kenneally for Beyond the Book. In 2017, nothing about Washington, DC, ever seems to enjoy bipartisan support, and almost no legislation ever moves faster than molasses running uphill – except for HR 1695, that is, otherwise known as the Register of Copyrights Selection and Accountability Act of 2017. Keith Kupferschmid, CEO at the Copyright Alliance, represents individual artists and creators from more than 40 trade associations, companies, and guilds across the spectrum of copyright disciplines. He joins me now from Washington to explain why HR 1695 is such a singular sensation piece of legislation. Keith Kupferschmid, welcome to Beyond the Book.

KUPFERSCHMID: Thank you, Chris. I'm happy to be here. Thank you for inviting me.

KENNEALLY: We're looking forward to learning more about HR 1695 and what is making it so special in this session of Congress. Let's tell people about your background. Before joining the Copyright Alliance in 2015, Keith Kupferschmid served as the general counsel and senior vice president for intellectual property for the Software and Information Industry Association. He has testified before Congress and various federal and state government agencies on IP issues. Keith is



trained as an IP attorney and has worked in private practice as well as the US Patent and Trademark Office and at the Copyright Office.

I guess, Keith, the place to start is with HR 1695, although there's a lot more about copyright reform going on on Capitol Hill. In a single sentence, the Register of Copyrights Selection and Accountability Act of 2017 would change how the US register of copyrights is appointed from a designee of the librarian of Congress to an appointee of the president. So why change the long-standing practice, and why change it now?

KUPFERSCHMID: Thank you, Chris. There's many different reasons to change it and to change it now. A few of those reasons include, for one, what this would do is restore the direct line of communication that Congress has historically had with the register of copyrights and the Copyright Office. For the first time ever, back in October, the librarian of Congress actually removed the register of copyrights, Maria Pallante, but also changed the organizational structure of the office and disrupted that direct line of communication that Congress historically has had with the Copyright Office. The Copyright Office and the register of copyrights can no longer go and talk directly to Congress and give Congress impartial advice on copyright policy. By making the register a presidential appointee, confirmed by the Senate, you then restore that direct line of communication.

Now, it also creates a more balanced, a more neutral, a more transparent selection process compared to the existing process, which is under the exclusive discretion of the librarian. The librarian has sole control, sole decision-making power over who the next register of copyrights should be. This bill would give that power to Congress to have some input, and more importantly, to the American public to have some say in who the next register of copyrights should be. We think that's extremely important.

KENNEALLY: What would that process be? I understand it would amount to creating a shortlist of qualified potential nominees.



KUPFERSCHMID: Yeah, so what would happen is the House and Senate leadership, along with the librarian, would develop a list of at least three nominees or candidates, and they would give that list to the President of the United States, whoever that president is. Here today, of course, it's President Trump. The president would either choose from that list or go back to them and say, no, I prefer another list, please, and they would select a candidate to nominate from that list of potential registers. Then that candidate would go through the confirmation process, very much like you see with judges and other political or presidential appointees. The Senate would have to confirm that individual before they could take on the position of register.

KENNEALLY: This line, this process, as you're describing, as you say, would reconnect the position to Congress itself. Congress makes copyright law, so there's a good deal of sense in that. Tell us more about why that's important – why it's important to have a register of copyrights who reports to Congress on issues regarding copyright.

KUPFERSCHMID: Chris, as you point out, Congress makes the copyright law and revises the copyright law. Copyright laws are very, very important to the economy, to culture, to job creation. For instance, the core copyright industries have contributed over \$1.2 trillion to the US GDP. Yet we don't have a register of copyrights who is a presidential appointee, unlike, for instance, the Patent and Trademark Office, where that is the case.

So the Copyright Office historically has had this direct line of communication where they can give impartial advice on what those laws should be – what the copyright laws should look like so our economy can blossom and we can create new jobs, etc. If the library is controlling that relationship, that presents a problem, right? Because the missions of the library and the Copyright Office are very different. A library is obviously all about providing access to its collections, to its corpus of works. The Copyright Office is about registering works and granting rights and recording those



ownership interests, as well as providing policy advice to Congress. Those missions don't exactly align.

We are of the strong belief that no stakeholder, certainly not a library, should have more ability to influence what the copyright law is than any other stakeholder. So it's very, very important that the Copyright Office and the register of copyrights has the ability to provide that impartial, independent advice to Congress, and for Congress to know that they're getting impartial advice and it's not being changed, for instance, by whoever happens to be supervising the Copyright Office, like the library.

KENNEALLY: Right. So far, at least, judging by the progress of the bill, most people would agree with you. As I understand it, things happened very quickly on the Hill. Once it was introduced in the Judiciary Committee, it was approved and voted out of that committee in about a week's time on a vote of 27-1, if I remember correctly. So tell us, from the Copyright Alliance's perspective, just why we're getting such a really strong, united response at a time when, as I mentioned in my introduction, almost nothing seems unified or bipartisan that goes on on Capitol Hill.

KUPFERSCHMID: Chris, that's an excellent point. Aside from copyright, obviously these are interesting times we all live in. And to see such bipartisan, bicameral support for a bill, especially a copyright bill – in the recent past, it's been exceedingly difficult to find such widespread support for a copyright bill. But you see not only the – pretty much the entire copyright community supporting this bill, but also even those who aren't in the copyright community, because it makes good sense. It's a good policy. So you see tremendous widespread support, as evidenced by the markup, which as you mentioned, was by a 27-1 vote. And we anticipate getting a similarly strong support when the bill goes to the House floor.

In large part, if you look at the bill, it's very modest. It's a very narrow approach. It simply does one thing, and that is make the register of copyrights a presidential



appointee confirmed by the Senate. There's a lot of other things that need to be modernized with the Copyright Office, but most of those – or not most of them, all of them, really – would be pushed off until a second bill coming down the pike at some point later in the year perhaps.

KENNEALLY: Indeed, that's a good point – to distinguish 1695 and this very narrow scope of that bill with the much larger ambitions around copyright reform. There's been discussions about copyright reform going on for at least four years, since the chairman of the Judiciary Committee, Bob Goodlatte, began to talk about comprehensive review of copyright law back in April 2013 in a speech before the World Intellectual Property Day celebration at the Library of Congress. So there's been a four-year process which has sort of pushed forward those other agenda items, including modernization and digitization. And as I understand, there is a separate bill, perhaps the one you're referring to, HR890, the Copyright Office for the Digital Economy Act. Can you tell us a bit more about some of the things that that would tackle?

KUPFERSCHMID: Yeah, so the primary approach of that bill, the CODE Act for short, is to give the Copyright Office more autonomy over its infrastructure and its operations. It would in essence give more autonomy to the Copyright Office to decide how to use its budget and give it its own budget. It would give it more autonomy over staffing decisions. But most importantly, it would give it more autonomy over its IT.

I can give one example that I think really shows the need to improve the Copyright Office's IT systems. If you look at the Copyright Office's recordation system and the Patent and Trademark Office's recordation system, and both those offices – that's where you record transfers of ownership. If somebody's transferring a patent or a copyright from Party A to Party B, you would record that information with those individual offices. Both offices have roughly the same amount of staff, 10 or 12 people or so. But the Patent and Trademark Office is able to process about a half million transfer or recordation documents a year. On the other hand, the Copyright Office is only able to process about 11,000 per year.



You ask yourself, well, why is that? It comes down to IT. The Patent and Trademark Office has it, and the Copyright Office doesn't. The Copyright Office is actually doing this by hand. By giving the Copyright Office a new and improved and its own IT system, as opposed to sharing the IT system with the library, you would be able to speed up that process, make it more efficient, make it more effective. I might add that the Patent and Trademark Office, using their IT, they were able to make this system so efficient, so effective, that they actually reduced the fee to zero. It no longer costs anything to file a recordation document at the Patent and Trademark Office. Hopefully we can get to a place where the Copyright Office is in the same position. But that's going to take some time, and really the first step in that process is making the register of copyrights a presidential appointee.

KENNEALLY: OK. That's the first step, as you say. I just am curious with regards to the CODE Act, as you referred to it there, which would create this separate, independent agency. While there may be some bipartisan support around the register of copyrights, creating new agencies, particularly in a Republican-dominated Congress, wouldn't sound like a no-brainer. But you mentioned that there would be cost benefits. Is that how people see it, that this new creation would really end up not costing money, but saving money?

KUPFERSCHMID: Yeah, from our perspective at the Copyright Alliance, we're not as concerned about where the office is as opposed to what it looks like at the end of the day. In other words, we are more concerned with the goal of modernizing the office. That could be within the library, it could be as an independent agency, or perhaps some other idea that somebody might have down the road. We want to see a modern, efficient, effective Copyright Office, and we don't want to get as hung up on whether this is an independent agency, because as you point out, that might get some Republican pushback on that, or whether it remains in the library or something of that nature. Rather, we are looking at what's best for copyright, what's best for copyright owners, what's best for copyright users, and what's best for the American public in terms of the efficiency, effectiveness, and modernization of the US Copyright Office.



KENNEALLY: All right. Keith Kupferschmid, CEO at the Copyright Alliance, thanks so much for joining us on Beyond the Book.

KUPFERSCHMID: Oh, thank you, Chris. I appreciate you inviting me.

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