

May 24, 2021

VIA ELECTRONIC MAIL

Ms. Shira Perlmutter
Register of Copyrights
United States Copyright Office
Washington, D.C. 20559-6000

Dear Register Perlmutter:

I write you today in my capacity as Ranking Member of the Senate Judiciary Committee Subcommittee on Intellectual Property. As you know, last year the Subcommittee conducted a yearlong series of hearings on reforms to digital copyright law. As part of these hearings, we heard from witnesses and interested stakeholders about ongoing issues with modernizing the copyright office registration system and general operations.

As my office considers changes to digital copyright law, I would benefit from the Copyright Office's expertise and guidance regarding adjusted copyright examination and registration requirements. Accordingly, I ask that your office provide assistance with the following issues.

1. *Study on Digital Deposits and Best Edition*

First, I ask that you conduct a study regarding the feasibility of decoupling the deposit requirements of Section 407 of Title 17 from Section 408. Section 407 addresses the requirement to submit two complete copies or phonorecords of the "best edition" for the Library of Congress, whereas Section 408 addresses the deposit requirements for Copyright Office registration purposes. Some have asserted that removing the "best edition" requirement from the registration deposit process in Section 408 could help improve the registration process by permitting low resolution digital deposits, for example.

This study should be conducted in consultation with the Library of Congress. Furthermore, the study should both assess the Office's legal review needs while also addressing the Library's separate needs to grow its collection. Finally, the study should also consider whether any statutory amendments, such as to the definition of "best edition," are needed. This study should be completed by no later than August 1, 2022.

2. *Study of Deferred Examination*

Second, I also request a study regarding the feasibility, benefits, and costs of creating an option for deferring examination of an application. The study should focus on adding an option for registering a work in which the registrant can obtain an effective date of registration upon submission of an application and deposit, while choosing to defer the examination of the submitted work until the registrant subsequently requests such an examination.

It should also consider and address what, if any, statutory changes would be necessary to enable applicants who are given such an effective date of registration to be able to commence a civil lawsuit in light of *Fourth Estate Pub. Ben. Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881 (2019). Like the study on digital deposits and best edition, this study must also take particular account of the needs of the Library to maintain and grow its collection. This study should also be completed by no later than August 1, 2022.

3. Report on Ongoing Study on Publications

Third, and finally, my understanding is that The Copyright Office has published a notice of inquiry and received comments in June 2020 regarding the statutory definition of publication to assist it in providing additional guidance regarding what the definition of publication should be in the modern context.¹ In order to assist in my ongoing efforts to reform digital copyright law, I request this study be completed by no later than December 1, 2021.

Thank you in advance for your attention to these matters. If you have any questions or would like to discuss these requests, please do not hesitate to contact either Susan Allen (Susan_Allen@judiciary-rep.senate.gov) or Shelby Devine (Shelby_Devine@judiciary-rep.senate.gov) in my office. I look forward to your reply and to our continued work together to modernize copyright law.

Sincerely,

A handwritten signature in blue ink that reads "Thom Tillis". The signature is written in a cursive style with a horizontal line underneath the name.

Thom Tillis
United States Senator

¹ Online Publication, U.S. Copyright Office, (last visited May 21, 2021), <https://www.copyright.gov/rulemaking/online-publication/>.