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United States Senate

WASHINGTON, DC 20510
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VIA ELECTRONIC TRANSMISSION

Ms. Shira Perlmutter
Register of Copyrights and Director
U.S. Copyright Office
101 Independence Ave, S.E.
Washington, D.C. 20559

Dear Register Perlmutter,

I write you today in my capacity as Ranking Member of the Senate Judiciary Committee Subcommittee on Intellectual Property. Our nation's copyright system supports creators and industries that collectively add over \$1.5 trillion dollars to the American economy, employ 5.7 million hard-working Americans, and contribute more than \$200 billion in exports.¹ A key reason for the success of these incredible industries is our federal copyright system. Indeed, copyright law is one of Congress's enumerated powers in the U.S. Constitution, and my understanding is that current copyright law expressly preempts state laws in this area.²

However, I am concerned that despite this clear and longstanding framework, some states are encroaching upon the exclusive domain of federal copyright law. My understanding is that recently one state passed legislation that would require "a publisher who offers to license an electronic literary product to the public to also offer to license the electronic literary product to public libraries in the state on reasonable terms that enable public libraries to provide library users with access to the electronic literary product."³ Similar bills have been introduced this year and in previous years.⁴

Among the most concerning issues these bills raise is that they require copyright owners to license their works to specific parties by government mandate. This compulsory license removes from the copyright owner the decision as to whether, in what format, and on what terms works will be made available. The decision to mandate licensing terms also appears to be an unprecedented government intrusion into the copyright marketplace for creative literary works, outside the province of a state's authority. Although Congress authorizes statutory and compulsory copyright licenses administered by the Copyright Office, such licenses arise only in select carefully considered circumstances.⁵

These state legislative efforts would appear to directly conflict with the Copyright Act's clear language preempting "all legal or equitable rights that are equivalent to any of the exclusive

¹ International Intellectual Property Alliance, Copyright Industries in the U.S. Economy, the 2020 Report (2020).

² H.R. 94-1476, at 129 (1976); 17 U.S.C. § 301(a).

³ H.B. 518, 442nd Sess. (Md. 2021); S.B. 432, 442nd Sess. (Md. 2021).

⁴ S.2890, 204th Leg. (NY 2021); A.5837, 204th Leg. (NY 2021); S.2773, 148th Sess. (RI 2020).

⁵ See Circular 75, The Licensing Division of the Copyright Office, <https://www.copyright.gov/circs/circ75.pdf>.

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rights within the general scope of copyright . . .”⁶ The proposed licensing requirement appears to encroach upon the Copyright Act’s exclusive rights of reproduction and distribution.⁷

Accordingly, I ask that your office examine these bills in light of what appear to be clear preemption rules that situate copyright law exclusively at the federal level. As the expert adviser to Congress on copyright matters, I ask that you use your valuable expertise to clarify if federal preemption applies to these legislative efforts. This in turn will provide helpful direction to states so they may avoid proposing or enacting legislation that is preempted by the Copyright Act. I appreciate your immediate attention to this matter.

Sincerely,



Thom Tillis

Ranking Member

Subcommittee on Intellectual Property

⁶ 17 U.S.C. § 301(a).

⁷ 17 U.S.C. § 106(1) and (3).