

How the Copyright Office Tackles Digital Rights Issues

Under the Direction of Karyn Temple

Berklee Online

Holly C Winn

### **Abstract**

In this paper, the author will review the role of the Register of Copyrights / Director of the U.S. Copyright Office in the devising and promulgating policy around music issues, specifically his or her role in addressing needs that have arisen in the shifting digital landscape as it pertains to music rights management and legal protection.

The author will determine what concerns have needed to be weighed and addressed by various parties so that the Office could come to an educated decision on how to approach the somewhat-newly signed Music Modernization Act (MMA), updates to their copyright system, and the continuous fight against piracy and stealing. The author will describe the implementation or regulatory oversight suggested, how the interests of stakeholders and/or constituents might be balanced, and how success could be measured from these efforts.

### **Background**

Karyn A. Temple serves as the 13th Register of Copyrights and the Director of the U.S. Copyright Office. Appointed by the Librarian of Congress Carla Hayden on March 27, 2019, Temple leads a 400-person workforce and directs the administration of important provisions of the United States Copyright Act, Title 17 (U.S. Copyright Office - 2, n.d.).

In her role, she helps determine priorities and special projects for the office. But policy enactment and implementation doesn't solely rest on her shoulders. It takes a team to work together and engage various parties in movement toward a common goal. Still, she has served as a key player in testimonies and research to help progress the Office's goals since appointed.

The Office as a whole, in more recent years, has been focused on the following issues (Cannady and Reed, 2011):

- Rogue websites
- Illegal streaming
- Small claims
- Orphan works
- Library preservation
- Global policy development revisions such as U.S. trade negotiations, anti-piracy efforts, and international exceptions and/or limitations
- Provisions to the Digital Millennium Copyright Act
- Studying of costs and fees for public services
- Major revisions of the “Compendium of Copyright Office Practices”
- Finding innovative ways to address the educational needs of the public

In the next section, the author will look at four of the more recent, bigger issues that the agency has tried to tackle that may also overlap with some of the aforementioned.

### **A Review of the Director’s Involvement in Music Policy**

#### **Music Modernization Act and the Mechanical Licensing Collective.**

The U.S. Copyright Office Register is to designate entities to serve as the nonprofit Mechanical Licensing Collective (MLC), which will administer the statute’s blanket compulsory licensing system for digital music providers beginning on January 1, 2021. The MLC will also be

responsible for receiving usage reports from digital music providers, collecting and distributing royalties, and administering a process by which copyright owners can claim ownership of musical works. The Register is also in charge of choosing the Digital Licensee Coordinator (DLC), which will represent digital music services in the administration of the license (U.S. Copyright Office, n.d.).

As the Register, I would imagine Temple would have a hard time choosing those for which have enough knowledge and involvement to understand the depth and impact of decisions, but who also could serve the general public with the least amount of bias. Because conflicts of interest may not be as transparent, the balancing of the entities in the collective becomes of great importance. She most likely realizes that one of the key stakeholders is the general public.

For instance, the Office opened doors to receive more than 600 comments from members of the public regarding submissions for those seeking to be designated as MLC or DLC (U.S. Copyright Office, n.d.). Luckily, the Office also has a newly formed Copyright Modernization Office in 2018 and its director, Ricardo Farraj-Fijoo would more than likely be involved in reviewing resources, communications, stakeholder engagement and business project management as it pertains to MMA along with 25 employees -- taking some work off of Temple's and other Office employees' plates (U.S. Copyright Office - 2, n.d.).

Stakeholders include many streaming services and DSPs who will be impacted by the new statutory rate as it shifts the burden of having to get licensing permissions and pay artists directly. For many artists, the measurement of success comes in if they're earning more from their digital distribution and publishing efforts as well as seeing what they have earned more

accurately and speedily paid out. Perhaps, the balancing is the trade-off when artists take on more of the burden to get paid more.

### **Updates to Copyright Registration Process and Filing System.**

Temple stated that the average processing time for claims in correspondence was five months and online claims not involving written correspondence were being processed in an average of four months (Brachmann, 2019). The author can attest that the process is slow, being three months after filing and not seeing any progress.

One way to measure success as defined by efficiency in this area is to look at average pendency times. The Copyright Office reduced registration average pendency times by 40% within the last two years (Brachmann, 2019).

However, there are milestones that can be defined as success measures, such as whether the office receives increased funding requests showing an interest from parties in the investment. The Copyright Office's funding requests for modernization would total nearly \$100 million, including \$12.1 million per year over five years for IT development and \$5 million per year over seven years to digitize historic public records and make them searchable (Brachmann, 2019).

A major stakeholder in not only whether these initiatives are successful but even happen at all is Congress, who the Copyright Office requested give authority to use unobligated fee balances from previous budget cycles that would enable better flexibility and continuous work in the event of a government shutdown. This would require statutory language, which goes beyond a committee approval (Brachmann, 2019).

In Spring 2020, the agency hopes to launch a pilot program for a digital recordation system that would eventually replace their paper-based system and scale up to a full program at some point in 2024 (Brachmann, 2019). The stakeholders are employees who are managing and reviewing utilizing the current paper-based system who could potentially experience job displacement. Thus, even within the Copyright Office, there may be push back, and a united front is important to push the effort forward. Perhaps, with investment in digital education and other facets of the business for current employees, the support can be more aligned.

### **More Effective Tools to Combat Digital Piracy.**

Temple also has expressed the need for more effective law enforcement tools to combat digital piracy as well as the Copyright Office's recommendation to let Section 119 compulsory broadcast licenses under the STELAR sunset as planned at the end of this year (Brachmann, 2019). This would involve stakeholders from the Communications and Technology Subcommittee of the Committee on Energy and Commerce. The author could also see the Federal Communications Commission, Federal Radio Commission, and the International Broadcasting Bureau being stakeholders in the matter as it involves a broadcast license.

U.S. Chamber of Commerce's Global Innovation Policy Center found that digital video piracy costs the U.S. content production sector anywhere from \$29.2 billion to \$71 billion per year in lost revenues. Unlike illegal downloads, which infringes reproduction rights and can be prosecuted as a felony under federal law, illegal streaming is an infringement against public performance rights and is only charged as a misdemeanor -- so it still has been an industry issue (Brachmann, 2019).

It can be hard to measure true piracy numbers, but if those costs went down, that could be one measure of success in this effort. One could run an A/B test of numbers before implementation of new tools versus after, still there are so many factors to consider that one has to be careful it's not circumstantial.

### **Preventing Copyright Trolls from CASE Act.**

Copyright claims could get very expensive, especially when one has to work its way up to the top of the ladder to be heard. But an unappealable court per the CASE Act would be staffed by three full-time "Copyright Claims Officers" appointed by the Librarian of Congress, who would be allowed to assign damages of up to \$15,000 per infringed work, and up to \$30,000 total. This was meant to make filing a copyright claim easier and cheaper (Cade, 2019).

The CASE Act expands beyond just impacting the music industry. Stakeholders like the National Press Photographers Association have weighed in positively (Cade, 2019).

Some worry that a small-claims copyright system would invite litigants to be trolls. Temple believes the balance is sought in creating the Copyright Claims Board, in which the law would require two of the three claims officers to have extensive experience representing both copyright owners and users of copyrighted works in legal matters. The Board could also bar a party found engaging in harassment claim or counterclaim activity for more than once in a 12-month period (Brachmann, 2019).

The success of Act might be measured in whether more claims are filed, but then they would have to be weighed on some standard of frivolousness verses legitimate claims. Because

the Act is meant to get more claims from those who felt hindered in filing, but then the quality of the claims (i.e. no trolls) would have to be considered as well.

### **Conclusion**

Core copyright industries add more than \$1 trillion dollars to America's gross domestic product each year (Brachmann, 2019) -- so these efforts could have a tremendous impact not only for the music industry, but for the American economy.

Senator Thom Tillis, Chairman of the Senate IP Subcommittee, noted that it had been 10 years since the Director of the Copyright Office last appeared before the Senate Judiciary Committee (Brachmann, 2019) -- but it seems that Temple knew the importance of multiple parties seeing eye to eye. It shows her commitment to the role, the Office and finding creative ways to meet the needs of artists in the digital age.



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