

March 9, 2015

## **Supporting a Pro-Innovation, Pro-Creator, Pro-Consumer Copyright Agenda**

Dear Members of Congress,

Congratulations on your election to the 114th Congress. We look forward to working with you in the upcoming months as you tackle many of the issues we face as a nation. We represent a cross-section of creators, advocates, thinkers and consumers. There has been no better time for creativity in history. Thanks to technological innovation, today there are more artists, publishers and authors creating more works on more platforms than ever before.

The Internet is the largest of these platforms, enabling more than *\$8 trillion* in e-commerce every year. Online platforms rely partly on the exclusive rights granted by the Copyright Act, but also on the Act's flexible limitations and exceptions to copyright, such as fair use and the Digital Millennium Copyright Act's (DMCA) safe harbors. It is this balanced approach that makes possible the online platforms that generate revenue streams for creators, small businesses, entrepreneurs, application developers, startups and large content producers. Consumers have more choice and the public has greater access to information. Free speech is flourishing and new and wonderful things are being seen globally every second. The Internet has lowered barriers for everyone. It is important to note that technological advancement bridges the gap between traditional media and online platforms. In today's changing marketplace, online services and traditional media are forming a positive symbiotic relationship that highlights the notion that creators build on pre-existing works. Copyright limitations and exceptions such as fair use benefit *all* content creators regardless of the platform.

Copyright law and its regulation of content creation and dissemination have a large impact on all of us. Attempts to improve the effective uses of U.S. copyright law serve an important purpose, but in doing so we must remain mindful that a heavy-handed regulatory approach will only stifle this new creative revolution. Rather, innovation, technology and free markets have shown themselves very capable of finding ways to

reward creators and enrich consumers alike. The U.S. government should seek the appropriate balance in copyright law to unlock the innovative and creative spirit of all people to their fullest potential. We would like to share with you some of the values we feel best embody a wise approach to copyright policy and law in the U.S., values that must be reflected in that balance:

**The U.S. Constitution grants Congress the right to create copyright laws “to promote the Progress of Science and useful Arts.”** Congress’ power to enact copyright regulation is a limited power under the U.S. Constitution. In the words of the Supreme Court, “The primary objective of copyright is not to reward the labor of authors, but to promote the Progress of Science and useful Arts.” We strive to uphold the honored, privileged legal place granted to those who discover and create.

**A vibrant public domain is a core component of creativity and knowledge.** The public domain is the reservoir that nourishes creativity. It is thanks to the public domain that the works of Mozart are free to play, *Alice in Wonderland* can be adapted into a movie and today’s libraries can digitize and preserve their rare books collections. Understanding that a cultural commons is vital to future creativity, we support a vibrant public domain.

**A balanced copyright system benefits creators, users and innovators.** We believe society must support both those who originate works and the rights of those who legally access and acquire them. A copyright system must acknowledge the vital roles of those who own, experience, learn from, consume and transform the creations of others. Indeed, 81% of investors surveyed said increasing regulations to weaken copyright safe harbors would slow investment in new platforms more than would an actual recession. And even a momentary glance at online video platforms demonstrates how fundamental “remix culture” has become for young digital citizens.

**Free expression is a core American value.** We support the Constitutional promise that all people should be able to express themselves freely and believe that such expression includes fair use of works created by others, as protected by the Copyright Act and the courts. Overly-burdensome copyright laws stifle free speech, expression and the diffusion of knowledge in society. It is essential that copyright law find the appropriate balance between promoting creation, protecting innovators and creators and respecting the right to free expression.

**Simpler is better.** We stand for a copyright system that is clear, simple, transparent and appropriately limited. Complex bureaucratic regulatory schemes and government-granted monopolies, we believe, do not always serve to advance human creativity.

**Technology is good for creators.** Attempts to expand copyright law and increase regulatory control stifle the new creative revolution fueled by the Internet and constant advances in consumer electronics. The free market will find a way to integrate technological innovation in order to compensate creators over time. This has been true for over a century, as the new technologies that initially upset incumbent copyright industries create new profitable opportunities for those same industries. Recall, for example, the VCR—at first feared by movie studios, but later embraced as the genesis of the multi-billion dollar home video market. In contrast, copyright overregulation merely enriches some at the expense of the very creators it claims to help.

**Efforts to curb copyright infringement should be encouraged, but not at the expense of legitimate uses.** Supporting balanced copyright does not mean we support the improper use of copyrighted works. Rather, we want to make sure that efforts to reduce infringement do not prevent legitimate uses, stifle new innovations nor bring unnecessary harm to consumers.

**Fair use is a cornerstone of free speech, creativity and our economy.** Fair use is one of the most important free speech protections. As such, it has enabled important political, educational and cultural discourse to occur. It has also allowed many industries, including motion pictures, music and the Internet, to flourish. Without fair use, for example, search engines wouldn't exist. Fair use is an indispensable part of America's economic and cultural success story and must be protected.

**Legal safe harbors that ensure protections for the basic functionality of the Internet are essential.** As previously mentioned, the Internet is a key driver of the economy. Within its first four years of existence, the Internet attracted 50 million users. Now, about 3 billion users access online services. This rapid development of the

commercial Internet is partially attributable to the legal safe harbors which provide online platforms with protection from liability on core Internet functionality if they meet certain requirements. This provides the legal certainty needed to allow creators to invest time, money and talent to develop new services and innovate.

**Copyright litigation should not be used as a weapon.** Too often, the threat of excessive statutory damages and litigation is used as a cudgel to threaten legitimate uses of a work. This has a profound chilling effect as, for many, self-expression or technological innovation is just not worth the risk of millions or billions of dollars in damages. In addition, in most cases the recipient of an infringement threat does not have the substantive copyright knowledge to know how to respond. Worst of all, we have seen the rise of a new industry of “copyright trolls” who are clogging federal courts with copyright claims aimed at extorting large numbers of settlements from individuals, rather than at serving the purposes of the Copyright Act. It is important that Congress work to curb abusive behavior, prevent frivolous copyright litigation and discourage unjustified notices of violation.

We thank you for your time and attention to all of these matters and look forward to working with you over the next two years to promote equitable copyright policy for every sector of society. We encourage you to take due care as you approach that work to ensure that the current explosion of creative and innovative energy unleashed by technology continues to drive every aspect of American society and industry forward.

Groups:

Allied Media Projects

American Library Association

Appalshop

Association of College and Research Libraries

Association of Research Libraries

Association of Service and Computer Dealers, International

Center for Democracy and Technology

Center for Media Justice

ColorOfChange.Org

Computer & Communications Industry Association (CCIA)

Consumer Electronics Association

Copia

Digital Right to Repair Coalition

Electronic Frontier Foundation

FreedomWorks

iFixit

Institute for Intellectual Property and Social Justice

Internet Association

Internet Infrastructure Coalition

Media Action Grassroots Network

Media Mobilizing Project

Native Public Media

New America's Open Technology Institute

North American Association of Telecom Dealers

Openmedia.org

Organization for Transformative Works

Presente.Org

Prometheus Radio Project

Public Knowledge

R Street Institute

Reuse Alliance

Individuals:

Marvin Ammori

Future Tense Fellow, New America Foundation

Jonathan Askin

Brooklyn Law School, Founder/Director Brooklyn Law Incubator & Policy Clinic

Brandon Butler

American University Washington College of Law

Michael A. Carrier

Rutgers School of Law, Camden

Eric Goldman

Santa Clara Law School, Co-Director High Tech Law Institute

Debora J. Halbert

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Tom W. Bell

Chapman University - Fowler School of Law

Mark Lemley

William H. Neukom Professor of Law, Stanford Law School

Lateef Mtimba

Howard University School of Law

Glenn Reynolds

Beauchamp Brogan Distinguished Professor of Law, University of Tennessee College of Law

Jorge R. Roig

Charleston School of Law

Christopher Sprigman

Professor of Law, NYU School of Law

John Tehranian

Irwin R. Buchalter Professor of Law, Southwestern Law School