



Testimony of Sandra Aistars, Executive Director, Copyright Alliance

Committee on the Judiciary

Subcommittee on Courts, Intellectual Property and the Internet

U.S. House of Representatives

“Innovation in America: The Role of Copyrights”

July 25, 2013

**Testimony by Sandra Aistars, Executive Director, Copyright Alliance
Innovation in America: The Role of Copyrights
Before the Judiciary Committee's Subcommittee on Courts, Intellectual
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The Copyright Alliance is a non-profit, public interest and educational organization made up of artists, creators, and innovators of all types. Our members include artist membership organizations and associations, unions, companies and guilds, representing millions of creative individuals. We also collaborate with and speak for thousands of independent artists and creators and small businesses who are part of our one voice activists network. On core issues of copyright policy there is more that unites creators and innovators than there is that divides us, which is why I can represent such a diverse cross section of creative people and businesses in one organization.

I am grateful for the Subcommittee's invitation to testify, and our members commend the Committee for undertaking this review. It is fitting that in an age of rapid technological advances we review our laws to make sure they are up to the task of encouraging creativity and dissemination of works, for the benefit not only of the creators, but also the general public. As the Committee approaches this challenge, however, we urge you to take a measured approach. The copyright laws, on the whole, are working and have helped to make this country the leading producer and exporter of creative and innovative goods in the world. Care must be taken to ensure the balanced intellectual property protections we currently enjoy not be sacrificed in the hope that weakening protections will spur technological innovation.

This hearing focuses on copyright and the creative community's contribution to innovation; next week's hearing will be on technology's contributions. And while it is important to hear separately from various stakeholders, I want to underscore that the creative community does not view copyright and technology as warring concepts, whose interests must be balanced to further the public good. Rather our members view

ourselves as partners and collaborators with the technology community. Indeed, in many instances individual creators and companies alike are playing dual roles both as authors of creative works and as technology innovators who themselves develop new technologies or who adopt and drive demand for technologies necessary to the creation and distribution of their works. Increasingly technology companies also play dual roles, often straddling both the creative and tech communities. Numerous members of the Copyright Alliance, such as the Business Software Alliance, the Entertainment Software Association and the Software and Information Industry Association are comprised of technology companies with significant copyright interests.

When people hear that Congress is reviewing the copyright laws, the tendency is to think that the focus will be on revising Title 17. But some of the most important work this Committee can do has nothing at all to do with rewriting law. Rather, the Committee can use its oversight role to encourage law enforcement to take seriously criminal violations of the copyright law, and it can encourage all stakeholders in the Internet ecosystem to proactively take commercially reasonable, technologically feasible measures to reduce the theft of intellectual property.¹

Principles For the Copyright Review Process

A robust, well-functioning and up-to-date Copyright Act is important to all stakeholders, especially the general public, which is the ultimate beneficiary of a well-functioning system. As a practicing copyright lawyer for close to twenty years, I share the Chairman's and the Register of Copyrights' interest in examining the system to ensure it meets today's

¹ Law enforcement has stepped up in recent years to address IP crime. The creation of the IPR Center, the success of Operation In Our Sites, and the Megaupload indictment are just three of the many law enforcement initiatives that have educated the public – and the criminals – that the US does not consider IP theft to be mere nuisance crimes. This Committee can play an important role as both authorizers and in its oversight of DOJ to ensure that these efforts continue in an appropriate fashion.

Likewise, private initiatives between rights holders and online intermediaries have started to have an impact in this arena, and this Committee should be actively encouraging such efforts. To cite but a few examples, there are the "UGC Principles" (covering video-sharing sites); agreements between rightsholders and payment processors, rightsholders and ISPs, and ad networks. Ideally future private efforts will involve the participation of all affected rights holders and address the needs of creators such as photographers, graphic artists, authors and songwriters, who thus far have not been participants in these privately led initiatives.

needs in specific areas of its application. If we proceed in a spirit of cooperation with addressing some clearly defined ways in which copyright law may be failing to live up to its goals, then the creators I represent, and the public at large will be well served. If, however, we proceed on the premise that copyright law is somehow obsolete simply because we now live in a different technological age, we risk a future that will no longer add to and build upon over two centuries of cultural works and the liberty and prosperity fostered by their diffusion.

Copyright law should remain rooted in technology-neutral principles. The fundamental premise of copyright law is that ensuring appropriate rights to authors will drive innovation and benefit the society as a whole. This should not change because of new technologies that come and go in the marketplace. No one knows for sure what innovation looks like in advance. To undermine copyright protections on the theory that this will spur additional innovation in certain subsectors of our economy is simply guessing and therefore gambling with this nation's overall economic health and cultural heritage.²

Copyright is a unique form of property grounded in an artist's own creativity, hard work, and talent. In many ways it epitomizes the American Dream. This is something I know first-hand. I am a first generation American. My parents were refugees to the United States. My father supported our family in a middle-class household through his work as a visual artist and author, and most copyright owners in the U.S. are individuals just like my father. They are neither famous nor wealthy. They are individual graphic artists, photographers, songwriters, filmmakers and authors who make or supplement a middle class living from their creative work. They are small businesses in nearly every community in the country.

Based on these demographics of rights holders and the nature of copyright, some Constitutional scholars have argued that creative works should be even more worthy of protection than physical property:

² Of course when considering copyright it is important to value the entire body of law, including, for instance exceptions and limitations such as fair use. Copyright owners are users of copyrighted works as well as authors, and thus rely on these provisions as much, if not more, than other users.

[T]he field of creative works is infinite, and one person’s expression of an idea does not meaningfully deplete the opportunities available to others; indeed it *expands* the size of the “pie” by providing inspiration to others. Moreover, while tangible property such as land and chattel is often pre-existing and acquired through mere happenstance of birth, intellectual property flows directly from its creator and is essentially the “propertization of talent” that is, “a reward, an empowering instrument, for the talented upstarts in society.”³

Creative upstarts are a source of innovative ideas, solutions and new economic potential, and they are also first-adopters of new technologies that transform the means of producing creative works.⁴ For instance, documentarian Trisha Ziff, uses social media tools to collaborate with and remotely direct three taxi drivers in Kerala who are filming parts of her current documentary project. Capturing footage in Ramallah, Morocco, Kerala and Mumbai, Ziff is documenting stories of how cinema is keeping small emigree communities connected to their home cultures. Creators like Ziff and many others drive innovation in technology by using tools in new ways, thus providing impetus to technology producers to create new products and services to meet their needs.

At the same time, creative upstarts are perhaps most harshly affected by gaps in the copyright law, and their experiences and challenges are often least heard by policymakers.⁵

³ PAUL CLEMENT, VIET DINH & JEFFREY HARRIS, CENTER FOR INDIVIDUAL FREEDOM, THE CONSTITUTIONAL AND HISTORICAL FOUNDATIONS OF COPYRIGHT PROTECTION, 2 (2012) (emphasis and quotations in original) (citing Justin Hughes, *The Philosophy of Intellectual Property*, 77 Geo. L.J. 287, 291 (1988)).

⁴ See, Johannes Trüby, Christian Rammer, & Kathrin Müller, *The Role of Creative Industries in Industrial Innovation*, at Non Technical Executive Summary (Econstor Working Paper, ZEW Discussion Papers 08-109) available at <http://hdl.handle.net/10419/27592> (last accessed July 19, 2013).

⁵ For instance, authors of all types require a well-funded Copyright Office that is up to the tasks required of it in the 21st century. We appreciate and support the efforts of the Office to discover current inefficiencies, and to outline modernization needs. These sorts of modernization efforts must also take place with the full participation of a variety of authors in order to ensure a workable system emerges. As an example, photographers have long complained that the current registration system does not adequately take into account their work flows and requirements as potential registrants of large volumes of works, each of which individually may have a limited (or unknown) value.

Eric Hart, a maker of theatrical props and author from Burlington, North Carolina, recently shared his challenges with us. Earlier this year, after several years of researching, writing and assembling all the necessary technical information, including setting up and shooting more than 500 illustrative photographs, Eric's first book *The Prop Building Guidebook: For Theatre, Film, and TV* was published by Focal Press. The book is a unique, comprehensive reference for prop makers that provides innovative approaches to solving problems. Special attention was paid to the details of its design and layout to ensure that it can easily be used in a workshop. Unfortunately, but not surprisingly, it was pirated almost immediately upon its release, and many of the sites on which it appears are supported by advertising by major brands. Eric wrote to us:

I wanted this information to spread regardless of whether people can afford it. I filmed a number of videos to complement the book, and those are available for free on the book's website. I also had a few chapters which couldn't fit in the book, so those can be downloaded for free from the book's website as well (in a DRM-free format). The book's website has a link where you can find the closest library to read my book, as well as a link for teachers to request a free copy to review for their classes. Finally, my blog continues to be a source of free information on a regular basis.

While it is not unexpected for me to find out the book is being pirated, it is odd. I've found a lot of the pirate sites with links to my book are really just auto-generated websites using the name of my book to draw traffic, but the actual link leads you to download some malware or adware. But then there are sites like Mobilism.org, where real people are requesting a pirated copy of my book. It's happening in full view of anyone surfing the web. It's like I'm standing right here, and someone is saying, "Yeah, you spent years creating something unique and valuable that will benefit the community. I appreciate that, and I'm going to take advantage of it, but I'm not going to pay like everyone else." ⁶

Encouraging the creation and broad dissemination of works like Eric's will

⁶ See Eric Hart's full statement at Appendix A.

require maintaining a framework of laws that makes it worthwhile for creative individuals to invest the labor and talent to share their skills with others. Copyright protection must not become illusory. And for creative businesses to survive and grow, the value to principals and investors in such works needs to be clear.

As you delve into this copyright review I would urge you to think about copyright and innovation from an author's perspective in the following way.

First, copyright is about empowerment. A copyright belongs to the author from the time a work is created and recorded in some tangible form, regardless of whether the author has registered it or taken any formal action. A copyright may be the only asset the author has in a negotiation with a distributor, label, or other corporation. It opens the door for an economic negotiation. If you weaken copyright or make it harder for the author to obtain or maintain its protections, you weaken the author's negotiating position, as well as the value proposition for the distributor.

Second, copyright is about choice. Because copyright exists in a work and belongs to the author from the time the work is recorded, it enables the author to choose what he or she wishes to do with it. She can use a work in multiple ways simultaneously. She can license the use of the work commercially to support herself and continue investing in new projects, while also making the work available for free to other non-commercial users to support a cause she believes in. These choices allow for a broader variety of business models to develop, which increases healthy competition among innovators and benefits consumers.

The author can also choose not to license his or her work in certain circumstances. Sometimes the non-economic choices an author makes by enforcing a copyright are the most important ones. Matt Herron, a civil rights era photographer who we work with explained to me once that the reason copyright matters to him so much is that it enables him to keep his collection of photographs of the Selma to Montgomery march together, and it ensures that the history of that period will be passed down to future generations as a coherent whole -- without images missing because they are controlled by someone else, and without images having been devalued

because they were licensed for commercial purposes.

Finally, copyright is about freedom. It is core to protecting our First Amendment rights of freedom of expression. It also gives authors the freedom to create and to thrive, and the freedom to create free from outside influence. “As the founders of this country were wise enough to see, the most important elements of any civilization include its independent creators – its authors, composers, and artists – who create as a matter of personal initiative and spontaneous expression rather than as a result of patronage or subsidy.”⁷

These guideposts I have suggested for your deliberations are fully consistent with the Founders’ vision for copyright.

The Founders Recognized that Copyright Protection Would Spur Creativity and Innovation

Article I, Section 8 of the Constitution grants Congress the authority “[t]o Promote the Progress of Science and [the] useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”⁸ As one of the few constitutionally enumerated powers of the Federal government, this grant of authority reflects the Founders’ belief that copyright protection is a significant governmental interest, and that ensuring appropriate rights to authors drives innovation and benefits society.

In Federalist Paper 43 Madison declared “The utility of this power will scarcely be questioned.”⁹ And he asserted that “[t]he public good fully coincides in both cases with the claims of individuals.”¹⁰ Early Supreme Court cases reinforce the belief that “[t]o promote the progress of the useful arts is the interest and policy of every enlightened government.”¹¹

Because, in Madison’s words, “[t]he public good fully coincides with the

⁷ *Copyright Law Revision: Hearings on S. 1006 Before the Subcomm. On Patents, Trademarks, and Copyrights of the Comm. on the Judiciary*, 89th Cong., 1st Sess. 65 (1965) (testimony of Register of Copyrights Abraham Kaminstein).

⁸ U.S. Const. art. I, § 8, cl. 8.

⁹ THE FEDERALIST NO. 43 (James Madison).

¹⁰ *Id.*

¹¹ *Grant v. Raymond*, 31 U.S. 218, 224 (1832).

claims of individuals,”¹² in ensuring authors’ rights would be protected, the focus of copyright law has properly been first on the author, but the ultimate effect is a benefit to society at large.

“The economic philosophy behind the clause empowering Congress to grant patents and copyrights is the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors and inventors in ‘Science and the useful Arts.’ Sacrificial days devoted to such creative activities deserve rewards commensurate with the services rendered.”¹³

In *Twentieth Century Music Corp. v Aiken*, the Supreme Court reiterated this goal: “The immediate effect of our copyright law is to secure a fair return for an ‘author’s’ creative labor. But the ultimate aim is, by this incentive, to stimulate artistic creativity for the general public good.”¹⁴ It is axiomatic that to benefit society, copyright law must have a dual purpose: to create a framework that encourages creation and dissemination/commercialization of works. As the Court explained in *Golan v. Holder*,

“[n]othing in the text of the Copyright Clause confines the ‘Progress of Science’ exclusively to ‘incentives for creation.’ Evidence from the founding, moreover, suggests that inducing *dissemination*—as opposed to creation—was viewed as an appropriate means to promote science. Until 1976, in fact, Congress made ‘federal copyright contingent on publication [,] [thereby] providing incentives not primarily for creation,’ but for dissemination. Our decisions correspondingly recognize that ‘copyright supplies the economic incentive to create *and disseminate* ideas.’”¹⁵

As Justice Sandra Day O’Connor eloquently wrote “In our haste to disseminate news, it should not be forgotten that the Framers intended copyright itself to be the engine of free expression. By establishing a marketable right to the use of one’s expression, copyright supplies the economic incentive to create and disseminate ideas.”¹⁶

¹² Madison, *supra* note 8.

¹³ *Mazer v. Stein*, 347 U.S. 201,219 (1954).

¹⁴ *Twentieth Century Music Corp. v. Aiken*, 95 S. Ct. 2040, 2044 .

¹⁵ *Golan v Holder*, 132 S. Ct. 873, 888-89 (2012) (emphasis in the original) (citations omitted).

¹⁶ *Harper & Row Publishers, Inc. v. Nation Enter.*, 471 U.S. 539, 558 (1985).

Since the dissemination of works properly requires the consent of the author, the history and development of copyright law reflects both economic and other societal goals. A creator's control over the use of his or her work – the “right to say no” – can often serve as a proxy to address non-economic interests. In fact, international law elevates this right to a human right.¹⁷

In reviewing the Copyright Act, Congress should therefore keep in mind both the economic contributions and motivations of creators, and the non-economic goals the Copyright Act serves and make any adjustments to the law in ways that will encourage both the creation and dissemination/commercialization of works. For many creators, works will not be broadly disseminated unless the creator feels "safe" doing so on non-economic grounds.

Last year's controversy over Instagram's change to its Terms of Service demonstrates that users of the popular photo sharing site have similar concerns to professional creators in this regard. Instagram lost nearly half of its daily active user base last year when the site changed its Terms of Service in ways which users perceived would allow the service to sell users' personal photographs for commercial advertising.¹⁸ Consumer concerns about misuse of their personal photographs are well-founded. In a case in the Northern District of Texas in 2009, a family sued Virgin Australia based

¹⁷ See, Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), art. 27 (Dec. 10, 1948):

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Several jurisdictions confirm that copyrights are human rights. For example, the European Court of Human Rights recently upheld criminal charges against various operators of the infamous Pirate Bay site. The Court stated that copyright is protected as property under Article 1 of Protocol No. 1 of the European Convention on Human Rights. Governments do not merely have a duty of noninterference with the enjoyment of property rights but "may require positive measures of protection." The Court denied the challenge that the criminal charges interfered with defendants' exercise of their free expression rights as "manifestly ill-founded," holding that in this case, such interference was "necessary in a democratic society" to vindicate copyright owners' human rights. *NEIJ v. Sweden*, 2013-V Eur. Ct. H.R. *available at* [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-117513#{"itemid":\["001-117513"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-117513#{).

¹⁸ http://www.nypost.com/p/news/business/bad_insta_karma_4ZENrwZVX2byVMQxK045rN

on its use of photos of their daughter taken at church camp, and posted to Flickr. Virgin Australia had used the photos in an embarrassing ad campaign urging viewers to dump their pen pals.¹⁹

The Creative Industries Drive Innovation and Provide Major Economic Inputs to Our Economy

Ensuring that authors continue to enjoy appropriate rights in their works, and that the Copyright Act continues to motivate the creation and dissemination of works by taking into account authors' economic and non-economic motivations is crucial to our innovation economy. This is so because

First, Creative Industries are a major source of innovative ideas and thus contribute to an economy's innovative potential and the generation of new products and services. Secondly, they offer services which may be inputs to innovative activities of other enterprises and organizations within and outside the creative industries. Thirdly, Creative Industries are intensive users of technology and often demand adaptations and new developments of technology, providing innovation impulses to technology producers.²⁰

The experiences of our members are consistent with these findings. As storytellers, our members use technology to enhance their storytelling. Directors Guild member James Cameron spent years developing the technologies required to bring his vision for Avatar to the screen. His work required a number of groundbreaking, state-of-the-art technologies such as new cameras; leaps forward in 3-D; and advances in performance-capture technology that are continuing to benefit professional filmmakers as well as other businesses. These advances also benefit amateur creators – many of

¹⁹ Chang v. Virgin Mobile USA, LLC, Civil Action No. 3:07-CV-1767-D, http://scholar.google.com/scholar_case?case=17329615568000796880. The case was dismissed for failure of personal jurisdiction, and it is possible that had the merits been reached defendants would nevertheless have prevailed, because the photos were taken by her camp counselor and posted subject to a Creative Commons Attribution 2.0 license that provides for broad use privileges, including commercial use without payment. The case is significant nonetheless to illustrate that the copyright owner's decision to license or not based on the exclusive rights granted to a copyright owner have important non-economic ramifications as well.

²⁰ Johannes Trüby, Christian Rammer, & Kathrin Müller, *The Role of Creative Industries in Industrial Innovation*, at Non Technical Executive Summary (Econstor Working Paper, ZEW Discussion Papers 08-109) available at <http://hdl.handle.net/10419/27592> (last accessed July 19, 2013).

the techniques and technologies now used by amateur filmmakers and musicians on sites like YouTube were originally motivated, created for and tested and perfected by professional filmmakers and musicians.

Likewise, the motion picture studios aggressively pursue new technology opportunities for distribution of their works in digital media, not only as customers of technology companies, but as developers of platforms themselves. Some of the most popular consumer electronics formats in history, including DVD and Blu-ray were developed through collaborative cross-industry efforts. Both in private practice, and in my former role as an officer of Time Warner, I served on or chaired working groups of Consumer Electronics, Information Technology and Entertainment companies to develop technical specifications and license agreements for some of the underlying technologies for these and other formats. Studios are patent holders in these technologies alongside IT and CE companies. Similarly Ultraviolet, a cross industry initiative to distribute films through a cloud-based system, was heavily driven by studio investments and participation.

Entertainment companies also develop distribution platforms for their services entirely on their own.

- “HBO GO,” the TV Everywhere platform for HBO subscribers, was developed entirely in-house.
- Studios--in particular Warner Bros. and Universal--drove Digital Cinema Distribution Coalition (“DCDC”) with a group of major theatrical distribution companies to develop and standardize an open, transparent, cost-effective system for high speed digital delivery of movies and live event programming to all exhibitors from all content owners. This innovative technical project is quickly replacing the expensive and time-consuming process of distributing physical film prints to thousands of theaters domestically and (eventually) internationally.
- Warner Bros. invented the Video Recombine Process to upgrade older television programming into high-definition format suitable for watching on today’s HD large screen televisions and displays. This new, efficient, cost-effective process permits the upconversion of both popular and niche television shows shot on video from the 1980s and 1990s.

- Syndistro, a joint venture of Warner Bros., CBS and Deluxe, created the MagnuBox platform for syndication operations that permits multiple TV stations simultaneously to receive recorded material and live content for faster download speeds while dramatically reducing the need for costly and inefficient transcoding.

These types of investments occur throughout the creative community and have been going on for years – largely unpublicized. For the creative industries this sort of innovation is simply part of their businesses.

- The publishing Industry invests \$100s of millions in R&D, infrastructure, skilled labor, and other resources to create, publish, distribute and maintain scholarly articles digitally and on the Internet. Scholarly publisher Reed Elsevier began development of its on line publishing platform, ScienceDirect in 1995, beta tested it in 1997-1998, and finally rolled it out in 1999. The company invested \$26 million in initial development costs and made an initial investment of \$46 million to create digital archives. Since then it has spent \$100s of millions shifting to digital production and publication of journals. This includes paying developers to code, scan, and beta test platforms, purchasing hardware and machinery, R&D and ongoing maintenance and enhancements. Currently, Reed Elsevier maintains over 90 terabytes of digital storage capacity from which an average of 10 million active users from 120 different countries download nearly 700 million articles per year. More than 1.5 million articles in science, technical and medical fields were published in 2009 alone.²¹
- Creative people within such innovative businesses are developing new tools for their readers as well. The New England Journal of Medicine employs a full time staff of medical illustrators to redraw and recompose all images submitted by authors. A recent feature pioneered by the journal is a 3D video animation of all of the medical images that allows the images to be rotated on multiple axes for different perspectives. The benefits to medical and biochemical

²¹ Adam Mossoff, *How Copyright Drives Innovation in Scholarly Publishing* (forthcoming 2013) (manuscript at 18-20) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2243264.

researchers for their own innovative work are obvious.²²

Innovative approaches are also being developed to ensure artists are remunerated for their work:

- As was recently emphasized by the World Creators Summit in Washington, DC, held by CISAC (the International Confederation of Societies of Authors and Composers), collective licensing organizations – like BMI and ASCAP in the United States and their counterparts in over 100 foreign countries – play a critical role in the protection and promotion of creators’ rights in a global, digital economy. Performance rights organizations (PROs) ensure that copyright royalties flow to authors for the use of their works anywhere in the world. To promote the licensing of entire repertoires of musical works on a non-exclusive basis, to remunerate songwriters, composers and publishers, and to provide information to the public, the PROs have invested significant resources in developing or acquiring the necessary computer software and hardware technologies.

The assertion that the creative community is making major contributions to our innovation economy is not just based on anecdotal evidence and every day experience. Both the World Intellectual Property Organization and the US Patent and Trademark Office have issued reports establishing that the creative community drives innovation and makes major economic inputs to economies.

The USPTO found that the entire US economy relies on some form of IP; because virtually every industry either produces or uses it. Having identified and studied 13 copyright intensive industries, USPTO concluded they provided 5.1 million jobs in the US, and that for every two jobs in the copyright intensive industries, they supported an additional one job elsewhere in the economy. Education levels, wage levels and the ability to lead economic recovery outpaced non-IP intensive industries.²³

²² *Id.*

²³ ECON. AND STATISTICS ADMIN. AND U.S.P.T.O., INTELLECTUAL PROPERTY AND THE US ECONOMY: INDUSTRIES IN FOCUS (Mar. 2012) available at http://www.uspto.gov/news/publications/IP_Report_March_2012.pdf.

Analyzing 30 national studies of the economic contributions of the copyright industries to GDP, the World Intellectual Property Organization has found a strong and positive relationship between contributions of copyright industries to GDP and (1) economic freedom (2) global competitiveness (3) global innovation and (4) research and development.²⁴ Specifically, WIPO found:

- Countries that have experienced rapid economic growth typically have above average share of GDP attributed to copyright industries;
- Contribution of copyright industries to GDP exhibits a strong and positive relationship with the Index of Economic Freedom. (The Index of Economic Freedom ranks countries on a 1-100 scale evaluating economic openness, competitiveness and the rule of law, including business and trade freedom, fiscal freedom, property rights, and freedom from corruption. According to WIPO “[c]ountries that score well demonstrate a commitment to individual empowerment, non-discrimination, and the promotion of competition. Their economies tend to perform better, and their populations tend to enjoy more prosperity...”²⁵
- There is a strong and positive relationship between the contribution of copyright industries to GDP and the Global Competitiveness Index. Countries with high scores have advanced knowledge, ideas and innovation;²⁶ and
- There is a positive and highly significant relation between performance of the copyright industries and the Global Innovation Index. This relationship implies that innovation and creativity are inherently and positively connected.²⁷

USPTO’s and WIPO’s economic findings are consistent with consumer opinion as well. The American Consumer Institute Center for Citizen Research is releasing a report today on consumer opinions on IP and counterfeit/pirated goods. The study surveyed 1,000 adult US citizens age

²⁴ WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO), WIPO STUDIES ON THE ECONOMIC CONTRIBUTION OF THE COPYRIGHT INDUSTRIES 8, 10-12 (2012) available at http://www.wipo.int/export/sites/www/ip-development/en/creative_industry/pdf/economic_contribution_analysis_2012.pdf.

²⁵ *Id.* at 8.

²⁶ *Id.* at 10.

²⁷ *Id.* at 10-11.

18 or older, using a third party national survey research group. The survey results show that an overwhelming majority of consumers surveyed believe

- Protecting IP is good way to encourage innovation and creativity (86%)
- The sale of counterfeit and pirated goods negatively affects US jobs and economy (89%) and
- 91% support strong enforcement of laws against sale/distribution of counterfeit/pirated goods.

Conclusion

A focus on and respect for creator's rights reflects the values our country was built on, rooted in our Constitution. The public benefits from the intellectual and cultural diversity that results, as well as from the promotion of a sustainable and innovative economy. As you examine the Copyright Act during this review process I urge you to

- Keep in mind how the changes proposed will affect the vast and varied communities of creators and innovators across the country.
- Strive for a well functioning copyright act that will unite the interests of all stakeholders to a common goal – don't proceed from the basis of any particular business model.
- Continue to afford yourself the opportunity to hear from a wide array of participants in order to understand how any changes proposed will work for creative upstarts as well as for more established members of the creator and innovator community.
- Remember the multiple goals the Founders had in mind for copyright.

And with every argument for revision, demand specifics. After more than 200 years we already know that the basic premises of copyright protection work. We should not risk its benefits on vague or overbroad theories predicated on supporting the business goals of any particular industry. The debates we hear today are no different than those that have occurred in the past. The times and the players may be different, but the premises are the same, and the basic principles underlying the Copyright Act have withstood the test of time. In this regard, the words of Barbara Ringer, the former Register of Copyrights are worth remembering. In an essay published nearly forty years ago, when the Act was last being reviewed she

wrote:

If the copyright law is to continue to function on the side of light against darkness, good against evil, truth against newspeak, it must broaden its base and its goals. Freedom of speech and freedom of the press are meaningless unless authors are able to create independently from control by anyone, and to find a way to put their works before the public. Economic advantage and the shibboleth of “convenience” distort the copyright law into a weapon against authors. Anyone who cares about freedom and authorship must insure that, in the process of improving the efficiency of our law, we do not throw it all the way back to its repressive origins in the Middle Ages.²⁸

We urge you to keep true to the principles, which have served this country and its innovators and creators so well since the founding of our nation.

²⁸ Register of Copyrights Barbara Ringer, The Demonology of Copyright, R.R. Rowker Memorial Lecture New Series, 19 (Oct. 24, 1974) available at http://www.copyright.gov/history/demonology_of_copyright.pdf.

Appendix A: Statement of Eric Hart

Like many creative people who work in the arts for a living I don't spend a lot of time thinking about copyright law, but a recent experience brought to my attention how important its protections can be and how challenging it can be for an independent author and artist like myself to use it to protect my work.

I began working in the theater at my undergraduate school in the late 1990s. I have done lighting, set design, painting and even audio. But I soon discovered my true passion: making props — and I have been a working prop maker for the past ten years. At a certain point, I became frustrated with the lack of current books available on the craft of prop making and began working on my own. It was partly because I wanted to collect all the information I needed to reference into a single volume, but I thought others might be interested in such a book as well. Earlier this year, *The Prop Building Guidebook: For Theatre, Film, and TV* was published by Focal Press.

I've always been open to sharing what I know and what I learn. Part of the reason I wanted to write the book in the first place was because it seemed the best way to get that kind of knowledge out to the most people possible. I could post it to the Internet, but the Internet is so fragmented and ephemeral. Most of what goes up there is soon forgotten about. The extra time and effort of making a book gives much more weight to the information inside.

Even with running a blog for a while and writing a couple of magazine articles, nothing could prepare me for the amount of work it would take to craft a full book. I was given a year to complete the manuscript, and I worked nearly every day on it; even then, I still felt like I could have used more time. For much of the time, I had to carve out a few hours before and after work to write; for a brief period, I was unemployed and could spend entire days (and nights) writing. There was no such thing as "time off" for that year.

But it actually took me longer than that year to write because I put a lot of work into it beforehand. I first started planning the book in 2008 and researching what I

would need to do to get one published. I started my blog a month later in January 2009 to practice my writing and start building an audience. My blog has always been free and I've been writing original content for it three times a week with only a few breaks for the past four years. It takes a lot to maintain that sort of writing habit; I began waking up a few hours before work every day, and any free time I would get I would spend writing.

The text itself was a challenge. No one had ever written anything as comprehensive as I was attempting. I talked to various professionals in the field and poured through any book, magazine or website with reference material I needed. Besides trying to describe the "best practices" of my industry, I was checking and rechecking a lot of technical information to make sure everything I said was accurate.

The photographs were another story. No other prop making book in the past had color photographs; mine had over 500. I was able to draw on the photographs I had taken throughout my career, but there were still dozens of photos that I had to set up and shoot specifically for the book. In some cases, I had to buy materials to demonstrate their use for those photographs. I invested a lot of time, effort and money into both the text and the photographs for this book, so it was an incredible value for anyone who would buy or read the book. I was literally creating something which had never been created before, and which would serve as a foundation of information for future prop makers to build off of.

Of course, I wanted this information to spread regardless of whether people can afford it. I filmed a number of videos to complement the book, and those are available for free on the book's website. I also had a few chapters which couldn't fit in the book, so those can be downloaded for free from the book's website as well (in a DRM-free format). The book's website has a link where you can find the closest library to read my book, as well as a link for teachers to request a free copy to review for their classes. Finally, my blog continues to be a source of free information on a regular basis.

While it is not unexpected for me to find out the book is being pirated, it is odd. I've found a lot of the pirate sites with links to my book are really just auto-

generated websites using the name of my book to draw traffic, but the actual link leads you to download some malware or adware.

But then there are sites like Mobilism.org, where real people are requesting a pirated copy of my book. It's happening in full view of anyone surfing the web. It's like I'm standing right here, and someone is saying, "Yeah, you spent years creating something unique and valuable that will benefit the community. I appreciate that, and I'm going to take advantage of it, but I'm not going to pay like everyone else."

The book is actually very cheap for what it is. Textbooks and reference books of the same size and scope can sell for \$80-120, but my book is a mere \$40. That's probably less than the cost of the raw materials to make the book if you didn't mass-produce it. The book itself is made for prop making; its large size and binding let it sit flat on a work table, open to any page you want so you can refer to it while building a prop. In that way, the pirated copy would be far inferior to the physical book itself.

Forty dollars for access to my ten years of prop making experience? Forty dollars to see the results of years of research into materials, products, tools and companies, as well as interviews and discussions with numerous experts in the field? In full color, to boot? That's quite the bargain.

You can pay at least \$40 a month for your Internet, hundreds of dollars for your computer equipment, and maybe another couple hundred for an e-reader, but you can't bring yourself to spend another \$40 for something unique and valuable to actually read on all that equipment? Something is off here.

What really gets me are the ads on the site. Companies like Citibank and Chrysler are actually paying the site to provide a forum for people to ask for pirated copies of my book. Imagine if I funded a website that told people how to avoid paying their Citibank credit card bills; see how long that will last.

The website even gives out "rewards" for people who provide pirated copies of the book! One pirate writes,

I actually really need this, so can raise the award to 100 WRZ\$ for a retail quality.

You *really* need this? You're in luck! You can buy the book and have it shipped to you almost anywhere in the world! You can buy the e-book and read it instantly! You can go to the library and check it out for free! If the library doesn't have it, you can request an inter-library loan to get it. You and your friends can pool your money and buy one to share.

But no. You do not want to reward the person who has spent years carefully creating the book that you "really need." You would rather reward the person who took two seconds to Google "how to remove DRM from e books". You reward a website who sells advertising to major companies and only draws traffic from pirates looking for new things to pirate.

Most people who have emailed me with questions have found I answer them. I don't have my information and knowledge locked away. All I ask is that you value my work and labor as much as I do. And it's obvious you do ("I actually really need this"). You have plenty of free alternatives to seek out on your own on the Internet. But you probably, like me, we're not satisfied with them, and wanted someone to devote the time and energy to create a more complete and definitive prop building guide. That's exactly how I felt and what I did.

This book is not a commodity. It is not interchangeable with other books out there, nor did it appear magically one day. Its publication was not inevitable. I didn't have some old prop book in front of me that I could just transcribe and update. I had to work for every sentence in that book. Some tiny phrases and charts took hours just to put together, because the information was scattered all over the place. The prop making book which most people use was published almost thirty years ago. If I hadn't written this one, it might have been another thirty years before one appeared again.

I've spoken with dozens of prop makers who have said they wanted to write a book, or were writing a book, but because of the demands of the job, there is never enough time. It's a rare confluence of events for a prop maker to have the desire to write a book, have the ability to explain and teach the craft well, have the skills to write coherently, have the time and support to devote to the mammoth undertaking of writing a book, have the network of colleagues to assist in areas which are not his specialty, and then manage to find an editor that believes in the project and gives it more support than expected, and a publisher with high standards of quality to carry the whole project through.

The publisher took the risk of thousands of dollars hiring editors, designers, marketers, proofreaders and indexers, as well as printing up thousands of copies of a book. I took the risk of spending a year working on a project with no guarantee of any return (as a side note, authors in these niche technical markets like mine don't get advances). Many people have taken great risks to get this book made; a book which has proven to be valuable and needed. It is clear this book would not have existed without those risks and that hard work. The million monkeys of the internet would not have inevitably created it on their million typewriters. The only risk the reader makes is less than \$40--on something that already exists and has been reviewed and sampled.

While we do have laws intended to protect creators like me, we seem to live in a culture that pretends piracy has no real victims (or even, as some pundits like to say, that piracy helps build your market). It is important to remind everyone the amount of work that goes into the creative works which are so useful and valuable to us. I only wrote a single book, but there are those who devote every day of their lives to writing and creating, and they will not be able to do that if we ignore websites which decide to give away those works for free without the creator's permission (or even knowledge). When we devalue the creative work, we are devaluing both the act of creation and the act of working, both of which are society needs.