



September 28, 2026

Senate Leadership
Senate Judiciary Committee Leadership
Senate Judiciary Committee Staff

Via email

Dear Senator Thune, Senator Schumer, Senator Grassley, and Senator Durbin:

Re:Create is a coalition of non-profits representing civil liberties groups, start-ups, technology companies, libraries, and other groups across the political spectrum, united in our commitment to balanced copyright law that respects fair use, free expression, and the public's right to access information. We write to describe in detail our concerns regarding HR 10204, the Legislative Branch Agencies Clarification Act (LBACA), which was recently passed in the House. Those concerns arise from changes to the Library's control over its collections through the deposit mechanism, changes to copyright rulemaking under 17 U.S.C. § 1201, and the new proposed process for appointment of the Register of Copyrights. HR 10204 makes sweeping changes to the structure of the Library and the Copyright Office in ways that have not been fully vetted by hearings or consultations with stakeholders. We urge members of the Senate to reject this dangerous and hasty overhaul of the copyright system. Our core concerns are explained in more detail below.

The Library must control its collections.

To safeguard its integrity and independence, and to guarantee it can meet its mission “to support the Congress in fulfilling its constitutional duties and to further the progress of knowledge and creativity for the benefit of the American people,”¹ the Library of Congress must have control over the acquisition, use, and disposition of its collections. The Copyright Act includes a deposit requirement that assists in the Copyright Office's examination of registrations, but it also has helped to build the greatest library in the history of the world. The majority of the Library's collections historically have been built through the copyright deposit mechanism, and the Copyright Office's administration of that mechanism can have a profound impact on the Library. The Copyright Office's regulations already reach beyond acquisition to control access and use of deposited materials.² Unless the Librarian has comprehensive oversight of the Register, the Register's power to control acquisition and use of deposit copies would usurp the Library's

¹ U.S. House of Representatives, “The Library of Congress,” <https://www.house.gov/the-house-explained/legislative-branch-partners/library-of-congress> (last visited March 30, 2026)

² For example, Copyright Office regulations limit access and use of electronic materials in the Library's collection when those materials are obtained through the deposit mechanism, effectively dictating how Library collections can be circulated, even to members of Congress and their staff. 37 C.F.R. § 202.18. Using its power to make such regulations, the Register could assert control over materials submitted through copyright deposit even if it were required to make such materials available to the Library. The vast majority of deposits (86%) are now in electronic formats. See U.S. Copyright Office, *Registration Times*, <https://www.copyright.gov/registration/docs/processing-times-faqs.pdf> (last visited March 30, 2026).

control over its own collections, endangering Congress's access to these materials and undermining the Library's extraordinarily successful mission of building a collection that preserves for posterity a comprehensive history of knowledge and creativity.

Under current law, Title 17 allocates authorities to the Librarian of Congress that ensure Library control. Specifically, the Library has supervisory authority over the Copyright Office and over all regulations made by the Register of Copyrights.³ Accordingly, while the Copyright Office is tasked with developing rules governing deposit,⁴ and empowered to make other regulations for the administration of its functions and duties,⁵ the Library's right of general direction and supervision, and its right of approval of all Copyright Office regulations, give it ultimate authority over all rules impacting its collections.

The LBACA would transfer these powers to the Register of Copyrights. Vesting control over Library collections with another agency vitiates the Library's independence and threatens its ability to serve Congress and the American people without bias or interference. The risk is heightened by the inevitable tension between the Library's goal of building a maximally comprehensive and useful collection and the Copyright Office's goal of administering a minimally burdensome and efficient registration process for copyright holders. Any change in the relationship between the Library and the Copyright Office would need to leave the Library fully and unambiguously in control of the deposit mechanism and of all deposits that it selects for its collections. This would involve a careful audit of the Register's powers under Title 17 and a comprehensive revision of those powers. Instead, HR 10204 literally finds and replaces "Librarian" with "Register" throughout Title 17, with no apparent regard for the consequences.

The Section 1201 triennial rulemaking must protect the public interest.

The Librarian is the final decisionmaker in the triennial rulemaking required by Section 1201 of the Digital Millennium Copyright Act (DMCA). 17 U.S.C. § 1201(a)(1)(C) ("the Librarian of Congress...shall make the determination in a rulemaking proceeding"). The rulemaking is a fair use safety valve in the DMCA, designed to protect the public interest against rightsholder overreach. Congress was deeply concerned that by giving legal force to "technological protection measures," they were creating a mechanism that rightsholders could use to block lawful fair uses, including education, criticism, and scholarship.⁶ The triennial rulemaking gives the public an opportunity to petition for exemptions from the DMCA for lawful uses unduly burdened by TPM protection. The latest cycle of that rulemaking is underway now.

Under current law, the Copyright Office administers the rulemaking, in consultation with the National Telecommunications and Information Administration (NTIA), and then provides a recommendation to the Librarian. While the Librarian's final determination has generally endorsed the Register's recommendations, it has occasionally diverged in favor of the public

³ 17 U.S.C. § 701(a) (Register "shall act under the Librarian's general direction and supervision"); 17 U.S.C. § 702 ("All regulations established by the Register under this title are subject to the approval of the Librarian of Congress.").

⁴ 17 U.S.C. § 407(c)

⁵ 17 U.S.C. § 702

⁶ See H.R. Rept. 105-551 pt. 2 (Commerce Committee) ("The Committee was therefore concerned to hear from many private and public interests that H.R. 2281, as reported by the Committee on the Judiciary, would undermine Congress' long-standing commitment to the concept of fair use").

interest. In the 2010 rulemaking, the Librarian granted an exemption favoring ebook accessibility despite the Register's recommendation that the proposed rule be rejected.⁷ The Librarian's role as final arbiter in the rulemaking embodies Congress's intention that the proceeding vindicate the public interest when it is threatened by rote application of the anticircumvention provisions.

The LBACA removes the Librarian from the 1201 process, making the Register both the administrator and the decider, subject only to a requirement to consult with NTIA. The rulemaking was intended to protect the public interest from copyright overreach. While the Register may be well-positioned to administer the proceedings and evaluate claims that proposed exemptions favor activities that would otherwise be lawful, it has no special expertise or authority to judge the impact of the DMCA on burdened activities. If the Librarian is not the final arbiter of the DMCA's triennial proceedings, the public interest would be better served by placing the final ruling with the NTIA rather than with the Register. Doing so would preserve the Register's current role as an expert adviser and administrator while placing the final determination in the hands of an agency with a broader public policy mandate commensurate with the broad public interest implicated by the DMCA.

Commerce Committees should be included in the Register selection process.

The LBACA would remove Librarian oversight of the Register, instead making it a Presidentially-appointed position. The bill directs several congressional committees to jointly recommend three individuals for consideration by the President in making this appointment. Over the last half century, copyright protection has been extended to software and copyright regulations have shaped the growth of the internet, which is now at the heart of the American economy. Accordingly, if the Register becomes a presidential appointee, the House and Senate Commerce Committees should also be among the committees who play a role in the Register's selection given their jurisdiction over technology and interstate commerce.

For the foregoing reasons, the Senate should reject HR 10204.

Respectfully,

Brandon Butler
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Additional resources on the Copyright Office and the Library of Congress:

- [Library Copyright Alliance, Fast-Tracking H.R. 6028 Can Threaten Copyright Deposit and the Public Interest](#)
- [Re:Create Coalition Urges Congress to Modernize Copyright Office](#)
- American Library Association: [Lessons from History—the Copyright Office Belongs in the Library of Congress](#)
- Center for Democracy & Technology: [A 21st Century Copyright Office: Renovation Over Relocation](#)

⁷ <https://www.govinfo.gov/content/pkg/FR-2010-07-27/pdf/2010-18339.pdf>

⁸ Not every member of the Re:Create Coalition necessarily agrees on every issue, but the views we express represent the consensus among the bulk of our membership.

- Re:Create: [New Copyright Corner Q&A Series Features Shira Perlmutter As First Guest](#)
- Electronic Frontier Foundation: [Let's Make The Copyright Office Less Political, Not More](#)
- Public Knowledge: [Public Knowledge Opposes Rushed Legislation on Copyright Office](#)