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## National Writers Union Priorities for Copyright Reform

Reform of U.S. copyright law is long overdue, not just because of technological change, but also to rectify longstanding inequities to writers and other creators.

The key issue for the National Writers Union and other writers and creators is this: Will copyright reform help our members and other creative workers take advantage of new technologies and business models that benefit us and the reading public? Or will keeping up with technology be a pretext for changes in the law which re-allocate rights and revenues in ways that unfairly favor publishers, distributors, and intermediaries over creators?

### What We Want

**1. Elimination of 17 U.S. Code § 411 and § 412**, which require registration as a prerequisite for filing a copyright infringement lawsuit or obtaining statutory damages and attorneys' fees. These formalities are prohibited by the Berne Convention and deny creators the effective redress required by the WIPO Copyright Treaty. Repeal of these sections of the Copyright Act is essential for the U.S. to fulfill its global treaty obligations, and will encourage other countries to reciprocate by respecting U.S. copyrights. Repeal will make it easier for creators to defend their copyrights.

**2. Creation of a Copyright Small Claims Court as an accessible, effective way to defend copyrights** without having to bring costly, time-consuming lawsuits in federal court. Federal lawsuits are prohibitively expensive for most creators. As a result, we have no meaningful ability to enforce our rights. Since creators increasingly find their work has been pirated online by an unauthorized third party or their publishers have issued unauthorized digital editions of their work, creators need a less costly way to assert their rights, terminate infringements, and win fair compensation.

**3. Reform of 17 U.S. Code § 203 on the reversion of rights.** Section 203 of the Copyright Act has too many limitations and procedural obstacles to be useful to most

creators, and it cannot be invoked if an original publisher or other licensee has disappeared (an “orphan publisher”). Reversion of rights to a work’s creator should be automatic after a number of years (no more than 20) without requiring notice, registration, or other formalities. Reversion of rights held by a corporation, partnership, or other entity other than a natural person should be automatic and immediate on the dissolution of the corporation, partnership, or entity, unless notice of a successor is recorded with the Copyright Office beforehand.

## What We Don’t Want

### **1. No statutory license or exception to copyright for so-called orphan works.**

An orphan work is one whose rights holders have not been identified or located. All orphan works proposals to date would inevitably categorize as orphans many works that are being actively exploited by their creators and other rights holders because important ways that works are currently used and sold do not specify the rights holders. In effect, these orphan works' proposals would confiscate rights to these works and undermine their creators' livelihoods. They would also interfere with normal exploitation of the works and impose *de facto* formalities in violation of the Berne Convention.

### **2. No statutory, default, or extended collective licensing for digital distribution.**

Digital distribution, including through mass digitization, should continue to require permission from each copyright holder on an opt-in, not opt-out basis. Opt-out schemes are promoted as a means to build libraries' digital collections, but they also function as statutory usurpation of copyright. We support expansion of digital libraries through increasing their acquisition budgets, not through expropriation of creators' rights.

**3. No increased formalities for rights holders.** Mandatory registration already imposes an improper burden on the time and budgets of copyright holders, and it is a clear violation of the Berne Convention and other treaties. Under current procedures, it's nearly impossible to register many types of works in a timely, inexpensive way, especially works published online. Registration procedures necessarily embody technological and business-process assumptions that are slow to adapt to change and therefore serve as a barrier to new publishing and distribution models. Current registration requirements should be repealed and no additional formalities should be added.

**4. No privatization of copyright registration functions.** Only a public body such as the Copyright Office can assure all rights holders of fair treatment and due process. In all likelihood, copyright registries would be dominated by and vulnerable to capture and control by large companies – mainly publishers and distributors – that would favor publisher-centric business models and assumptions over new media and self-publishing models to the detriment of creators and the public alike.