



Science Fiction & Fantasy Writers of America
Legal Affairs Committee
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1 March 2021

U.S. Senator Thom Tillis
Chairman of the Senate Judiciary Subcommittee on Intellectual Property
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Senator Patrick Leahy, Chair
U.S. Senate Judiciary Subcommittee on Intellectual Property
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Comments re: The Digital Copyright Act of 2021 (DCA)

Dear Senator Tillis and Senator Leahy:

Science Fiction and Fantasy Writers of America (SFWA) is a 501©(3) nonprofit membership organization of over 1,800 commercially published writers of science fiction, fantasy, and related works. Its membership includes writers of both stand-alone works and short fiction published with other works. SFWA is not a subsidiary of any other entity, and is entirely owned by its membership. SFWA has no subsidiaries or other ownership interest in any other organization that may be affected by this testimony. SFWA members run their own small businesses, whose product is the written word.

SFWA welcomes the opportunity to submit these comments on the discussion draft published by Senator Tillis of the Digital Copyright Act (DCA) of 2021. We would also welcome an opportunity to meet with Senator Tillis, Senator Leahy, other members of the Subcommittee, and/or members of their staff concerning the issues raised in these comments.

While SFWA recognizes and applauds the draft bill's comprehensive approach to copyright reform, at the same time we feels that combining all of these diverse, complex issues into one vast law is not the correct way to deal with them and ends up lumping the good, the bad, and the ugly when many of them deserve to be looked at and voted on independently. Partially because of this complexity, SFWA will only be commenting on a subset of the proposals, Sections X(), Y and Z. In the spirit of taking a proactive approach to copyright from an author's standpoint, we will also make some suggestions about different ways to approach some of the issues, especially orphan works.

Section 2: Limitations on Liability Relating to Material Online (512)

SFWA agrees with and supports the comments submitted by the Authors Guild. While we don't have a comprehensive solution to the problem of online piracy, we can say without reservation that Section 503 doesn't currently work in the vast majority of cases for authors of novels and short fiction.

Section 3: Orphan Works Act

Whenever it comes up, **SFWA** has attempted to point out the difficulties for authors created by an orphan works bill, and suggested alternatives. Our submissions to the Copyright Office can be found at <https://www.copyright.gov/orphan/comments/reply/OWR0108-SFWA.pdf> and https://www.copyright.gov/orphan/comments/noi_10222012/Science-Fiction-Fantasy-Writers-America-Inc.pdf. Our concerns about this iteration are no different. One thing that has changed since 2012 is the increased number of ways authors can use the Internet as part of their business model, as pointed out eloquently in the current submission from the National Writers Union, which we support. Related to this is the rise of authors self publishing their works for the Kindle without registering their copyrights, purchasing ISBN's, or appearing in any of the lists which are used to tell if a work is "in print".

Briefly, instead of creating a law that penalizes authors who cannot be found, SFWA strongly supports measures to make authors easier to find. As outlined in our 2012 CO submission, there are a number of ways to do this. First and easiest is to create a federally funded online "Author Directory" or registry database of authors, a list of their works, and their contact information. Authors would be able to create and update their information through a simple online form. Secondly, we would like to see the Copyright Office include contact information in its database and, for a nominal fee, allow registering transfers of ownership rights to encourage rights owners to keep their information up to date. Details are included in **our** above mentioned submissions. We strongly believe that the Copyright Office must take responsibility for a single system that helps find authors before any orphan works legislation is considered.

We would also strongly support legislation that, instead of arbitrarily defining a work as an orphan, would automatically revert rights to the author if the work was deemed to be out of print or individual rights were not being exercised by the publisher. In addition, we agree with

the National Writers Union on the need to reform Section 203 of the Copyright Act (17 U.S. Code § 203) on termination of licenses or assignments of rights.

Section 6: Promoting Attribution through Copyright Management Information (1202)

In keeping with the suggestions above, **SFWA** would like to see mandated the universal use of embedded Copyright Management Information in all published works of art, including text such as novels and short stories. This embedded information would require the inclusion of the original author's name, among other data, and stripping this embedded data would be prohibited by law. We would also suggest that the Content Management Information include other information that could be used in disambiguating the author (a International Standard Name Identifier (ISNI) number, for example) and a Digital Object Identifier (DOI) for recordkeeping and library use. We strongly support the moral rights of authors of written works, especially the right to attribution.

Section 16: Study on Publication and Section 20: Group Registration of Works

SFWA links these two together because they both relate to the status of works published online. We firmly believe that the current law, even with the proposed amendments, does not clearly establish what constitutes "publication" for the purposes of copyright registration, especially when it comes to an appearance on the Internet. As we have pointed out before, fiction is made available to readers on the Internet in many ways, from a posting on a blog to the sale of an e-book on Amazon.com. Some involve downloading the work in a formal way, some just involve viewing. Some is behind pay walls, but most is not. Rather than commissioning the Copyright Office to study the issue, as this proposed section does, the Office should provide you with a definitive definition of publication, and that should be included in the Act. We also think that it is imperative that the Office be given latitude in defining what information is submitted in a registration, because some kinds of works make the currently required information meaningless. For example, publication on the World Wide Web is word wide and not limited to a single country.

SFWA was heavily involved in the creation of the new group registration category GRTX, Group Registration of Short Online Literary Works, and we celebrate its inauguration late last year. We believe that the Copyright Office should be given the authority to create additional group registration categories at its discretion as specified in new paragraph (4)(B) or combine previously existing group registration categories when it is expedient to do so. Paragraph (4)(A), however, mandates a specific kind of group registration (published in Periodicals), and is not only unnecessary, but would prevent the Office from combing a number of currently existing group registration text categories to create a category that would more successfully meet the needs of our membership, as well as many other free-lance writers who publish short works in many different ways. They may publish in print periodicals, in online periodicals, as blog posts, and in print and electronic anthologies. Limiting a category to periodicals alone means that they must pay for registration in two (or more) categories, multiplying the fees and making the process twice as hard. For this reason, we recommend Section 20 paragraph (4)(A) be struck

from the proposed bill. If specific deposit requirements are wanted for works published in periodicals or newspapers, they can be incorporated in the instruction for a new comprehensive text group category, but we feel they are unnecessary.

Finally, we recommend that the Copyright Office do a new feasibility study on establishing a public lending right (PLR) in the United States, which would allow authors to receive payment from the government to compensate for the free loan of their books by public and other libraries. It should be applicable to library lending of written or graphic work in print and digital formats. The studies that were conducted in the eighties are no longer applicable.

Thank you for allowing us to comment on the discussion draft. **SFWA** welcomes the opportunity to work with you and your staff on legislation to address these concerns, either as part of an omnibus bill or as separate bills. We look forward to working with you and the Subcommittee on copyright legislation.

Sincerely,

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