July 21, 2016

Allan Adler
General Counsel
Vice President for Government Affairs

Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: Concept Release – Business and Financial Disclosure Required by Regulation S-K (RIN 3235-AL78), 81 Fed. Reg. 23916 (daily ed. April 22, 2016).

Dear Secretary

The Association of American Publishers (AAP) is the national trade association of the U.S. book and journal publishing industry. AAP's 400 or so members include most major commercial publishers in the U.S., as well as smaller and non-profit publishers, university presses, and scholarly societies. AAP members publish works in every field and format, including popular books, scholarly journals and monographs, software, websites, and a variety of other electronic publications. Some AAP members produce digitally-based learning solutions which are facilitated through online platforms, learning management systems, and adaptive learning software for customized use by instructors and students at all education levels pursuant to a variety of licensing options. The protection and enforcement of intellectual property rights are among AAP's highest priorities.

On behalf of AAP and its members, I write to offer a preliminary view on that part of the Concept Release which seeks comments regarding whether "copyrights" should be added to the scope of Regulation S-K's Item 101(c)(1)(iv).[1] That Item currently requires a registrant, within a narrative description of "the business done and intended to be done by the registrant and its

[1] See Concept Release, 81 Fed. Reg. at p. 23933-23934. Given our response to this threshold question, we do not address the request for comment on other issues related to Regulation S-K's Item 101(c)(1)(iv), including possible changes to the nature of the information required to be disclosed, the form or manner of its presentation, and whether only certain industries' registrants should be obligated to make such disclosures.

subsidiaries," to disclose information about "the importance... and the duration and effect of all patents, trademarks, licenses, franchises and concessions held" by the "dominant segment or each reportable segment" of the registrant to the extent such information is "material to an understanding of the registrant's business taken as a whole."[2]

Our comments should be viewed in the context of directives that Congress enacted into law less than a year ago, instructing the SEC to "eliminate provisions of regulation S-K, required for all issuers, that are duplicative, overlapping, outdated, or unnecessary," and "determine how best to modernize and simplify" the Regulation's registration requirements "in a manner that reduces the costs and burdens on issuers while still providing all material information."[3]

Focusing on the purpose of Regulation S-K, mandatory disclosure of all copyright interests held by a registrant publisher is not necessary to ensure that the publisher has provided investors with "information they need to make informed investment and voting decisions" with respect to registered securities. [4] A detailed listing of a publisher's copyright interests is not likely to inform investment and voting decisions in a manner that "may lead to more accurate share prices, discourage fraud, heighten monitoring of the managers of companies, and increase liquidity."[5] Nor is it the kind of information that investors are likely to think would, by its disclosure, "increase the integrity of securities markets, build investor confidence, and support the provision of capital to the market."[6]

Such disclosure, however, would be costly and burdensome for registrants – particularly emerging growth companies and small businesses – to produce and disseminate. For example, a single AAP member and major U.S. trade publisher currently offers for sale in the U.S. a total of approximately 15,000 copyrighted literary works; other trade publishers, in the aggregate, offer tens of thousands of additional works. Requiring a publisher to create a list of each of its works, much less a list including details about the extent of the publisher's rights in each of those works, would impose an enormous and costly burden without providing investors with any information useful in making investment or voting decisions. It could also disclose competitively sensitive information.[7]

A publisher's right to commercially exploit copyrighted literary works can vary significantly in nature, scope and duration. Copyright is a divisible form of intellectual property, and rights in a particular literary work may be exercised world-wide or in particular countries, and may also be held in unpublished works or in works that were published but are not currently available for purchase.

---

[2] Regulation S-K, Subpart 229.100, Item 101(c)(1)(iv).
[3] Fixing America's Surface Transportation ("FAST") Act, P.L.114-94 (Dec. 4, 2015), Title LXXII, Sections 72002(2) and 72003(a)(1)..
[4] See Concept Release, id. at p.23919.
[5] Id.
[6] Id.
[7] Id.

The bundle of exclusive rights belonging to the author of a work may or may not be held by the publisher depending upon whether the work is legally considered to have been created by the publisher, created by an author from whom the publisher acquired some or all rights of copyright, or created by an author whose copyright (or particular rights) had been transferred to a third-party from whom the publisher acquired its rights to exploit the work. Rights in a work may be exercised by the copyright owner, or licensed by the copyright owner to someone else, exclusively or non-exclusively.

Moreover, different publishing sectors typically acquire and exercise rights differently according to the nature of the literary work and its market. For example, while an educational publisher may want to acquire all rights of copyright, a trade publisher of books for the general public may want to acquire only the rights needed to publish the work in particular formats or within a particular geographic market. The publisher's expenditures for developing a work, licensing fees, or other costs of rights acquisition may well be considered competitively sensitive, but in any event would be of limited, if any, use in assessing the value of the publisher's copyright interest(s). The key valuation factor – the work's marketability and actual or potential earnings – involves different data and will depend, among other factors, on whether the work is published or unpublished at the time.

Clearly, the public disclosure of copyright interests in a work can serve important public purposes and policies, which is why registration with the Copyright Office of a copyright claim in a work is encouraged to make the work and its copyright owners easily found by the general public, including those interested in rights acquisition or licensing for certain uses of the work. However, copyright registration is voluntary under the law and the information required for registration is unlikely to be "material" for purposes of Regulation S-K with respect to investment and voting decisions.[8]

Mandated disclosure of registrant publishers' copyright interests would provide investors with a welter of information that is not material to, and of little practical use for, valuing businesses for investment or voting decisions. While it may be debated whether claims of investor "information overload" justify directing the SEC to comprehensively evaluate the effectiveness of Regulation S-K in ensuring disclosure of registrant business and financial information that is material to securities investment and voting decisions,[9] it seems doubtful that Congress, in urging the *simplification* of mandatory disclosure requirements under the SEC rule, would consider the copyright interests of publishers to be the kind of material information that investors need for such decisions.

---

[8] See generally 17 U.S.C. Section 408.

[9] *Compare, e.g.*, the floor statements of lead sponsor Rep. Scott Garrett (R-NJ) during House passage of H.R.1525, the proposed "Disclosure Modernization and Simplification Act of 2015," which subsequently was enacted as Title LXXII of the FAST Act, Congressional Record of Oct. 6, 2015 at H6804-6805, *with* views of Sen. Elizabeth Warren (D-MA) in her letter of July 7, 2016 to the Hon. Mary Jo White, Chair, Securities and Exchange Commission, available at http://www.warren.senate.gov/files/documents/2016-7-7_Letter_from_Senator_Warren_to_Chair_White.pdf.

The Concept Paper notes that SEC's consideration of whether to require disclosure of copyrights is primarily focused on the "information technologies and services industry." [10] While it is unclear whether the SEC considers the types of publishers that make up AAP's membership to be within this industry category, or has considered such publishers at all in connection with Regulation S-K, we do note the observation that such industry registrants currently make disclosures about copyrights "voluntarily,"[11] and we would simply urge the continuation of this policy.

Respectfully Submitted,

Allan Adler
General Counsel
Vice President for Government Affairs

[10] Concept Release, id. at p.23934.
[11] Id.