July 15, 2016

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090
***Via* http://www.regulations.gov**

RE: File No. S7-06-16, Release Nos. 33-10064, 34-77599
Business and Financial Disclosure Required by Regulation S-K

Intellectual Property Owners Association (IPO) submits the following comments in response to the Securities and Exchange Commission's (SEC or Commission) Concept Release on Business and Financial Disclosure Required by Regulation S-K (Concept Release). IPO is an international trade association representing companies and individuals in all industries and fields of technology who own, or are interested in, intellectual property rights. IPO's membership includes about 200 companies and more than 12,000 individuals who are involved in the association either through their companies or as inventor, author, law firm, or attorney members. IPO membership spans 43 countries.

IPO advocates for effective and affordable IP rights and provides a wide array of services to members, including supporting member IP interests through legislative, regulatory, and judicial advocacy; analyzing current intellectual property issues; information and educational services; and disseminating information to the general public on the importance of intellectual property rights

Below are comments on the questions presented in Section IV(A)(3) of the Concept Release addressing disclosure of information related to technology and intellectual property (IP) rights. For your convenience, we have retained the number of each question as indicated in the Concept Release.

42. Should we retain the current scope of Item 101(c)(1)(iv), which requires disclosure of a registrant's patents, trademarks, licenses, franchises and concessions? Should we expand the rule to include other types of intellectual property, such as copyrights? Should we remove the individual categories and instead require disclosure of "intellectual property"? If so, should we define that term and what should it encompass?

As the Concept Release notes, IP-related disclosure varies significantly among registrants and across industries. This variation reflects the different circumstances of individual registrants and the differing materiality judgments made by each registrant's senior management or board of directors. The current scope of Item 101(c)(1)(iv), including the materiality threshold set forth in the introductory language of Item 101(c)(1), is sufficient to provide investors with information about registered companies' IP assets. We recommend no expansion of the scope of IP that must be disclosed. Expansion would impose significant new burdens, costs, and

risks upon registrants, provide limited or no benefits to investors, and could have an adverse impact on registrants' shareholders' value. Specifically, we believe it ill-advised to expand the scope of Item 101(c)(1)(iv) to require disclosure of copyrights or trade secrets.

A company might have many valid copyrights that have never been registered or even identified. Requiring disclosure would force companies to catalogue everything in their operations that might be eligible for copyright protection, which would impose substantial costs on companies and require significant time and human capital. The vast majority of those works are unlikely to be material to a company's business, so disclosure would be of limited or no use to investors. Moreover, in an abundance of caution, and given the difficulty of making materiality judgments regarding assets whose commercial value might be inchoate or otherwise difficult to ascertain, companies might be over-inclusive in disclosures of copyrighted works. Investors would be inundated with floods of information that could make it difficult for them to discern the information that a company actually considers to be material.

Likewise, the scope of information eligible for trade secret protection is vast. Trade secrets are owned by nearly every company in virtually every sector of the economy to protect confidential information in all aspects of corporate operations. The only requirements for trade secret protection are that the owner has taken reasonable measures to keep the information secret and the information derives independent economic value from such secrecy. It is unclear what kind of disclosure the Commission could require that would not risk destroying, or at least endangering, the value of such assets. A requirement to disclose information about a company's trade secrets would implicate many of the same compliance costs and burdens identified in relation to copyright disclosures. Because there is no mechanism for registering a trade secret, many companies do not catalogue their trade secrets and do not have systems in place to evaluate the eligibility of confidential business information for protection. Because companies might rely on trade secrets to protect incipient technologies that are not yet on the market, it could be extremely difficult to determine whether certain trade secrets are material or to quantify their value.

Requiring disclosure of both copyrights and trade secrets would have additional deleterious effects upon companies' competitive advantage, analyzed under Question 46 below.

43. What, if any, additional information about a registrant's reliance on or use of technology and related intellectual property rights should we require and why? Should we revise Item 101(c)(1)(iv) to require more detailed intellectual property disclosure, similar to the disclosure currently provided by some biotechnology and pharmaceutical registrants? If so, should we require such detailed disclosures for all or only for some of a registrant's intellectual property, such as those that are material to the business?

We believe the requirements currently set forth under Item 101(c)(1)(iv) provide investors with sufficient information. The current principles-based regime allows companies the flexibility to determine the materiality of their IP assets and to tailor their disclosures accordingly. It is not surprising that different disclosure practices have evolved, because the importance of IP assets varies greatly from industry to industry, and even among companies within the same industry. Likewise, the concept of materiality is not "one size fits all," and the

level of disclosure that is appropriate for one company might not be appropriate for other companies. Even companies that are similarly situated might perceive and analyze the significance of their IP assets in different ways. Companies should be given the discretion inherent in a principles-based rule to make particular disclosure decisions based on their particular circumstances.

In addition, requiring detailed disclosure for all of a company's IP assets—or even just more detailed disclosure with regard to patents—will in many cases result in investors being provided with too much information. Including detailed information about any individual patent or other IP asset that is not considered by a company to be material would result in just such an avalanche of information, leaving investors the difficult task of trying to determine what is relevant.

44. For registrants with large intellectual property portfolios, does aggregate disclosure of the total number of patents, trademarks and copyrights and a range of expiration dates provide investors with sufficient information? If not, what additional information do investors need about a company's portfolio of intellectual property? Would tabular disclosure or an alternate format or presentation of a registrant's intellectual property portfolio make the information more useful to investors? What would be the benefits and challenges of requiring disclosure of this information in this format?

Determining the value and materiality of a registrant's IP assets typically involves a highly fact-specific inquiry and contextual assessment. It would be inappropriate for the SEC to mandate that all companies use a similar aggregate disclosure format, for which the Commission has not established a connection between the aggregate disclosure of companies' IP portfolios and their overall business. In addition, requiring aggregate disclosure of all IP assets would run the risk of burying material portions thereof in a barrage of non-material information which, as already discussed, would harm rather than benefit investors.

45. Should we limit these disclosure requirements to registrants in particular industries? If so, which industries should we specify and why? Is disclosure about a registrant's intellectual property most useful in the context of the description of business, disclosure about trends and developments affecting results of operations, or in a discussion of risk and risk management?

The IP and technology landscape is varied and ever-changing. The prevailing practices of an industry might evolve quickly, and the value and nature of a company's IP assets might change quickly over a relatively short period of time. Therefore, we do not think it is in the best interests of companies or investors for the SEC to prescribe industry-specific IP disclosure requirements. Such a disclosure regime would need to be updated too often to be practical and would likely fail to keep pace with the rapid changes in business models and technology that companies experience.

46. What are the competitive costs of disclosure under Item 101(c)(1)(iv)?

Any disclosure regime promulgated by the SEC will require striking the appropriate balance between providing material information to investors and protecting competitive information

important to a registrant's business. The current disclosure rules balance this tension well, allowing companies to tailor disclosures to provide adequate information to investors while protecting competitive information. Revising disclosure standards could involve real competitive costs, and the SEC should be sensitive to that fact when considering such revisions.

With regard to copyrights, over-inclusiveness by companies in their disclosures of copyrighted works, as discussed under Question 42 above, could adversely impact the interests of a company and its shareholders by communicating to competitors information that is competitively valuable and that the company has legitimate interests in protecting from disclosure.

With regard to trade secrets, requiring even a minimal disclosure that certain trade secrets exist could have deleterious results for the owner. Even knowledge that a company has or is developing trade secrets in a certain area of technology or manufacture could allow competitors a commercial advantage. The requirement to disclose information about a company's trade secrets could deter registrants from investing in the development of such information in the first place, which could undermine incentives for innovation and impede growth. Requiring registrants to disclose information about their trade secrets is also ill-advised because trade secrets are particularly susceptible to misappropriation. In this age of cyberespionage, trade secrets can be copied, memorized, or otherwise removed from company's premises increasingly easily. Disclosure requirements would give misappropriators information as to who and what to target.

Further, any SEC-mandated disclosure could result in forfeiture of trade secret protection and cause irreparable competitive harm to companies. Registrants should not be put in the position of risking the value of core corporate assets if they disclose too much information about their trade secrets, while risking significant SEC penalties and other civil liability if they disclose too little.

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IPO appreciates the opportunity to provide these comments. We would be happy to address any questions that the Commission might have.

Sincerely,

Mark Lauroesch
Executive Director