

UNITED STATES COPYRIGHT OFFICE

Promoting
Creativity

Through an
Effective National
Copyright System

104th

ANNUAL REPORT
of the Register of Copyrights

for the Fiscal Year Ending September 30, 2001

Message from the Register



This Annual Report for Fiscal Year 2001 reviews the Office's work in the policy and regulatory area, improvements in our public services, and the progress made toward reengineering our business processes and information technology systems.

This year the Office completed the first rulemaking under section 1201 of the Copyright Act relating to the circumvention of technological measures used to protect access to copyrighted works. Under the law, the Office will perform this review every three years. In addition, as required in section 104 of the Digital Millennium Copyright Act (DMCA), the Office submitted a report to Congress evaluating the effect of advances in electronic commerce and associated technologies, as well as the amendments made in title 1 of the DMCA, on sections 109 and 117 of the Copyright Act. The Office also continued to work with executive branch agencies on a large number of international copyright matters.

I am pleased that we made significant advances during the year in our work to reengineer the Office's principal business processes and its information technology systems so that we will continue to meet the needs of both owners and users of copyrighted works in the future. We completed an ambitious reengineering agenda this year and are in a position to sustain this momentum in Fiscal Year 2002.

Our reengineering effort this year, like all the Office's accomplishments, is the product of dedicated Copyright Office staff. I thank them for the work and achievement reflected in this report.

The Annual Report for 2001 would not be complete without mention of the tragic events that occurred on September 11, 2001. The Copyright Office remembers those whose lives were lost on that day, offers encouragement to their family and friends, and words of praise to all of the heroes who aided in rescue and recovery.

Marybeth Peters
Register of Copyrights





In FY 2001, the Copyright Office registered 601,659 claims, recorded 15,242 documents, created 548,485 catalog records, and collected and deposited approximately \$186 million in royalty fees. The Office transferred material with an estimated value of over \$31 million to the Library of Congress for its collections and exchange programs.

Copyright Law Administration

COPYRIGHT REGISTRATION



The Copyright Office continued to fulfill its statutory mandate to register claims to copyright and make available a public record of these claims. During the fiscal year, the Office received 590,091 claims to copyright covering more than 800,000 works, and registered 601,659 claims. Materials received by the Office are examined to determine whether the deposit contains copyrightable material, whether the claimant is entitled to claim copyright, and whether there has been compliance with the U.S. copyright laws and Office regulations.

Backlog Reduction Effort

The Office worked diligently to improve the timeliness of its registrations by reducing a backlog of claims on hand. In February 2001, the Examining Division implemented a major backlog reduction effort. The goal of this effort was to reduce the processing time for a copyright registration from receipt of the application to issuance of a certificate and to reduce the amount of unexamined claims on hand to four weeks of receipts by the end of the calendar year.

To achieve these goals, the Division set new weekly production targets for copyright examiners. By the end of the fiscal year, the number of unexamined claims on hand in the Division had dropped substantially and registration processing time had improved significantly. In most parts of the Division, interim production targets were met or exceeded, and the effort was clearly on track for meeting the final goal by the end of the 2001 calendar year. When the backlog reduction effort began in February 2001, the Division had 185,380 unexamined claims on hand. At the end of the fiscal year, September 30, this number was reduced to 81,087.



Another key to improving the management of the workload of the Division was to obtain more accurate statistics on production. To achieve this, a new automated statistical database system, the Examining Production System (EPS), was implemented. Using this new system, each examiner and technician daily logs individual claims worked.

Copyright Office Electronic Registration, Recordation and Deposit System (CORDS)

During Fiscal Year 2001, more than 21,000 full electronic claims in literary, textual, and musical works were processed through CORDS. ProQuest Information and Learning Company continued to submit electronically approximately 500 claims per week for university dissertations. The other major source of CORDS claims was the Harry Fox Agency, which submitted approximately 50 claims per week for musical works on behalf of several music publishers.

[Developments on CORDS and the Office's overall Information Technology strategy are contained in the Information Technology portion in the Management section of this report.]

Renewals

Under the 1909 copyright law, works copyrighted in the United States before January 1, 1978, were subject to a renewal system in which the term of copyright was divided into two terms — the first term of 28 years and a second term of 47 years if renewed in the last year of the first term. In 1992, Congress amended the copyright law to make renewal automatic for works originally copyrighted from January 1, 1964, through December 31, 1977, and to make renewal registration for such works optional. The 1992 amendment also contained several incentives to encourage owners to register their renewal claims.

The Office registered 19,752 renewals in FY 2001.

Copyright Office Electronic Registration, Recordation and Deposit System (CORDS)

CORDS is the Copyright Office's automated system to receive and process digital applications and digital deposits of copyrighted works for electronic registration via the Internet from a limited number of cooperating partners. Through CORDS, copyright applications can be filed electronically by sending applications and deposits in digital form. The CORDS system facilitates full electronic processing, both initial preparation by the applicants on the "front end" and completely automated processing on the "back end" by the Copyright Office.

Copyright-Related Registrations

Mask Works

Mask works registered this fiscal year totaled 558. One mask work claim was refused based on lack of eligibility because the citizenship/domicile of the author and the place of first exploitation were solely Taiwan, which is not a party to a U.S. treaty affording protection to mask works. The applicant appealed on the basis of a 1948 treaty on industrial property and on the basis of Taiwan's current Integrated Circuit Layout Protection Act, which mirrors the U.S. Semiconductor Chip Protection Act in many respects, one of which is reciprocity. After considering the applicant's arguments, the Office confirmed the refusal of registration. Under U.S. law, the protection of mask works comes under a *sui generis* category, not under copyright. Because the eligibility provisions of the U.S. Semiconductor Chip Protection Act were not met, the Office concluded that the work was not eligible for protection in the United States.

Mask Works Protections

Under the Semiconductor Chip Protection Act of 1984, federal statutory protection was provided for mask works fixed in semiconductor chip products. Protection of a mask work terminates if application for registration of a claim of protection is not made within two years after the date on which the mask work is first commercially exploited anywhere in the world.

Mask works are defined in the Act as: a series of related images, however fixed or encoded (1) having or representing the predetermined three-dimensional pattern of metallic, insulating, or semiconductor material present or removed from the layers of a semiconductor chip product; and (2) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

Vessel Hulls

The Vessel Hull Design Protection Act was signed into law on October 28, 1998, as part of the Digital Millennium Copyright Act (DMCA). This law grants an owner of an original vessel hull design certain exclusive rights, provided that application for registration of the design with the Copyright Office is made within two years of the design being made public. Vessel hull deposit material may consist of either drawings or photographs of the design.

The Office registered 48 vessel hull designs this fiscal year.

Appeals of Denials of Registration

Applicants whose claims for registration are rejected can appeal such decisions. The Examining Division began keeping statistics on first appeals to rejections in January 2001. From January 2001 through September 2001, the Division handled 133 first appeals. Thirty-eight initial rejections — or 28 percent — were reversed.

The Copyright Office Board of Appeals, which considers second appeals, met six times and heard 15 appeals, involving 39 works. During the fiscal year, the Board issued decisional letters in response to nine second appeals, covering 26 works plus two collections, registered four works and one collection, and upheld the refusal to register 22 works and one collection.



Cataloging

Title 17 U.S.C. §705 requires the Register of Copyrights to provide and keep records of all deposits, registrations, recordations, and other copyright-related matters, and to prepare indexes of all records.

The Cataloging Division records a bibliographic description and the copyright facts of all works registered in the Copyright Office, including documents.

The Cataloging Division received 595,224 registrations in FY 2001 and created cataloging records for 548,458, including 25,673 submitted through CORDS.

The division also cataloged claims for vessel hulls and mask works and processed online service providers' agent designations. By the end of the fiscal year, 48 vessel hull design registrations and three distinctive ID submissions (logos) had been received and scanned, and 744 interim designations of agent had been posted to the Copyright Office website.



RECORDATION

Documents pertaining to a copyright, a mask work, or a vessel hull design can be recorded in the Copyright Office so that a public record is made. Many documents submitted for recordation relate to transfers of ownership. Any or all of the copyright owner's exclusive rights or any subdivision of those rights may be transferred, but the transfer of exclusive rights is not valid unless that transfer is in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent. Recorded documents include contracts between authors and publishers, security interests, terminations, notices of intent, and transfers of ownership.

The Documents Recordation Section received 15,369 documents for recordation and cleared 15,242 covering over 300,000 titles or works.

To improve the processing of documents, a project was begun to produce additional manuals on document practices, prepare Frequently Asked Questions to be posted on the website, prepare a fact sheet on recordation fees, revise public information about recordation in the circulars, and create guide letters and other helpful informational tools. Policy issues to improve document processing were considered, some of which will be resolved next year. Others will await implementation of the Office's business process reengineering effort.



MANDATORY DEPOSIT

The mandatory deposit provision of the copyright law provides that the Copyright Office is entitled to receive copies of every copyrightable work published in the United States. Section 704(b) of the Copyright Act states that these published deposits copies “are available to the Library of Congress for its collections, or for the exchange or transfer to any other library.” The Copyright Acquisitions Division (CAD) uses the mandatory deposit requirement, 17 U.S.C. §407, as well as Copyright Office regulations to acquire works needed for the collections of the Library of Congress. The copyright statute authorizes the Register of Copyrights to issue demands for the required copies anytime after publication. The Division encourages copyright owners to deposit or register works regularly and voluntarily and as soon as possible after publication.

During FY 2001 the Copyright Office transferred to the Library a total of 278,035 copies of works received from copyright owners under the mandatory deposit provisions of the Copyright Act, with an estimated value of \$4,919,356. CAD made demands for 3,439 titles based on recommendations by CAD librarians, LC recommending officers, and congressional requests.



STATUTORY LICENSES AND OBLIGATIONS, AND THE CARP SYSTEM

The Copyright Office administers the statutory licenses and obligations contained in title 17 U.S.C. The Licensing Division collects royalty fees from cable operators for retransmitting television and radio broadcasts, from satellite carriers for retransmitting “superstation” and network signals, and from importers and manufacturers of digital audio recording products. The Division deducts its full operating costs from the royalty fees and invests the balance in interest-bearing securities with the U.S. Treasury for later distribution to copyright owners.

Royalty Fee Distributions

The Copyright Office distributes royalties collected under sections 111, 119 and chapter 10 of title 17 U.S.C.

In FY 2001, the following distributions were made:

- On October 26, 2000, \$239,111,006 was distributed. This included 75 per cent of 1998 cable royalties and 75 per cent of 1996–1998 satellite carrier funds.
- On March 15, 2001, a further distribution of satellite carrier funds totaling \$21,091,427 was made. Certain amounts (reserves) for the 1996, 1997, and 1998 funds were not paid up but held to cover costs and any amount that may be in controversy.
- On June 28, 2001, \$600,000 of 1997 cable royalties, plus \$35,471 in interest, were distributed.
- On June 14, 2001, a full distribution of the 2000 Digital Audio Recording Technology (DART) Sound Recording Fund was made, totaling \$3,320,767. Also, a final distribution of the 1995–1999 DART Musical Works Funds was made in the amount of \$592,390.

Financial statements for the 2001 royalty fees available for distribution in the cable and satellite statutory licenses, and in the digital audio recording technology statutory obligation are included in the appendices.



Initial Notice Documents

The Licensing Division continued to process and examine incoming Initial Notice documents filed pursuant to section 114 of the copyright law and posted them on the Office's website. The filing of an Initial Notice is required in order that copyright owners may receive reasonable notice of use of their sound recordings under the statutory license. To date, over 5,000 links to Initial Notices have been posted on the website.

Copyright Arbitration Royalty Panels (CARP)

During Fiscal Year 2001, the Copyright Office was involved with the administration of five CARP proceedings. Three of the five proceedings involved setting rates and terms for the digital performance right in sound recordings license as it pertains to webcasters, 17 U.S.C. §114, and the ephemeral recording license, 17 U.S.C. §112; the digital performance right in sound recordings license as it pertains to preexisting subscription services and preexisting satellite digital audio radio services, 17 U.S.C. §114; and the digital performance in sound recordings license as it pertains to new subscription services, 17 U.S.C. §114. The other two proceedings involve the distribution of royalty fees collected in accordance with the Audio Home Recording Act of 1992 (AHRA), 17 U.S.C. chapter 10, and the cable statutory license, 17 U.S.C. §111.

Copyright Arbitration Royalty Panel (CARP)

A CARP makes determinations about distribution of royalties collected by the Licensing Division for the cable and satellite licenses, and the digital audio recording devices and media obligation. They also set and adjust royalty rates and set terms and conditions of some of the statutory licenses. A CARP panel consists of two arbitrators selected by the Librarian of Congress upon the recommendation of the Register of Copyrights, with a third, who is chairperson, selected by the first two. The first CARP proceeding took place in 1996.

Rate adjustments and royalty distribution proceedings under CARPs are divided into two essential phases. The first is the 45-day pre-controversy discovery period during which the parties engage in a pre-CARP motions practice and exchange their documentation and evidence in support of their cases, in preparation for the hearings before a CARP.

The second phase is the proceeding before a CARP itself, including the presentation of evidence through hearings and submission of proposed findings by all of the parties. CARPs have 180 days to conduct a proceeding, including receiving evidence and submitting the final written decision to the Register of Copyrights. Within 60 days of receipt of the report, the Librarian of Congress, on the recommendation of the Register of Copyrights, must either accept or reject the panel's determination. If the Librarian rejects the CARP's decision, he has 30 additional days in which to substitute his own determination.



Rate Setting and Adjustments

The Office has been administering a rate setting proceeding to establish rates and terms for the public performance of sound recordings by means of eligible nonsubscription transmissions (webcasts) (17 U.S.C. §114 license as amended by the Digital Millennium Copyright Act) and the making of an ephemeral recording in furtherance of the permitted public performance of the sound recording (17 U.S.C. §112 license). The Office announced a six-month voluntary negotiation period associated with these licenses for the period October 28, 1998, to December 31, 2000. The voluntary negotiation period concluded with no proposed settlement being filed with the Office.

Subsequently, the Recording Industry Association of America (RIAA) filed a petition in accordance with 17 U.S.C. §112(e)(5) and §114(f)(2)(B) to convene a CARP for the purpose of setting rates and terms for these licenses. Consequently, the Office requested the filing of notices of intent to participate in the proceeding and set the schedule for the 45-day precontroversy discovery period on September 27, 1999. On December 22, 1999, at the request of the parties, the Office vacated the schedule announced in the *Federal Register* in order to allow more time to try to negotiate a settlement.

During the pendency of the proceeding, the Library published a notice, in accordance with 17 U.S.C. §112(e)(6) and §114(f)(2)(C)(i)(II), initiating the voluntary negotiation period for the purpose of establishing rates and terms for the two licenses for the period 2001 and 2002. The RIAA again filed a petition to convene a CARP to set these rates, as no settlements were reached.

Prior to the establishment of a new precontroversy discovery schedule for the 1998–2000 proceeding and the establishment of a precontroversy discovery schedule for the 2001–2002 proceeding, the Library consolidated the two proceedings which would be handled by a single CARP.

After conclusion of the precontroversy discovery period, the Library selected the arbitrators to serve on the CARP, initiated the 180-day period, and announced the schedule for the proceeding. The proceeding progressed on schedule, and the testimony on the direct cases of the parties was completed. The testimony on the rebuttal phase of the case is scheduled to begin early next fiscal year.



The Office initiated a rate adjustment proceeding to establish rates and terms for the public performance of copyrighted sound recordings by preexisting subscription services and preexisting satellite digital audio services. The Office announced the initiation of the six-month voluntary negotiation period, which began on January 9, 2001. The voluntary negotiation period ended with no proposed settlement. Subsequently, two petitions to convene a CARP were filed, one by the RIAA, and a joint petition by XM Satellite Radio and Sirius Satellite Radio. Notices of intent to participate in a CARP proceeding will be filed in Fiscal Year 2002.

The Office initiated another rate proceeding to establish the rates and terms for the public performance of sound recordings by new subscription services. The Office announced the initiation of the six-month voluntary negotiation period, which began on February 12, 2001. The voluntary negotiation period ended with no proposed settlement. The time period in which parties with a significant interest can file with the Office a petition to convene a CARP ends in October 2001.

Distribution Proceedings

The Office also administered two CARP distribution proceedings: the distribution of 1995–1998 royalties collected for the distribution of digital audio recording technology; and the distribution of 1993–1997 cable royalties.

The Office resolved the controversies surrounding the distribution of the 1995–1998 royalties collected for the distribution of digital audio recording technology. The remaining controversies existed within the Musical Works Fund for these years. The 180-day arbitration period began on April 10, 2000. Eight parties appeared before the CARP. The arbitrators met with the parties on June 19, 2000, in order to set the schedule for the proceeding. The Panel ruled that they would decide the proceeding on the basis of the written pleadings. The parties filed their proposed findings of fact and conclusions of law and their reply findings. The Panel issued its report to the Librarian of Congress on November 9, 2000. After considering the petitions to modify the Panel's report and upon the recommendation of the Register of Copyrights, the Librarian adopted the CARP's determination on February 7, 2001.

The other distribution proceeding was to resolve the Phase II controversies in the Program Supplier category in the distribution of the 1993–1997 cable royalties. Settlement was reached by all parties in this category except for the Program Suppliers, represented by the Motion Picture Association of America (MPAA), and the Independent Producers Group (IPG), who had a controversy with respect to the distribution of the 1997 motion picture and syndicated programming funds.



After the filing of direct cases and the conclusion of the precontroversy discovery period, the 180-day arbitration period was initiated on October 17, 2000. Hearings were held over the next 180 days, and the Panel filed its report with the Librarian of Congress on April 16, 2001. On June 5, 2001, after review of the Panel's report and the petitions to modify the report on the recommendation of the Register, the Librarian issued an order rejecting the Panel's decision and remanding the case to the Panel for modification of its decision. In the June 5 Order, the Librarian stated that the Panel acted arbitrarily in three ways: 1) the Panel did not follow the decisional guidelines and intent of an order issued earlier in the proceeding regarding dismissal of any claimants listed in IPG's written direct case who did not have a written representation agreement with Worldwide Subsidy Group in place on or before July 31, 1998; 2) the Panel arbitrarily included two programs in IPG's award when IPG did not introduce evidence as to the value of the programs; and 3) the Panel did not provide any explanation of the methodology or analysis it used to arrive at the distribution percentages set forth in the report. On June 20, 2001, the Panel submitted its modified decision to the Librarian, and the parties filed their petitions to modify the revised report. At the end of the fiscal year, the Register was reviewing the Panel's modified report and the parties' petitions. The Librarian will issue his decision in Fiscal Year 2002.

Claims Filed for Royalty Fees

The Office received and processed claims from copyright owners who are entitled to receive royalty fees generated from the use of their copyrighted works during 2000 under the terms of the cable, satellite, and Digital Audio Recording Technology (DART) statutory licenses. In January and February of 2001, the Office received 33 claims for DART royalty fees. In July 2001, it received 616 claims for cable royalties and 217 claims for satellite royalties. Distribution proceedings will begin for these royalty funds after the Office ascertains whether a controversy exists concerning the distribution of the funds among the claimants.

[Regulations related to statutory licenses are listed in the Regulatory Activities, Policy Assistance, and Litigation section of this report.]





The Copyright

Office is the primary source in the U.S. government for legal and technical advice on copyright matters. It assists the Congress, executive branch agencies, and the judiciary on copyright and related issues.

Regulatory Activities, Policy Assistance, and Litigation

COPYRIGHT OFFICE REGULATIONS



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egulations issued during FY 2001 included the following:

SECTION 1201 RULEMAKING

Pursuant to 17 U.S.C. §1201 of the Digital Millennium Copyright Act (DMCA), in October 2000 the Copyright Office issued its rulemaking to determine whether any particular classes of works would be exempt from the general prohibition on the conduct of circumvention of technological protection measures used to protect access to copyrighted works. After an exhaustive review and analysis of the comments, reply comments, post-hearing comments, hearing testimony, and consultation with the National Telecommunications and Information Agency of the Department of Commerce, the Register recommended, and the Librarian of Congress approved, two exemptions for: (1) compilations consisting of lists of websites blocked by filtering software applications; and (2) literary works, including computer programs and databases, protected by access control mechanisms that fail to permit access because of malfunction, damage, or obsolescence. The Office posted the entire record of the rulemaking on its website. This regulation concluded the first of the reviews mandated by Congress in the DMCA and covers the period of October 28, 2000, through October 27, 2003. Under the law, the Office must undertake this review every three years.

GROUP REGISTRATION OF PHOTOGRAPHS

On August 16, 2001, the Office issued final regulations to establish a new procedure for group registration of published photographs, resolving a lengthy and controversial rulemaking proceeding designed to address complaints photographers had raised with the Office and Congress about the registration process. The Office's goals were to facilitate the registration process for photographers who want to register their published photographs, while at the same time increasing the accuracy of the public record.



The new group registration procedures permit registration of an unlimited number of photographs published within the same calendar year on one application with one fee, provided the photographs were all taken by the same photographer and that the copyright claimant is the same for all. This new rule expands on the formats permitted as deposit copies accompanying applications for registration and also liberalizes the deposit requirements for unpublished photographs registered as an unpublished collection. Although the Library of Congress does not rely on deposits submitted for registration to sustain its collection of photographs, the regulations identify acceptable formats in terms of the Library's preference.

Another feature of the regulation designed to make registration easier is the elimination of the requirement of a specific date of publication for each photograph, provided that each photograph within the group was first published within three months before the date on which an application is received by the Office. This regulation has made it easier for photographers to register their works, which ultimately results in a better public record of copyrighted photographs.

NOTICES OF TERMINATION OF TRANSFERS AND LICENSES COVERING THE EXTENDED RENEWAL TERM

The Office published a proposed modification to its regulation governing notices of termination of transfers and licenses covering the extended renewal term to include changes introduced by the Sonny Bono Copyright Term Extension Act (CTEA). The original regulation was limited to notices of termination made under 17 U.S.C. §304(c) regarding the additional 19 years added to the extended renewal term by the 1976 Copyright Revision Bill. The CTEA added 20 years to the extended renewal term, and added 17 U.S.C. §304(d), creating a new termination right covering the additional 20-year period. The proposed new regulation would establish procedures for terminating under either 17 U.S.C. §304(c) or §304(d). While the requirements for notices of termination under either section were similar, the Office proposed that notices issued under 17 U.S.C. §304(d) contain a reference to 17 U.S.C. §304(c) and affirmatively state that the rights being terminated were not the subject of a previous termination. Comments were due by June 18, 2001.



NOTIFICATION TO REGISTER OF COURT ACTIONS

Before a copyright owner or the author of a U.S. work can bring an action for copyright infringement, he or she must have a certificate of registration or a refusal to register from the U.S. Copyright Office. When registration is refused, the applicant is entitled to institute an action for infringement if he or she has served a notice of the action, with a copy of the complaint on the Register in accordance with 17 U.S.C. §411(a). In cases where registration has been refused, the Register of Copyrights has the option to become a party to the action with respect to the issue of registrability of the copyright claim. In such cases, the Register has 60 days to enter an appearance after service of the notice.

In order for the Register to make a determination whether to intervene, timely service is critical. In 1994 the Office published an address where such notices could be served. Thereafter, some parties failed to use the proper address, resulting in delays in notice to the Office. Consequently, the Office published a final rule establishing that proper service would either be first class mail to a designated address, or by hand delivery to the General Counsel of the Copyright Office. The rule also provides an address for service of a second copy to the U.S. Department of Justice.

TECHNICAL AND HOUSEKEEPING AMENDMENTS

The Office amended its regulations to make them consistent with the term extension provisions enacted in the Sonny Bono Copyright Term Extension Act. In the course of its annual housekeeping review, it also updated addresses given to the public, eliminated regulations no longer necessary because of changes in the law, and corrected errors.

Statutory Licensing Regulations

During Fiscal Year 2001, the following regulations relating to statutory licenses were issued:

COST OF LIVING ADJUSTMENT FOR PERFORMANCE OF MUSICAL COMPOSITIONS BY COLLEGES AND UNIVERSITIES

Each year, the Office adjusts the rates for the public performance of musical compositions in the ASCAP, BMI, and SESAC repertories by public broadcasting entities licensed to colleges and universities to reflect the change in the Consumer Price Index. On December 1, 2000, the Office published the rates, adjusting for a 3.4 per cent cost of living increase that went into effect January 1, 2001.



DEFINITION OF A SERVICE FOR THE PUBLIC PERFORMANCE OF SOUND RECORDINGS

The RIAA filed a petition with the Office requesting a rulemaking to determine the scope of the definition of a “service” under 17 U.S.C. §114 of the Copyright Act, which grants the copyright owners of sound recordings a limited digital performance right. The Office conducted the rulemaking and issued its final rule amending the regulatory definition of a “service” for purposes of the statutory license under 17 U.S.C. §114 to clarify that broadcasters who transmit their over-the-air radio signal over the Internet are not exempt from copyright liability under 17 U.S.C. §114 (d)(1)(A). The Office determined that to exempt such transmissions from copyright liability under the statutory license would thwart Congress’s intent in enacting the Digital Performance Right in Sound Recordings Act of 1995.

DEFINITION OF AN INTERACTIVE SERVICE FOR THE PUBLIC PERFORMANCE OF SOUND RECORDINGS

The Digital Media Association (DiMA) requested that the Office interpret the definition of an “interactive service” in 17 U.S.C. §114 of the Copyright Act to exclude webcasters of recorded music who allow some degree of consumer influence on programming decisions. The Office sought public comment on how to proceed with DiMA’s petition and whether a rulemaking proceeding was necessary or appropriate. After reviewing the public comments, the Office determined that DiMA did not present a persuasive case that a rulemaking on this issue was necessary, feasible or desirable, and thus denied its petition for rulemaking.

MECHANICAL AND DIGITAL PHONORECORD DELIVERY COMPULSORY LICENSE

The Office issued a notice of inquiry regarding a petition for rulemaking received from the RIAA. RIAA requested that the Office resolve, through a rulemaking proceeding, the issue of what types of digital transmissions of prerecorded music are general digital phonorecord deliveries (DPDs) and what types are incidental DPDs. The RIAA petition focuses on two types of digital music deliveries: On Demand Streams and Limited Downloads. At the end of the fiscal year, the Office was considering the comments filed in response to the notice of inquiry.

CABLE AND SATELLITE STATUTORY LICENSES

The Office conducted a rulemaking proceeding to clarify the requirements for the submission of claims for royalties under the cable statutory license, 17 U.S.C. §111, and the satellite statutory license, 17 U.S.C. §119. The Office decided to reconsider the question of who may file a cable or satellite claim and under what circumstances a joint claim may be filed. The necessity for the rulemaking resulted from the discovery of certain reporting problems in the claim-filing process that came to light in a recent cable distribution proceeding. After consideration of



public comments, the Office issued a final regulation requiring that each claim filed must identify the copyright owner and that a party who files a joint claim on behalf of multiple copyright owners must list the name and address of each copyright owner to the joint claim.

DETERMINATION OF REASONABLE RATES AND TERMS FOR THE DIGITAL PERFORMANCE OF SOUND RECORDINGS

The Office issued a notice of proposed rulemaking requesting comment on proposed regulations that will govern the RIAA collective when it functions as the designated agent receiving royalty payments and statements of accounts from nonexempt, subscription digital transmission services which make digital transmissions of sound recordings under the provisions of 17 U.S.C §114 of the Copyright Act. On May 8, 1998, the Librarian of Congress issued a final rule setting the rates and terms for the 17 U.S.C. §114 license for preexisting subscription services. The RIAA appealed the Librarian's decision to the United States Court of Appeal for the District of Columbia Circuit. The court upheld the rate set by the Librarian but remanded for further consideration certain terms imposed on RIAA. Upon remand, the RIAA filed a petition to establish terms governing the RIAA collective. Since none of the other parties to the rate adjustment proceeding objected to the petition, the Office published the notice of proposed rulemaking to seek comment on the regulations proposed by RIAA. The Office extended the period to file comments to the proposed regulations to next fiscal year.

COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS, INCLUDING DIGITAL PHONORECORD DELIVERIES

The Office issued a notice of proposed rulemaking in order to improve the efficiencies associated with the service and filing of a Notice of Intention to Use the 17 U.S.C. §115 license. This section permits the use of a nondramatic musical work, including the distribution of a phonorecord by means of a digital phonorecord delivery, without the consent of the copyright owner if certain conditions are met and royalties are paid. One of the conditions is that the person intending to use the 17 U.S.C. §115 license must provide notice to the copyright owner of a musical work of his or her intent to use the copyright owner's work under the statutory license. The notice of proposed rulemaking sought comments on proposed amendments to the regulations governing the content and service on copyright owners of such notices of intent to use the license. At the end of the fiscal year, the Office was considering the comments received in response to the notice of proposed rulemaking.

[Docket numbers and dates of *Federal Register* documents issued during Fiscal Year 2001 are listed in an appendix of this Report.]



REPORTS AND LEGISLATION

The Copyright Office provides expert assistance to Congress on copyright matters by advising Congress on proposed changes in U.S. copyright law; analyzing and assisting in the drafting of copyright legislation and legislative reports; and undertaking studies on current issues for Congress. Congressional action on copyright legislation during this fiscal year included the following:

Digital Millennium Copyright Act (DMCA) Section 104 Report

In August 2001, the Register delivered to Congress the Report required under section 104 of the DMCA.

The Office’s mandate in this study was to evaluate “the effects of the amendments made by [title 1 of the DMCA] and the development of electronic commerce and associated technology on the operation of sections 109 and 117 of title 17 U.S.C.; and the relationship between existing and emergent technology and the operation of sections 109 and 117...”

The Report was the product of two rounds of written comments from the public, a day-long public hearing, and extensive deliberations by the Register in conjunction with the Policy and International Affairs (PIA) staff and the General Counsel’s staff.

The Report focused specifically on three proposals that were put forward during consultations with the public: creation of a “digital first sale doctrine”; creation of an exemption for the making of certain temporary incidental copies; and the expansion of the archival copying exemption for computer programs in section 117 of title 17 U.S.C.

Digital Millennium Copyright Act (DMCA)

The DMCA, (Public Law 105-304 (1998)), was enacted into law on October 28, 1998. This Act added a new Chapter 12 to title 17 of the U.S. code which among other things, prohibits circumvention of access control technologies employed by copyright owners to protect their works. The DMCA was the foundation of an effort by Congress to implement United States treaty obligations and to move the nation’s copyright law into the digital age. The enactment of the DMCA was only the beginning of an ongoing evaluation by Congress on the relationship between technological change and U.S. copyright law.

Section 104 of the DMCA requires the Register of Copyrights and the Assistant Secretary for Commerce for Communications and Information jointly to evaluate (1) the effects of title 1 of the DMCA and the development of electronic commerce and associated technology on the operation of sections 109 (first sale doctrine) and 117 (exemption allowing owners of copies of computer programs to reproduce and adapt them for use on a computer), and (2) the relationship between existing emergent technology and the operation of those sections.



In the Report, the Register declined to endorse recommendations by some of the public commenters to expand the first sale doctrine into a “digital first sale doctrine” that would permit the owner of a digital copy of a work to transmit the work to another person, provided the first digital copy was deleted. Although it was argued that transmitting and deleting a work in digital form is just the same as disposing of a book, the Report identifies a number of significant differences that warrant the different treatment currently accorded to these activities under the law. Even assuming that the deletion step in “forward and delete” proposals for a digital first sale doctrine could be enforced — which the Register found unlikely — a secondary market in downloads of works would have a far greater impact on the legitimate interests of copyright holders than the sale of used books. In short, concerns about likely harm to authors and publishers were more compelling than speculative benefits to the general public of a digital first sale doctrine.

Regarding temporary incidental copies, the specific problem that was brought to the attention of the Office was the demands made by music publishers for royalties based on the temporary buffer copy of a portion of a sound file that is made in computer memory while decoding certain music streams on the Internet. The Report concluded that while these buffer copies are reproductions under the Copyright Act, they should not give rise to liability when they are made in order to carry out a licensed performance of the music. The Report went on to recommend that, although the fair use doctrine would apply to many — if not most — buffer copies made during a licensed stream, the law should be amended to preclude liability in these circumstances.

The final subject discussed in the Report was the archival exemption under section 117. It was pointed out during the Copyright Office hearing that section 117 is out of step with the way that computer users back up their systems. The Office agreed with this assessment and recommended that the law be amended.

Hearings on the Report had been scheduled in the House Subcommittee on Courts, the Internet, and Intellectual Property in September and October 2001, but were postponed until later in the year as a result of the events of September 11, 2001.



Distance Education

S. 487, the Technology, Education and Copyright Harmonization (TEACH) Act, was introduced in the Senate on March 7, 2001, to promote digital distance education and implement the recommendations made in the Register's report to Congress on Distance Education in May 1999. The Register testified before the Senate Committee on the Judiciary on March 13, 2001, along with representatives of copyright owners and educational institutions. In her testimony, the Register said “[p]art of the challenge for this Office in formulating recommendations addressing digital distance education was to remove technologically obsolete legal provisions as an impediment to carrying forward the distance education activities sanctioned by Congress in 1976 into the twenty-first century, without killing a nascent and potentially important market for right holders. We concluded that this could best be accomplished by using the policy line drawn by Congress in 1976 as the point of reference for a technological updating of section 110(2) that would take account of the nature and capabilities of digital networks.”

After the Senate Judiciary Committee hearing on the bill, the Committee asked the Register to facilitate negotiations between the affected parties in order to craft legislation that all the affected parties could support. The Office convened discussions among the parties to obtain consensus on outstanding issues. Over a period of several weeks, representatives of copyright owners, nonprofit educational institutions and nonprofit libraries met at the Office to negotiate these issues.

On June 7, 2001, a bill representing the outcome of those negotiations was passed by the full Senate. The Register testified before the House of Representatives Subcommittee on Courts, the Internet, and Intellectual Property on S. 487 on June 27, 2001, expressing support for the bill as passed by the Senate. On July 11, 2001, the Subcommittee moved the bill forward and referred it to the full Judiciary Committee without amendment.

The Technology, Education and Copyright Harmonization (TEACH) Act

would update sections 110(2) and 112 of the Copyright Act to allow the same activities to take place using digital delivery mechanisms that were permitted under the policy balance that was struck by Congress when the law was enacted in 1976, while introducing safeguards to minimize the additional risks to copyright owners that are inherent in exploiting works in a digital format.

Section 403 of the DMCA directed the Copyright Office to make recommendations to Congress on how to promote distance education through digital technologies. The Office was specifically directed to consider the following issues: 1) the need for a new exemption; 2) the categories of works to be included in any exemption; 3) appropriate quantitative limitations on the portions of works that may be used under any exemption; 4) which parties should be eligible for any exemption, which parties should be eligible recipients of distance education material under any exemption; 5) the extent to which use of technological protections measures should be mandated as a condition of eligibility for any exemption; and 6) the extent to which the availability of licenses should be considered in assessing eligibility for any exemption, and other issues as appropriate.

The bill would, *inter alia*, expand the coverage of rights in section 110(2) to allow the delivery of authorized performances and displays through digital technologies, expand the categories of works exempted from the performance right but limit the amount that may be used in these additional categories to “reasonable and limited portions,” and emphasize the concept of “mediated instruction” to ensure that the exemption is limited to what is, as much as possible, equivalent to a live classroom setting.

The Work Made for Hire and Copyright Corrections Act of 2000

The Work Made for Hire and Copyright Corrections Act of 2000, which was enacted on October 27, 2000, amended the definition of “work made for hire” to restore it to the way it was before. This legislation also made noncontroversial corrections to the copyright law, removed expired sections, and clarified miscellaneous provisions governing fees and record keeping procedures.

Sovereign Immunity

The Office advised congressional staff on legislative drafting, monitored case law developments, and actively participated in discussions with congressional staff, the Patent and Trademark Office, and affected private parties regarding the issue of whether or not States should be held accountable for infringement.

Oversight Hearing

On May 2, 2001, in an oversight hearing, the Register of Copyrights provided testimony to the House of Representatives Subcommittee on Courts, the Internet, and Intellectual Property on two major Copyright Office initiatives, reassessment and planning regarding information technology (IT) and the business process reengineering (BPR) effort.

[Additional information and topics covered at the oversight hearing are contained in the Management section of this report.]



INTERNATIONAL ACTIVITIES



Protection against unauthorized use of a copyrighted work in a country depends primarily on the national laws of that country. Most countries offer protection to foreign works under the aegis of international copyright treaties and conventions.

The Office continued to work in tandem with executive branch agencies on international matters, particularly with the United States Trade Representative, the Patent and Trademark Office, and the Departments of State and Commerce.

International Copyright Relations

A map of international copyright treaties and conventions is included in the Appendices and Tables portion of this report.

The Policy and International Affairs (PIA) staff participated in numerous multilateral negotiations in FY 2001. The Register and a PIA staff attorney were members of the U.S. delegation to the December 2000 Diplomatic Conference held in Geneva, Switzerland under the auspices of the World Intellectual Property Organization (WIPO) to seek international protection for audiovisual performers, principally television and screen actors. The Copyright Office also assisted with preparations for the meetings of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore.

The Office participated, as well, as part of the U.S. delegation, in meetings of the WIPO Standing Committee on Copyright and Related Rights, which considered issues relating to possible treaties on the protection of broadcasting organizations and producers of non-copyrightable databases.

PIA staff were part of the U.S. delegation to the World Trade Organization Council on TRIPS. The TRIPS Council is responsible for monitoring the operation of the TRIPS Agreement (the intellectual property component of the WTO agreements), and, in particular, how members comply with their obligations under it. The Council is in the process of reviewing the intellectual property laws of developing countries for compliance with TRIPS obligations.



In June 2001, PIA staff also participated on the U.S. delegation to a diplomatic conference, under the auspices of the Hague Conference on Private International Law, which met to consider a draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters. As part of the U.S. government's process of public consultation in preparation for the diplomatic conference, the Copyright Office sponsored a day-long roundtable discussion which focused upon intellectual property aspects of the draft Convention. The Convention would create harmonized rules of jurisdiction in international civil cases among its parties, as well as common rules for recognizing and enforcing the resulting judgments in other member countries.

A PIA staff member was part of the U.S. delegation to the Intergovernmental Copyright Committee meeting which was held in June 2001 at the UNESCO headquarters in Paris. The main questions under the Committee's consideration were to (1) determine copyright liability of service and access providers in the context of electronic transmissions; (2) examine the experience in settling copyright conflicts in the digital environment; and (3) consider various practical aspects of the artists resale right (*droit de suite*).

Office staff were members of the U.S. delegation to the Intellectual Property Negotiating Group of the Free Trade Area of the Americas in October 2000, and were instrumental in preparations, including the drafting of U.S. treaty proposals. The goal of the negotiating group is to prepare and finalize an IP chapter for a Free Trade Area of the Americas Agreement. The overall agreement is due to be completed by 2005.

PIA staff participated in the drafting and negotiation of the intellectual property provisions of a bilateral Free Trade Agreement with the Kingdom of Jordan. The Office is currently involved in the negotiation of intellectual property chapters of bilateral Free Trade Agreements with Chile and Singapore, including the drafting of proposed text.

The Office also actively participated in numerous additional bilateral negotiations and consultations during the year, including those held with China, Hong Kong, Israel, Japan, Korea, Macau, Malaysia, the Philippines, Russia, Taiwan, and Ukraine, on issues ranging from enforcement to copyright law revision. Staff met on a regular basis with foreign officials and visitors interested in learning about the U.S. copyright system and exchanging information about topics of mutual concern. They completed reviews of draft copyright bills for other countries. The Office additionally provided assistance to the United States Trade Representative in the World Trade Organization (WTO) accession processes for nations such as China and Vanuatu and provided responses regarding U.S. copyright law and policy to the WTO Trade Policy Review queries.



The Copyright Office was represented on the interagency Special 301 Committee which evaluates the adequacy and effectiveness of intellectual property protection and enforcement throughout the world. This annual process, established under U.S. trade law, is one of the tools used by the U.S. government to improve global protection for U.S. authors, inventors, and other holders of intellectual property rights.

The Register participated in a number of symposia and conferences outside the United States, including programs in China and Canada. The Office also participated in symposia and conferences sponsored by WIPO, the United States Information Agency (USIA), the U.S. Agency for International Development (USAID), and the Commerce Department's Commercial Law Development Program. Training on copyright was provided for the State Department's Foreign Service Institute.

The Register led a Copyright Office delegation to China, at the invitation of the National Copyright Administration of China. The delegation discussed China's implementation of its WTO commitments, copyright enforcement, and developments in U.S. copyright law.

In conjunction with WIPO, the Office's International Copyright Institute (ICI) held an International Symposium on the Effect of Technology on Copyright and Related Rights from October 30 – November 3, 2000, in Washington, DC. Seventeen copyright experts and government officials from around the world attended. The ICI is designed to further international understanding and support of strong copyright protection, including the development of effective copyright laws and enforcement overseas.



LITIGATION

Although the Office does not enforce the provisions of title 17, it may be involved in litigation in several ways. It can choose to intervene under section 411(a) in a case where registration has been refused; it may be sued under the Administrative Procedure Act; it may be asked to participate in litigation either by assisting in the preparation of an *amicus curiae* brief in support of a particular position; by assisting the Department of Justice in defending a particular action; or, by bringing a suit under section 407 to compel the deposit of copies of the best edition of a work.

Bonneville v. Peters

In response to a final rule published on December 11, 2000, broadcasters of AM/FM radio stations brought an action against the Register seeking judicial review of the Office's determination that AM/FM broadcast signals transmitted simultaneously over a digital communications network, such as the Internet, were not exempted by 17 U.S.C. §114(d)(1)(A). The Recording Industry Association of America, Inc. (RIAA) intervened as a defendant. The broadcasters claimed that the final rule exceeded the Office's statutory authority, and if within the Office's authority, was arbitrary. The Office and RIAA moved for summary judgment, claiming that the final rule was within the Office's authority and reasonable. The radio station owners cross-moved for summary judgment. The court granted summary judgment, holding that the Office had sufficient statutory authority to issue its final rule; moreover, the court observed that the Office's rule was not just reasonable, but that after full examination of the statute, its legislative history, and congressional intent, the court would have reached the same conclusion as the Office in the absence of its required deference to it. Plaintiffs have appealed.

New York Times v. Tasini

The only copyright case heard by the Supreme Court this term was one where the Court had to grapple with the question of what a provision enacted in 1976 meant in a digital environment. Freelance authors sued the petitioners, who are newspaper publishers and data base owners, for copyright infringement. The authors had given the newspaper and periodical publishers permission to publish their articles but argued that the publishers exceeded the scope of that permission when the publishers and database owners also put or authorized copies of the articles in both CD ROM databases and NEXIS, an online database. The publishers argued that they were permitted to reproduce the articles in the databases under the limited presumptive privilege of in 17 U.S.C. §201(c). The district court had ruled in favor of the publishers and the appellate court in favor of the freelance authors.



The Office participated in discussions with the Justice Department and the Patent and Trademark Office about whether the U.S. government or the Copyright Office should file an *amicus* brief. The Justice Department determined that no government brief should be filed.

Ultimately, the Supreme Court agreed with the Court of Appeals and ruled in favor of the freelance authors finding that the newspaper publishers and database owners exceeded the scope of the limited privilege to reproduce articles published in periodicals when they put or authorize the use of the articles in the databases. The Court left the remedial issues open for initial airing and decision in the District Court.

Universal City Studios, Inc., v. Corley (formerly Universal City Studios, Inc., v. Reimerdes)

The defendant operates and publishes a magazine and website for computer hackers that posted decryption software known as DeCSS for downloading by the public. The computer code was capable of decrypting the Content Scrambling System (CSS) employed as a technological protection measure which protects access to motion pictures embodied in digital versatile disks (DVDs). The defendant's website also established links to several other websites that claimed to offer DeCSS for download. Plaintiffs brought suit under 17 U.S.C. §1201 claiming that the defendant's posting of DeCSS violated the provisions prohibiting the trafficking or distribution of circumvention devices to the public. The district court preliminarily enjoined the defendants from posting the DeCSS software on their Internet website. Following a trial on the merits, the district court held that CSS effectively controls access to copyrighted works within the meaning of 17 U.S.C. §1201(a)(2). Having determined that defendants violated the anti-trafficking provision of 17 U.S.C. §1201(a)(2), the court additionally enjoined the defendant from linking to other websites offering DeCSS. The defendant appealed to the United States Court of Appeals for the Second Circuit arguing, *inter alia*, that 17 U.S.C. §1201 was unconstitutional.

The Office assisted the Department of Justice and the United States Attorney for the Southern District of New York with the Government's intervention defending the constitutionality of the statute. The Second Circuit heard oral arguments in the case, and a decision is pending.

CSU, L.L.C., v. Xerox Corporation

This antitrust suit was brought by a group of independent service organizations against Xerox for its refusal to sell or license copyrighted and patented parts, manuals, and diagnostic software. CSU competed with Xerox in the repair of its copiers and printers. The question presented was whether the unilateral refusal to sell or license intellectual property protected by a



patent or copyright was absolutely immune from a claim of monopolization and attempted monopolization under Section 2 of the Sherman Antitrust Act. The United States Court of Appeals for the Federal Circuit held that in the absence of any indication of illegal tying, fraud on the Patent and Trademark Office, or sham litigation, the patent holder may enforce the statutory right to exclude others from making, using, or selling the claimed invention free from liability under the antitrust laws. In the copyright context, the Federal Circuit agreed with other courts that a valid copyright creates a rebuttable presumption that a refusal to deal is for a legitimate business purpose and that subjective motivation alone is insufficient to rebut this presumption in the absence of evidence that the copyrights were obtained by unlawful means or were used to gain monopoly power beyond the statutory copyright granted by Congress. CSU petitioned the United States Supreme Court for *certiorari*.

The Office participated along with the Patent and Trademark Office in a brief by the Solicitor General that argued against the Court's grant of *certiorari* in this case, arguing that this case was not the appropriate vehicle for consideration of an issue with such broad potential implications. The Supreme Court, without comment, denied *certiorari*.

Pope v. LOC

In *Pope v. Library of Congress*, a *pro se* action filed in the Northern District of California, the plaintiff alleged that the Copyright Office failed to issue a certificate of registration within a designated time period. Search of Copyright Office records revealed no submissions were received from the plaintiff during this time period. The Office, represented by the U.S. Attorney's Office of the Northern District of California, prepared a motion for summary judgement.

Eldred v. Ashcroft (formerly Eldred v. Reno)

Plaintiffs challenged the constitutional validity of the Copyright Term Extension Act of 1998. The Act extended the copyright term for all works, including those still under copyright protection in the United States on the effective date of the Copyright Term Extension Act of 1998. Plaintiffs argued that the extension took works that would have gone into the public domain out of the reach of the public for additional time, unlawfully. The U.S. Court of Appeals for the D.C. Circuit held that the statutory extension of copyright duration was constitutional, since there was no free speech right to exploit copyrighted works and the Copyright Clause preamble did not limit extension of the copyright term. Appellants filed a motion for reconsideration and an en banc hearing. Staff attorneys drafted most of the response to this motion. The court dismissed the motion, and appellants have filed a petition for *certiorari*.



A&M Records, Inc., v. Napster

In this case, the defendant operated a file-trading service that provides a forum for its users to exchange digital files of sound recordings. The plaintiffs sued, claiming that their copyrighted sound recordings had been copied on the defendant's system and that the defendant is vicariously liable and a contributory infringer of the plaintiff's copyrights. The defendant argued, *inter alia*, that section 1008 of the Audio Home Recording Act (AHRA) insulated it from liability in this case. The Office participated in the Department of Justice's filing of an *amicus* brief for the government with the Ninth Circuit Court of Appeals in this case. In this fiscal year, the Ninth Circuit affirmed in part, reversed in part, and remanded the case to the district court. On the particular issue of the applicability of the AHRA to this case addressed in the government's *amicus* brief, the Ninth Circuit agreed that the AHRA does not cover the downloading of MP3 files to computer hard drives.

Southco v. Kanebridge

Parties in this case are manufacturers of nuts, screws, and other hardware. The plaintiff filed a copyright infringement suit, claiming that the defendant's use of its hardware part numbers in advertising and comparison charts infringed the copyright in the part numbers. The district court agreed and issued an injunction against the defendant. The Office assisted the Department of Justice in drafting an *amicus curiae* brief that was submitted to the Third Circuit Court of Appeals. The government's brief argued that the part numbers at issue did not possess sufficient creativity to support copyright protection, that even if they did, the part numbers are analogous to titles and therefore not entitled to protection, and that even if the part numbers are copyrightable, the defendant's proposed use was within permitted fair use. The U.S. Court of Appeals for the Third Circuit has now reversed the district court and held that parts numbers used by a hardware manufacturer to designate various retractable captive-screw assemblies are not protected by copyright.

Peters v. Khayyam Publishing Co.

A settlement was secured in *Peters v. Khayyam Publishing Co.*, an enforcement action relating to mandatory deposit under 17 U.S.C. §407 of the copyright law. The government instituted an action following the publisher's repeated refusal to comply with the law and deposit certain issues of *Advances in Differential Equations*. Under the terms of the settlement agreement, the publisher agreed to comply with the law, deposit the issues which were the subject of the demand, and make timely deposit of future issues. The Library has received the demanded issues.



Schwarz v. United States General Accounting Office, *et al.*

This case involved a suit filed against the Register and more than 20 other defendants regarding rights under the Freedom of Information Act (FOIA). Following the Office's preparation of an affidavit detailing its compliance with the provisions under the FOIA, the attorney from the Department of Justice, representing the Office and all other defendants, secured dismissal of this case.



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CLEMENT (E.)

CLEMENT (E.W.) K-Z

CLEMENT (E.W.) A-J

CLEMENT (A.)

111

Clemens, Samuel L. (Mark Twain)
Innocents Abroad.
Original entry No. 2491 by American
Pub. Co., Hartford, Conn., July 28, 1869.
in Cir. Court for District of Connecticut.
Renewal entry No. 40845 by American Pub. Co.,
July 14, 1897, is renewal for 14 years from July 28, 1897.
 Author

BOOKS

Copyright reserved under act of Mar. 3, 1905, by

BOOK - AUTHORS, 1898-1957
CLEM -- CLEM

Responding to public requests for information and providing clear, accurate information about copyright principles and law is a principal function of the Copyright Office. In Fiscal Year 2001, the Office responded to 339,648 requests for copyright information and the website logged 12.1 million hits.

Public Information and Education



The provision of information on copyright law and its application is a principal function of the Copyright Office. The Office responds to public requests for information and engages in outreach programs to inform the public discussion on copyright issues.

The Public Information Office responded to 138,352 telephone inquiries, 13,932 letter requests, and 12,000 electronic mail requests for information from the public. It also assisted 11,600 members of the public in person, taking in 21,845 registration applications, and 2,164 documents for recordation.

The Copyright Office Website

(www.copyright.gov) is a public service that makes available circulars, announcements, regulations, the copyright law, related material, and all copyright application forms. The website can also be searched for copyright registrations and recorded documents from 1978 to present.

The Copyright Office website continued to play a key role in disseminating information to the copyright community and the general public with 12.1 million hits during the year, a 28 percent increase over the prior year. Numerous additions and enhancements were made to the website throughout the year. The most significant enhancement was the development of a web version of the copyright search function for the public to utilize when searching the online records of the Copyright Office. This made it possible for the public to search the records in a much more user-friendly manner and enabled the use of point and click search functionality. In addition, this new search function does not require the public to have a Telenet connection which many Internet Service Providers no longer provide and thereby greatly increases the number who can have remote access to the online records of the Office.



The Office updated the online version of Circular 92, entitled *Copyright Law of the United States of America and Related Laws Contained in Title 17 of the United States Code*. Updates included all amendments through the end of the second session of the 106th Congress and the Work Made for Hire and Copyright Corrections Act of 2000. This updated version of the copyright law was made available on the website in both text and PDF formats.

In October, the Office established a task group to determine if revisions were needed to the website to better serve the public in providing information via the Internet. As part of this process, a public user survey was conducted on the website during February to determine what changes and additions were desired. Some 6,000 members of the public responded with suggestions for modifications. By the end of the fiscal year, a proposed revision of the website had been developed for implementation in the near future.

The Copyright Office electronically published 28 issues of *NewsNet* during the year and the number of subscribers to this electronic news service rose to 5,121 by the end of the fiscal year, an 18 per cent increase over the prior year.

In response to public requests, the Reference and Bibliography Section searched 29,312 titles and prepared 4,711 search reports. In addition, it received 9,820 telephone calls and assisted 8,744 visitors to the Copyright Card Catalog.

The Certifications and Documents Section produced 7,121 copies of certificates of registration, a 69 per cent increase over the prior year. This increase is attributed to the expedited requests received in October and November as part of the copyright infringement litigation involving a website's use of musical works. During the fiscal year, the section produced 1,309 copies of copyright deposits and 853 certifications of deposits or records.

The Clerical Support Unit responded to 19,114 letter requests, 72,981 telephone requests, and 9,534 e-mail requests from the public for forms and publications. Beginning in April, the public was able to request forms and publications directly via the Copyright Office website.



During the fiscal year, 332,962 deposits were processed for storage at the Deposit Copies Storage Unit in Landover, Maryland, constituting some 7,578 cubic feet. This is a slight increase from the volume processed the previous year. The unit transferred to remote off-site storage facilities 853 cubic feet of records, consisting of unpublished deposits and 1990 correspondence records.

Credit Cards

In May, the Copyright Office began accepting credit cards as payment in the public service areas in the Information and Reference Division to include the Public Information Office, the Certifications and Documents Section, the Records Maintenance Unit, and the Reference and Bibliography Section.

Freedom of Information Act (FOIA)

The Office received 56 requests under the FOIA.





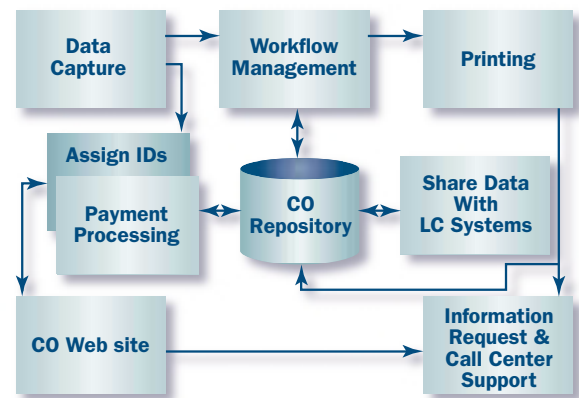
Copyright Office
CPR Team Redesign
Recommendation

Copyright Office
BPR Implementation Plan

The Copyright

Office employs approximately 500 staff. The Fiscal Year 2001 annual budget was more than \$38 million, around \$21 million of which was funded by fees.

Management



B

uilding on last year's planning efforts for two major management initiatives — business process reengineering and information technology — the Office made significant progress in defining new processes and improvements for its core business processes and in chartering a path for a comprehensive information technology strategy.

Business Process Reengineering (BPR)

is aimed at improving our public services. Specific project objectives are to:

- achieve timely public records through a redesigned workflow process that reduces the time needed for registration and recordation;
- achieve more efficient material processing both to and through the Copyright Acquisitions Division;
- achieve optimum response to public requests for or access to copyright information, search reports, and access to or copies of copyright related materials and documents;
- use new technologies to enhance general processing and tracking, as well as for work processes;
- contain costs to maintain current service fees;
- strengthen security and improve control over material; and
- use staff and space efficiently.

Business Process Reengineering (BPR)

In FY 2001, the Copyright Office continued the multi-year Business Process Reengineering (BPR) effort begun in FY 2000. The focus of this effort is to reengineer the Office's principal public services of registering claims, recording documents, acquiring works for the Library of Congress, answering public requests, maintaining records, and accounting.

After the selection of the contracting firm of PricewaterhouseCoopers LLP (PwC) in September 2000 to facilitate the reengineering effort, a Copyright Process Reengineering Team was formed. In addition, a BPR Steering Committee was formed of senior staff of the Copyright Office, representatives from the Library, and both labor organizations, to provide expertise and recommend solutions or actions to the Register.



M A N A G E M E N T

The Copyright Process Reengineering Team, comprised of 12 copyright staff members, facilitated by PwC staff, worked to assess the core business processes including organization, facilities, and technology and bring together a Baseline Current Operations Report which was completed in January 2001. This report was the first of a series of documents to record findings, conclusions, recommendations, and plans to implement processes in the Office. The team identified several high level issues that exist in the current environment. These issues represent areas in which the Office stands to realize the most improvement through the BPR effort. The team also identified the inputs and outputs from the current processes and mapped these processes at a high level. The team used this CO core process information as the baseline from which to plan for the new environment.

From January until April 2001, the team worked to redesign the Office's principal business processes. During this phase of the project, the team addressed current issues and problems with the processes and looked to apply best business practices. New processes were organized around outcomes to ensure that all activities focus on the final output to be produced. The designated new processes are:

- Maintain Accounts
- Answer Request
- Record Document
- Acquire Deposit
- Register Claim
- Receive Mail

The redesign recommendation included the replacement of current labor- and paper-intensive processes with automated systems that encourage the use of electronic submissions. New IT systems will automate the tracking and processing of materials throughout the Office, support the six redesigned processes, integrate services, and distribute and share information across the Copyright Office and with the Library.

A proposed Office organizational structure supported the six redesigned processes by grouping staff into divisions that correspond to the new processes. Because a single division will be responsible for an entire process, this new structure would reinforce accountability for delivery of an end product or service.

The team's redesign recommendations were presented to the BPR Steering Committee at an off-site retreat in April 2001. The Steering Committee supported the recommendations with some modifications which the Office then adopted. The contractor used these recommendations to create a BPR Implementation Plan which was delivered in June.



M A N A G E M E N T

In June, the Office awarded a second contract to PwC to assist with the BPR implementation process. This contract runs through June 2002 and includes plans to define the redesigned processes to an operational level, draft procedures manuals, create a training plan, and develop a reorganization package, including new job roles for the new processes.

As implementation began, implementation teams were formed and process owners identified for four of the six new processes: Receive Mail, Maintain Accounts, Register Claim, and Acquire Deposit. All of the implementation teams are comprised of CO division staff, and at least one LC Library Services representative, representative from the Office's Copyright Automation Group (CAG), and/or the Library's Information Technology Services (ITS). Labor organizations are also represented.

To maximize the benefits of BPR implementation for the Copyright Office and LC Library Services, Joint Issue Groups were planned to address serials processing, labeling, cataloging, selection, and the Library's opening of the National Audio-Visual Conservation Center in Culpeper, Virginia. The groups are comprised of a co-chair and three staff members from each service unit. At the end of the year, the scope of issues for two groups, serials processing and labeling, were in place, and meetings will begin early in calendar year 2002.

A Communications Plan was developed as the first step in a series of actions designed to facilitate communications with the staff about the BPR implementation. The plan focused on ways to keep staff informed about BPR activities and to encourage feedback and input from the staff about these activities. Articles were published for *Copyright Notices* and the Library of Congress *Gazette*, and a monthly *BPR Newsletter*, first published in August. The BPR staff website was redesigned and documents related to the BPR effort were posted.

At the close of the fiscal year, the implementation teams for Receive Mail and Maintain Accounts had completed process definitions and drafted procedures manuals. Teams were formed for the Register Claim and Acquire Deposit processes. Plans were underway to begin the organization redesign process, and discussions had begun to perform a baseline space assessment as a foundation for the necessary redesign of the Office's facilities.



Information Technology

The Copyright Office relies on the collection, processing, storage, and presentation of information to fulfill its duties under 17 U.S.C. Information processing and products are critical in the registration of claims to copyright, the recordation of documents pertaining to copyrighted works, statutory licenses, and the Office's responsibilities as an agency of public record.

The Office currently has more than 56 production systems. For the most part, they have been developed separately and are not supportive of full information sharing and integration. Some rely on hardware and software that is aging and becoming increasingly vulnerable to failure.

This year the Register began a fundamental transformation of the Office's public services from paper and hard-copy based processing to primarily electronic processing. The reasons were two-fold: 1) in order to fully serve its customers, the Office needs to have its services available online to the greatest extent possible, and 2) the new processes developed in the BPR project rely heavily on the use of technology.

Recognizing the need for a concomitant reengineering of IT systems to support the reengineered business processes, the Office began a comprehensive assessment of IT systems and projects. In April 2001, the Register initiated work on the technology component of reengineering by establishing an Information Systems Working Group (ISWG). The driving forces of this IT work were to:

- leverage information technology to increase the efficiency of Copyright Office business practices and the timeliness of service to the public;
- allow for online registration, recordation, and deposit;
- provide user-friendly Internet access to Copyright Office public records and information;
- provide administrative applications that increase Office productivity, including document management;
- support the Office's policy and regulatory work by providing access to current news sources and databases; and
- allow for interoperability with Library of Congress systems so that data can be shared.

The Working Group was charged with the following tasks:

- inventory present systems used in the Copyright Office;
- assess current IT projects and activities;
- recommend an IT management structure;
- prepare an action plan to guide work done during the transition period; and
- prepare a statement of work to obtain contract assistance in defining the complement of information technology needed to support the reengineered business processes.



IT Action Plan for Existing Systems

The Working Group completed an action plan for current Office information systems in July 2001. It looked at the 56 production systems used in the Office and 17 IT related projects and activities. The ISWG recommended continued use of all of the production systems because they were performing needed functions in the present business structure. The group recommended halting three of the development projects because they could be inconsistent with the new business structure. The group also adopted a new IT management structure centered on the establishment of a group to oversee the analysis of IT requirements, IT projects and activities, review and decide upon IT proposals and issues, promote efficient involvement of staff in system planning, and establish an effective IT status reporting mechanism. This group, the Information Technology Oversight Group (ITOG), was established and began its work in August 2001.

Some of the projects recommended for continuation involve strengthening existing systems. These include the following major initiatives:

- The replacement of prototypical components of the electronic registration system (CORDS) with software such as Oracle and Java.
- The migration of the workload management system (COINS) to more reliable and effective hardware and software.
- The redevelopment of the imaging system (CIS) with non-proprietary and more responsive software.

Work continued on these strengthening initiatives throughout 2001, each with a completion date in mid 2002. The work being done is required to ensure continued availability of these critical components of workload processing.

The IT action plan broadens the Office's approach so that electronic receipt and processing becomes the *primary* way to register works. In the future, the Office will encourage applicants to submit works for registration online. Once they are submitted, technology will be used to a much greater extent to process them quickly and ensure a timely public record. In the meantime, the functionality of the current CORDS system will not be expanded, but the system will be strengthened by replacing the prototypical software components with robust software, including the Oracle relational database management system and the Java programming language.

Other continued projects involve more immediate needs such as improvements in online search procedures used by the public and enhancements to the Licensing Division system.



IT Requirements Analysis

On July 26, 2001, the Office formally began the reengineering of its automated systems by issuing a request for quotation for contract assistance to complete an IT requirements analysis. This is the first step in the process of renovating and rebuilding the Office's IT systems so they will support the reengineered business processes and allow the Office to provide more services electronically.

The House and Senate approved an Office request to reprogram funds to undertake the requirements analysis. In September 2001, a contract was awarded to follow in step with the Office's BPR work and define the automated procedures to collect, route, and manage the information that makes up the historical record of a copyrighted work. Addressed in this effort will be electronic and scanned images of applications for copyright registration and transfer and other documents submitted for recordation, more comprehensive fiscal processing including acceptance of credit card payments, electronic routing of records and documents, and effective means to track public service requests. In addition, parts of the Office not included in the business process reengineering study will be looked at and opportunities identified for technology based improvements in those areas.

Coming from the requirements analysis will be two products that will be critical to fully prepare for the new business architecture:

- Functional specifications for system components that will be needed to support the re-engineered business processes including decisions about best hardware and software options and best IT development and operation practices.
- An integrated BPR and IT implementation plan that lays out the events and objectives necessary to put in place the changes in the Office processes, organization, and facilities as well as in technology. The plan will delineate the dependencies between events and will identify the critical path to facilitate management of the overall program.



Oversight Hearing

As mentioned previously in this report, on May 2, 2001, the Register testified before the House Subcommittee on Courts, the Internet, and Intellectual Property at an Oversight Hearing on the Copyright Office. The testimony focused on the Office's BPR and IT initiatives. The Register reported on the Office's request for a modification in its FY 2002 budget to establish an overall strategy for electronic delivery of services before continuing with further development of the CORDS project. The CORDS project will continue at its current level of service and eventually will be incorporated into the overall electronic delivery of services.

Management Planning and Policy Initiatives

Strategic Planning

The Office prepared a new Strategic Plan covering Fiscal Years 2002-2006 that was ready for publication by the end of fiscal 2001. The plan ties the constitutional provisions for copyright to the Copyright Office's mission, functions, goals and objectives, and the strategic initiatives that support the accomplishment of the plan. The strategic plan structure is now the framework for reporting in Annual Reports and other Office documents.

Management Controls

The Management Control Program ensures that Copyright Office programs are carried out in the most effective and economical manner possible, that obligations and costs comply with applicable laws, assets are safeguarded, and revenues are properly accounted for. During FY 2001, the Office conducted Vulnerability Assessments on all 22 management control modules, of which three were low risk and the rest at medium risk. Seven modules were chosen for control reviews.

Business Continuity Plan

The Copyright Office determined during its control review process that it needed to develop a current Business Continuity Plan (BCP). The Office used its earlier Y2K contingency plans as a foundation. A draft BCP was near completion at the end of the fiscal year, given added urgency by the terrorist attacks of September 11, 2001, and the threat of bioterrorism.



Budget

The Copyright Office receives three appropriations from Congress: BASIC, Licensing, and CARP. Total fiscal 2001 Copyright Office budget authority was \$38,438,249 with a full time equivalent (FTE) staff ceiling of 530. The BASIC appropriation (\$32,667,972) funds the majority of the Office's activities. The Licensing budget activities (\$3,250,000) and the CARP budget activities (\$2,519,445) were fully funded from user fees withdrawn from royalty pools.

The total BASIC appropriation derives its funding from two revenue sources: net appropriations from the U.S. Treasury (\$9,167,972 in Fiscal Year 2002) and offsetting collections authority from user fees (\$23,500,000). At the end of the fiscal year, the Office had collected \$21,601,045 in user fees. Any over collection or underspending of collected fees are deposited into a special "No-Year Account" set up by Congress in a 1998 law. The No-Year Account provides the Office with a reserve for operational improvements to meet customer service needs. Access to funds in this account is contingent upon congressional approval through the annual appropriation process. In FY 2001, the Office used \$1,374,607 from the No-Year Account.

Investment income from deposit accounts

In FY 2001, the Receiving and Processing Division continued to invest deposit account holdings in U.S. securities. During the first quarter, \$3,300,000 was invested in three-month Treasury bills. Succeeding investments were slightly lower, reflecting a decrease in deposit account balances over the year. At the end of the fiscal year, \$3,218,000 was allocated for investment for the first quarter of FY 2002. A total of \$158,337 in interest was earned from investments during the fiscal year, an increase of \$14,184, or 10 per cent in earnings over last year.



Security

Marking and Tagging

The Receipts Analysis and Control Center (RACC) continued to take steps toward full-scale marking and tagging of deposits to assure that items are marked as Copyright Office and Library property from the point of entry.

Two additional laser-marking machines arrived in October 2000, permitting marking of deposit copies received in standardized media such as compact disks, and video and audio cassettes.

With the completion of the new material and performance specifications for book anti-theft devices developed jointly by the Library's Preservation Research and Development Division and the Office of Security, the RACC plans to assume responsibility for applying these devices in calendar year 2002.

The Register approved the RACC proposal requesting a review and eventual replacement of the antiquated manual accession stamping operation with an automated accession label process. The major benefits for using automated accession labels are: a sound ergonomic label application process; elimination of risk of injury; smaller labels and more accurate placement; the elimination of ink and the maintenance and replacement of mechanical stamps; and greater efficiencies through new technology.

Reader Registration Program

In April, the Office implemented the Library's Reader Registration Program in five of its public service areas: the Certifications and Documents Section, the Card Catalog room, the Examining Renewals Section, the Records Maintenance Unit, and the Licensing Division Public Records Office. Registered users are issued a reader identification card, valid and renewable for two years, which permits the use of the copyright resources.

Secured Transport of Materials

Thirty-three new security carts were put in use for transporting book materials received under the mandatory deposit provision of the copyright law and for temporarily holding "high-risk" copyright registration materials such as CDs, DVDs, CD-ROMs, and other items of popular interest. This control measure is intended to achieve reasonable assurance against theft and mutilation of copyright deposits.



Automation

In addition to the IT work outlined in the beginning of this section, the following technology work was undertaken during the fiscal year:

COINS

The Copyright Automation Group (CAG) collaborated with the Library's Information Technology Services (ITS) to continue the conversion of the system to Oracle. A new team was assigned in ITS and progress continues to be made. A backup computer was purchased by ITS to mitigate the impact of any potential hardware failure.

Copyright Imaging System

Work continued on the redevelopment of the Copyright Imaging System. Collaborating with ITS staff, the CAG coordinated the review and testing of the information retrieval subsystem and the definition of requirements for scanning and inputting of data. Contract assistance was obtained by ITS to convert more than 4 million registration and document images to standard TIFF format.

Examining Production System (EPS)

In February 2001, the CAG completed the development, testing and implementation of the new automated statistical database system for counting the number of claims processed by examiners and technicians in the Examining Division. As mentioned previously, the EPS logs each application in-process number (IPN) into an automated database and generates reports of claims handled each week by individual staff member, team, section, and the Division. The statistics generated by EPS allow for better management of workflow.

Item Level Tracking

A requirements paper was finalized and will be used as input to the reengineering of IT processes. Item level tracking provides the capability to fully track copyright registration and deposit materials during processing and includes custodial transfer to the Library.

Copyright Office Intranet

In March 2001, the Office implemented a website for internal staff use containing annual reports, weekly production reports, planning information, and BPR and IT status reports.



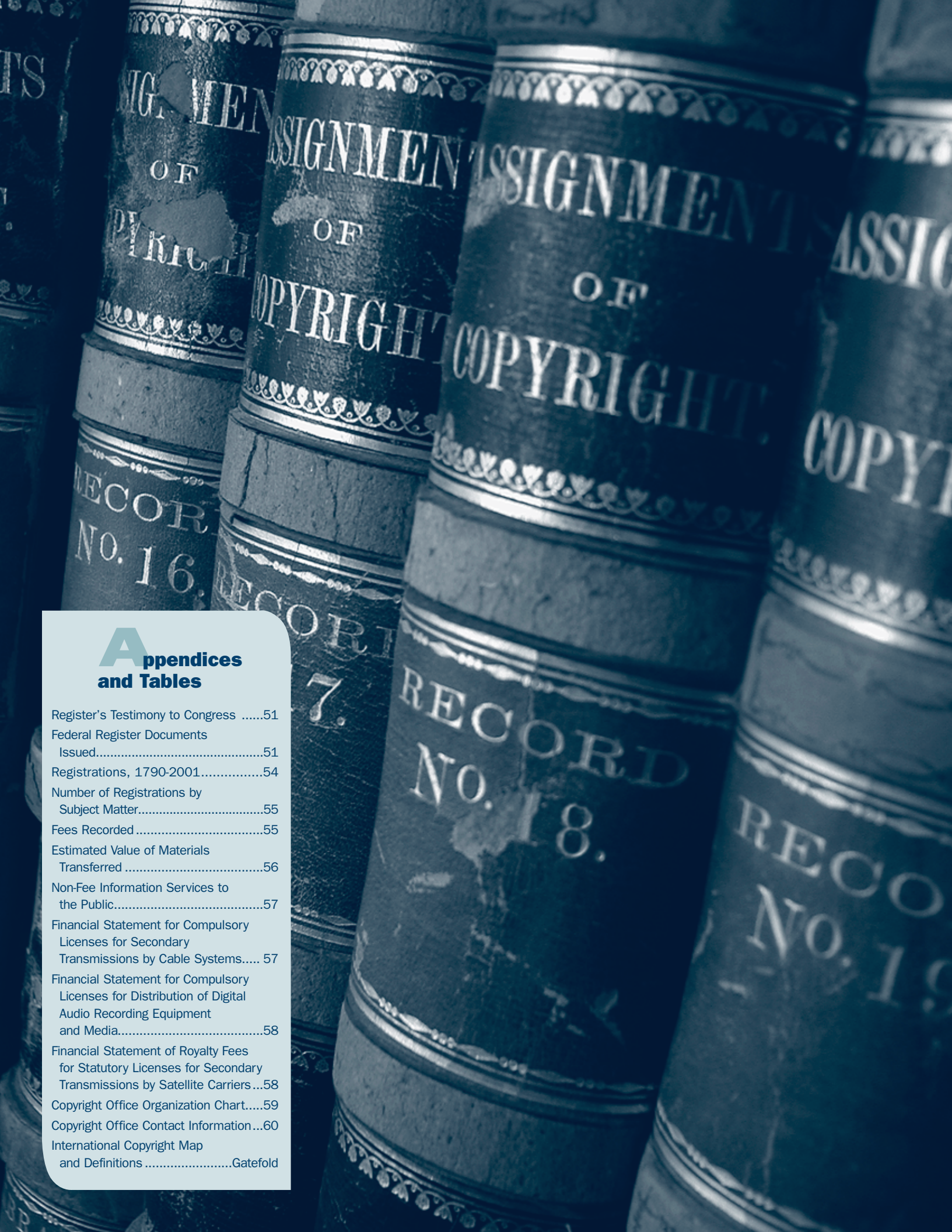
M A N A G E M E N T

Document Management Software

Collaboration began with Copyright Office staff to define the functionality needed in a system that would enable the building and routing of electronic folders containing staff work products, letters, memoranda and other correspondence and documents. The findings will be used in the selection of document management software that will support the routing of scanned applications and documents as well.

Respectfully submitted to the Librarian of Congress by,
MARYBETH PETERS
Register of Copyrights and
Associate Librarian of Congress for Copyright Services





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Register's Testimony to Congress

- The Technology, Education, and Copyright Harmonization Act of 2001. Hearings on S. 487 before the Subcommittee on Courts and the Internet, and Intellectual Property of the House Committee on the Judiciary, 107th Congress (June 27, 2001)
- Legislative Branch Appropriations. Before the Subcommittee on Legislative, House Committee on Appropriations on FY 2002 Budget request, 107th Congress (June 26, 2001)
- Legislative Branch Appropriations. Before the Subcommittee on the Legislative Branch, Senate Committee on Appropriations on FY 2002 Budget request, 107th Congress (May 2, 2001)
- Oversight Hearing on the United States Copyright Office. Before the Subcommittee on Courts and the Internet, and Intellectual Property of the House Committee on the Judiciary, 107th Congress (May 2, 2001)
- Promoting Technology and Education: Turbocharging the School Buses on the Information Superhighway. Before the Senate Committee on the Judiciary, 107th Congress (March 13, 2001)

Full text of statements are available on the Copyright Office website: www.copyright.gov

Federal Register Documents Issued

- Distribution of 1993, 1994, 1995, 1996, and 1997 Cable Royalty Funds, Initiation of arbitration 65 FR 60690, October 12, 2000
- Report to Congress Pursuant to Section 104 of the Digital Millennium Copyright Act: Notice of public hearing 65 FR 63626, October 24, 2000
- Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies; Final rule 65 FR 64555, October 27, 2000
- Adjustment of Cable Statutory License Royalty Rates: Final rule 65 FR 64622, October 30, 2000
- Distribution of 1993, 1994, 1995, 1996, and 1997 Cable Royalty Funds: Announcement of the schedule for the proceeding 65 FR 65335, November 1, 2000



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- Cost of Living Adjustment for Performance of Musical Compositions by Colleges and Universities: Final rule 65 FR 75167, December 1, 2000
- Public Performance of Sound Recordings: Definition of a service: Final Rule 65 FR 77292, December 11, 2000
- Digital Performance Right in Sound Recordings and Ephemeral Recordings: Notices of intent to participate; Announcement of precontroversy discovery schedule 65 FR 77393, December 11, 2000
- Public Performance of Sound Recordings: Definition of a Service; Petition for rulemaking, denial 65 FR 77330, December 11, 2000; correction: December 15, 2000 65 FR 78434
- Adjustment of Rates and Terms for the Digital Performance of Sound Recordings; Notice of negotiation period and request for notification 66 FR 1700, January 9, 2001
- Distribution of 1995, 1996, 1997, and 1998 Digital Audio Recording Technology Royalties: Distribution Order 66 FR 9360, February 7, 2001
- New Subscription Services and the Digital Performance Right in Sound Recordings: Initiation of voluntary negotiation period 66 FR 9881, February 12, 2001
- Mechanical and Digital Phonorecord Delivery Compulsory License: Notice of inquiry 66 FR 14099, March 9, 2001
- Service of Notice of Institution of Action for Infringement and Service of Complaint in Infringement Action on the Register of Copyright: Final rule 66 FR 19094, April 13, 2001
- Public Roundtable on Intellectual Property Aspects of a Draft Convention on Jurisdiction and Foreign Judgment: Notice announcing public forum 66 FR 20482, April 23, 2001
- Cable and Satellite Statutory Licenses: Notice of proposed rulemaking 66 FR 20958, April 26, 2001
- Notice of Termination: Notice of proposed rulemaking 66 FR 22139, May 3, 2001
- Renewal Copyright Registration: Final rule; technical amendment 66 FR 24267, May 14, 2001
- Cable and Satellite Statutory Licenses: Final rule 66 FR 29700, June 1, 2001
- Copyright Rules and Regulations: Copyright, Registration of Claims to Copyright, Freedom of Information, Privacy, Service of Process, Mask Works: Final rule; Technical amendments 66 FR 34372, June 28, 2001
- Group Registration of Photographs; Final regulations 66 FR 37142, July 17, 2001



- Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings: Notice of proposed rulemaking 66 FR 38226, July 23, 2001
- Digital Performance Rights in Sound Recordings and Ephemeral Recordings: Initiation of arbitration and announcement of the schedule for the proceeding 66 FR 38324, July 23, 2001
- Copyright Rules and Regulations: Copyright, Registration of Claims to Copyright, Freedom of Information, Privacy, Service of Process, Mask Works: Correction 66 FR 40322, August 2, 2001
- Compulsory License for Making and Distributing Phonorecords, Including Digital Phonorecord Deliveries: Notice of proposed rulemaking 66 FR 45241, August 28, 2001
- Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings: Proposed rule; Extension of comment period to 9/19/01 66 FR 46250, September 4, 2001
- Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings: Extension of comment period to 9/28/01 66 FR 48648, September 21, 2001
- Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings: Extension of comment period to 10/12/01 66 FR 49330, September 27, 2001



APPENDICES

REGISTRATIONS, 1790-2001					
Year(s)	Total	Year	Total	Year	Total
1790–1869	150,000 ¹	1914	124,213	1959	241,735
1870	5,600	1915	116,276	1960	243,926
1871	12,688	1916	117,202	1961	247,014
1872	14,164	1917	112,561	1962	254,776
1873	15,352	1918	107,436	1963	264,845
1874	16,283	1919	113,771	1964	278,987
1875	16,194	1920	127,342	1965	293,617
1876	15,392	1921	136,765	1966	286,866
1877	16,082	1922	140,734	1967	294,406
1878	16,290	1923	151,087	1968	303,451
1879	18,528	1924	164,710	1969	301,258
1880	20,993	1925	167,863	1970	316,466
1881	21,256	1926	180,179	1971	329,696
1882	23,141	1927	186,856	1972	344,574
1883	25,892	1928	196,715	1973	353,648
1884	27,727	1929	164,666	1974	372,832
1885	28,748	1930	175,125	1975	401,274
1886	31,638	1931	167,107	1976	410,969 ²
1887	35,467	1932	153,710	1976	108,762
1888	38,907	1933	139,361	1977	452,702
1889	41,297	1934	141,217	1978	331,942
1890	43,098	1935	144,439	1979	429,004
1891	49,197	1936	159,268	1980	464,743
1892	54,741	1937	156,930	1981	471,178
1893	58,957	1938	168,663	1982	468,149
1894	62,764	1939	175,450	1983	488,256
1895	67,578	1940	179,467	1984	502,628
1896	72,482	1941	180,647	1985	539,165
1897	75,035	1942	182,232	1986	560,212
1898	75,634	1943	160,789	1987	581,276
1899	81,416	1944	169,269	1988	565,801
1900	95,573	1945	178,848	1989	611,328
1901	93,299	1946	202,144	1990	643,602
1902	93,891	1947	230,215	1991	663,684
1903	99,122	1948	238,121	1992	606,253
1904	104,431	1949	201,190	1993	604,894
1905	114,747	1950	210,564	1994	530,332
1906	118,799	1951	200,354	1995	609,195
1907	124,814	1952	203,705	1996	550,422
1908	120,657	1953	218,506	1997	569,226
1909	121,141	1954	222,665	1998	558,645
1910	109,309	1955	224,732	1999	594,501
1911	115,955	1956	224,908	2000	515,612
1912	121,824	1957	225,807	2001	601,659
1913	120,413	1958	238,935	Total	29,732,771

¹ Estimated registrations made in the offices of the Clerks of the District Courts (source: pamphlet entitled Records in the Copyright Office Deposited by the United States District Courts Covering the Period 1790–1870, by Martin A. Roberts, Chief Assistant Librarian, Library of Congress, 1939).

² Registrations made July 1, 1976 through September 30, 1976 reported separately owing to the statutory change making the fiscal years run from October 1 through September 30 instead of July 1 through June 30.

NUMBER OF REGISTRATIONS BY SUBJECT MATTER, FISCAL 2001			
Category of Material	Published	Unpublished	Total
Non-dramatic literary works:			
Monographs and computer-related works	157,160	55,014	212,174
Serials:			
Serials (non-group)	49,993	-	49,993
Group Daily Newspapers	2,679	-	2,679
Group Serials	9,667	-	9,667
Total literary works	219,499	55,014	274,513
Works of the performing arts, including musical works, dramatic works, choreography and pantomimes, and motion pictures and filmstrips	55,296	101,054	156,350
Works of the visual arts, including two-dimensional works of fine and graphic art, sculptural works, technical drawings and models, photographs, cartographic works commercial prints and labels, and works of applied arts	64,289	35,617	99,906
Sound recordings	20,027	30,505	50,532
Total basic registrations	359,111	222,190	581,301
Renewals			19,752
Mask work registrations			558
Design vessel hull registrations			48
Grand total all registrations			601,659
Documents Recorded			15,242

FEES RECORDED, FISCAL 2001	
	Fees
Applications for Registration	\$17,381,555
Fees for mask works	\$48,225
Fees for Vessel Hull Design	\$5,655
Renewals	\$1,011,522
Total	\$18,446,957
Fees for recordation of documents	\$1,217,573
Fees for certifications	\$284,692
Fees for searches	\$244,024
Fees for expedited services	\$1,328,302
Fees for other services	\$217,290
Total	\$3,291,881
Grand Total	\$21,738,838
Fees Applied to the Appropriation, Fiscal 2001	\$21,759,382

ESTIMATED VALUE OF MATERIALS TRANSFERRED, FISCAL 2001					
	Registered works transferred to other departments of the Library	Non-registration works transferred to other departments of the Library	Total works transferred to other departments of the Library	Average unit price	Total value of works transferred to other departments of the Library
Books¹	162,390	50,057	212,447		\$9,801,937
Ink Print	138,260	23,493	161,753	\$58.22	\$9,417,260
Electronic Works (ProQuest)	21,694	26,219	47,913	\$3.60	\$172,487
Microfilm	2,436	345	2,781	\$76.30	\$212,190
Serials²	190,461	224,840	415,301		\$6,196,760
Periodicals	172,367	197,500	369,867	\$26.16	\$5,805,432
Ink Print Newspapers	18,094	25,200	43,294	\$0.91	\$23,639
Microfilm Newspapers	2,679	2,140	4,819	\$76.30	\$367,690
Computer-related works	6,703	1,036	7,739		\$1,483,745
Software	2,346	15	2,361	\$25.32	\$59,781
CD-ROMs	1,341	905 (705 serials)	2,246	\$634.00	\$1,423,964
Printouts	3,016	116	3,132	indeterminate value	
Motion Pictures³	13,695	104	13,799		\$12,284,834
Videotapes	13,010	104	13,114	\$80.19	\$1,051,612
Feature Films	1,267	—	1,267	\$8,866.00	\$11,233,222
Music	47,076	285	47,361	\$32.07	\$1,518,867
Dramatic Works, choreography, and pantomimes	959	—	959	\$58.22	\$55,833
Other works of the performing arts	263	—	263	\$32.07	\$8,434
Sound Recordings	22,275	1,191	23,466	\$13.03	\$305,762
Maps	3,455	157	3,612	\$32.95	\$119,015
Prints, pictures, and works of art	3,005	82	3,087	\$26.63	\$82,207
TOTAL	450,282	277,752	728,034		\$31,857,394
¹ 60% of "BOOKS" are selected for the collections; 40% are used for the Library's exchange program.					
² 60% of "SERIALS" are selected for the collections, except in the case of Microfilm Newspapers (100% of which are selected).					
³ Includes 582 copies selected by the Library under motion picture agreements.					

NON-FEE INFORMATION SERVICES TO THE PUBLIC, FISCAL 2001	
Information and Reference Division direct reference services	
In person	21,325
By correspondence	53,603
By email	22,467
By telephone	221,149
Total	318,544
Office of the General Counsel direct reference services	
By correspondence	58
By telephone	1,000
Total	1,058
Receiving and Processing Division services	
By correspondence	4,401
By telephone	3,716
Total	8,117
Licensing Division direct reference services	
In person	514
By correspondence	3,059
By telephone	8,356
Total	11,929
Grand total direct reference services	339,648

FINANCIAL STATEMENT OF ROYALTY FEES FOR COMPULSORY LICENSES FOR SECONDARY TRANSMISSION BY CABLE SYSTEMS FOR CALENDAR YEAR 2000	
Royalty fees deposited	\$112,771,405.40
Interest income	\$5,793,227.12
Gain on matured securities	\$71,676.66
Transfers in	\$75,347.00
Total	\$118,711,656.18
Less: Licensing operating costs	\$2,745,986.94
Refunds issued	\$12,776.28
Cost of investments	\$114,360,561.76
Cost of initial investments	\$1,132,268.88
CARP Operating costs	\$313,965.75
Transfers out	\$140,335.35
Total	\$118,705,894.96
Balance as of September 30, 2001	\$5,761.22
Plus: Face amount of securities due	\$114,662,853.43
Less: Pending refunds	\$3,289.18
Cable royalty fees for calendar year 2000 available for distribution by the Library of Congress	\$114,665,325.47

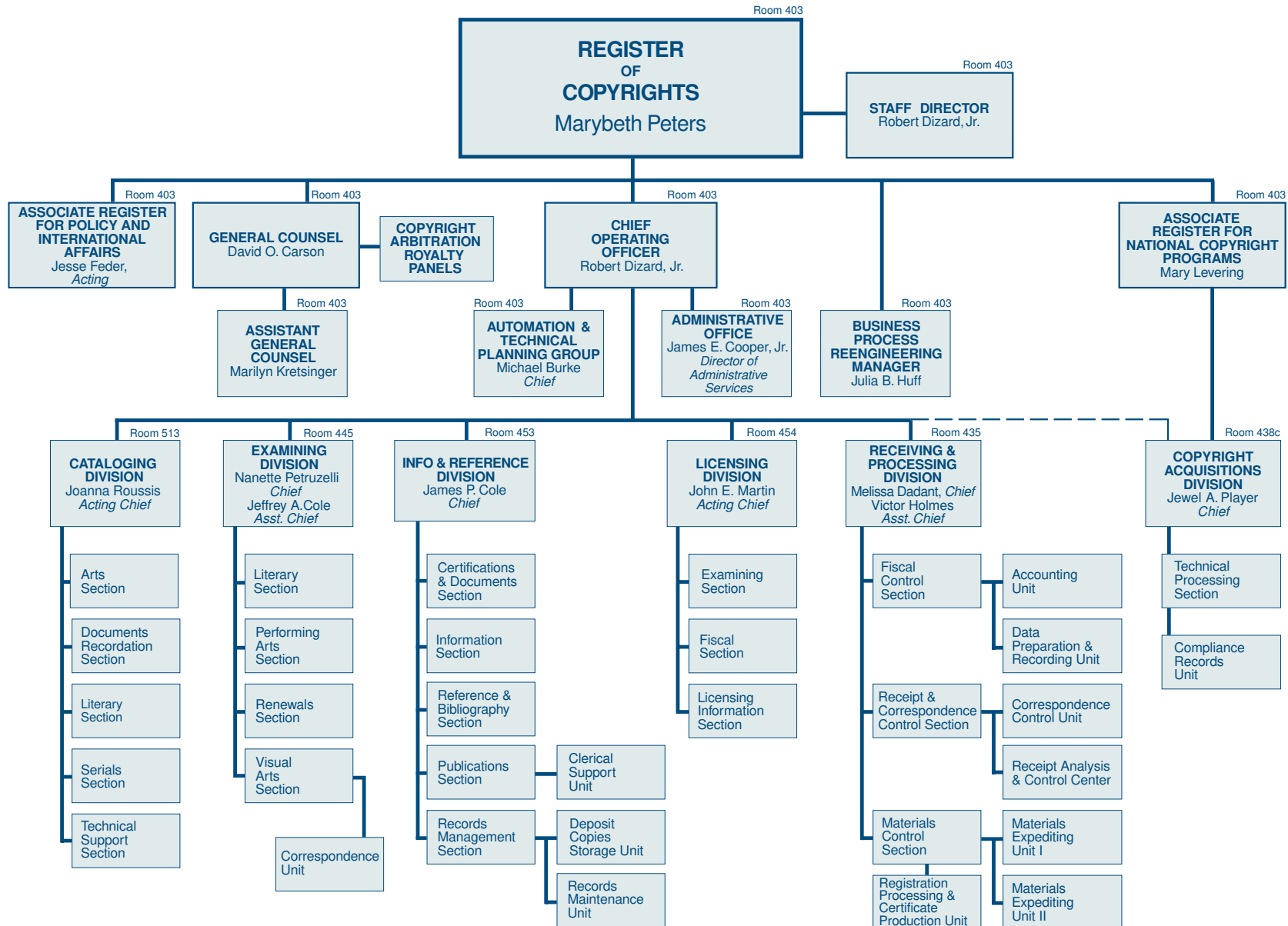
**FINANCIAL STATEMENT OF ROYALTY FEES FOR STATUTORY OBLIGATIONS
FOR DISTRIBUTION OF DIGITAL AUDIO RECORDING EQUIPMENT AND MEDIA
FOR CALENDAR YEAR 2000**

Royalty fees deposited	\$5,279,089.56
Interest income	\$164,831.97
Gain on matured securities	\$56,577.41
Total	\$5,500,498.94
Less: Licensing operating costs	\$28,045.98
Refunds	\$38,087.91
Cost of investments	\$1,918,652.32
Cost of initial investments	\$40,650.28
CARP operating costs	\$80,320.71
Distribution of fees	\$3,320,767.09
Transfers out	73,788.00
Total	\$5,500,312.29
Balance as of September 30, 2001	\$186.65
Plus: Face amount of securities due	\$1,923,274.59
Audio Home Recording Act royalty fees for calendar year 2000 available for distribution by the Library of Congress	\$1,923,461.24

**FINANCIAL STATEMENT OF ROYALTY FEES FOR STATUTORY LICENSES FOR
SECONDARY TRANSMISSION BY SATELLITE CARRIERS
FOR CALENDAR YEAR 2000**

Royalty fees deposited	\$67,644,774.08
Interest income	\$2,951,444.60
Gain on matured securities	\$300,788.44
Transferred in	
Total	\$70,897,007.12
Less: Licensing operating costs	\$24,967.08
Cost of investments	\$70,869,450.58
Cost of initial investments	(\$43,632.02)
CARP operating costs	\$46,126.36
Total	\$70,896,912.00
Balance as of September 30, 2001	\$95.12
Plus: Face amount of securities due	\$71,096,307.03
Satellite carrier royalty fees for calendar year 2000 available for distribution by the Library of Congress	\$71,096,402.15

U.S. Copyright Office



U.S. Copyright Office

The Library of Congress
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000

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www.copyright.gov

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Photos on pages 4, 16, 34, 38, and 50 by Charles Gibbons, Information and Reference Division

International Copyright Treaties and Conventions



Protection against unauthorized use of a copyrighted work in a country depends primarily on the national laws of that country. Most countries offer protection to foreign works under the aegis of international copyright treaties and conventions.

Treaties and Conventions:

Berne Convention – the leading international agreement that sets standards for protecting literary and artistic works

Bilateral – a unique agreement on copyright protection between the United States and another country

Geneva Phonograms Convention – known as the Geneva Convention, sets standards for protection of sound recordings against piracy

Universal Copyright Convention (UCC) – an international agreement that sets standards for protecting literary and artistic works, largely superseded by Berne

WIPO Copyright Treaty (WCT) – an international treaty setting standards for protection of works in digital format

WIPO Performances and Phonograms Treaty (WPPT) – an international agreement setting standards for protection of sound recordings

World Trade Organization (WTO) – the World Trade Organization's obligations regarding Trade-Related Aspects of Intellectual Property Rights, incorporating and expanding on Berne and adding enforcement obligations

International Copyright Treaties and Conventions

