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**THE NEXT GENERATION COPYRIGHT OFFICE:  
WHAT IT MEANS AND WHY IT MATTERS**

by MARIA A. PALLANTE\*

*INTRODUCTION*

Tonight I would like to discuss the improvements that some of you have been calling for with respect to the core services and technical capacity of the U.S. Copyright Office, many of which I agree with and all of which deserve further consideration. I will also report on the conclusions of some of the special projects that my colleagues and I conducted from October 2011 through October 2013 for the purpose of assessing deficiencies and vulnerabilities of the Office and preparing it for future challenges. To the many stakeholders who engaged with us on issues of law, business, and technology during this process, we express our gratitude and appreciation.

Where possible, we have already adopted new programs. For example, in the past year, in the category of supplementing our lean staff, we commenced research partnerships with law schools (beginning with Stanford), announced the Abraham Kaminstein Scholar in Residence Program (for professors and other substantive experts) and the Barbara A. Ringer Copyright Honors Program (for law school graduates).<sup>1</sup>

In the category of education and training, we launched the Copyright Matters public education program (focused on copyright law and marketplace developments);<sup>2</sup> established the internal Copyright Academy (for

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Mr. Meyer was a Policy Planning Advisor at the Copyright Office from 1983 to 1987, in addition to holding other positions in the federal government and private sector. A recognized expert in domestic and international copyright law, he was a partner with the Washington firm of Meyer & Klipper, PLLC at the time of his untimely death in 1999.

The author would like to acknowledge the foundational work of her predecessor, Marybeth Peters (Register 1994–2010), who implemented the first generation of electronic registration in 2008.

<sup>1</sup> *U.S. Copyright Office Announces Ringer Fellowships and Kaminstein Scholars, Names Brauneis of The George Washington University*, U.S. COPYRIGHT OFFICE NEWSNET, no. 516 (Sept. 5, 2013), <http://www.copyright.gov/newsnet/2013/516.html>.

<sup>2</sup> The Office has hosted a dozen Copyright Matters events since 2011, including Copyright & The American Songwriter; Copyright Conversations with the

purposes of much-needed staff training); undertook a major revision of registration standards and practices (the *Compendium of Copyright Office Practices*, Third Edition); and began to reorganize business units to address certain under-resourced areas of the Copyright Office (including legal work, digital file security, metadata standards, database functionality, and public information services).

Other improvements will take more time. That is, while the Copyright Office should and will continue to effectuate whatever progress it can under its existing structure and authority, some projects are more systemic and will require significant resources and/or congressional direction. Indeed, if stakeholders are largely correct in their assessments and advice — and I believe they are — we may well require a number of paradigm shifts in the years ahead. These shifts would affect several primary services under the copyright law, including: how the Office examines creative works and secures deposit materials; how it registers claims to copyright; how it records assignments, security interests, and other commercially important documents; how it manages technology and otherwise interacts with the broader marketplace; and how it is funded.

While no one has suggested that investing in the Copyright Office would be inexpensive, people seem to agree that it would be widely beneficial. This came through during our public comment process. For example, BMI suggested that it would be useful for the Office to collect and incorporate short digital samples of musical works as part of its registration records, to help people identify copyright ownership.<sup>3</sup> The American Society of Media Photographers and the Graphic Artists Guild suggested it would be helpful for the Office to invest in image recognition technologies to help people find works of visual art.<sup>4</sup> The Association of American Publishers said it would be helpful to the book publishing industry if the Office adopted commercially successful metadata standards for digital

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United Kingdom; and Nimmer on Copyright: Celebrating 50 Years, to name a few. See *Copyright Matters Lecture Series*, U.S. COPYRIGHT OFFICE, <http://www.copyright.gov/copyrightmatters.html>.

<sup>3</sup> Broadcast Music, Inc. (“BMI”), Comments Submitted in Response to U.S. Copyright Office’s Mar. 22, 2013 Notice of Inquiry at 2 (May 21, 2013). See Notice of Inquiry, Technological Upgrades to Registration and Recordation Functions, 78 Fed. Reg. 17,722 (Mar. 22, 2013). The comments the Office received in response to this Notice of Inquiry are available on the Copyright Office website, [http://www.copyright.gov/docs/technical\\_upgrades/comments](http://www.copyright.gov/docs/technical_upgrades/comments).

<sup>4</sup> American Society of Media Photographers (“ASMP”), Comments Submitted in Response to U.S. Copyright Office’s Mar. 22, 2013 Notice of Inquiry at 5 [hereinafter “ASMP Comments”]; Graphic Artists Guild (“GAG”), Comments Submitted in Response to U.S. Copyright Office’s Mar. 22, 2013 Notice of Inquiry at 10 (May 21, 2013).

content, such as ONIX.<sup>5</sup> And SoundExchange said that if the Copyright Office could develop APIs,<sup>6</sup> then rights management organizations and aggregators could create innovative applications for collecting and disseminating information regarding copyrighted content across the supply chain.<sup>7</sup> In a publication about the Copyright Office released in 2010, Public Knowledge observed that “[t]he long term cost savings created by an easy-to-use, comprehensive registry should easily outweigh the costs associated with its creation.”<sup>8</sup>

## I. THE WORLD AROUND US

*[N]early every copyright-related industry sector is in the midst of profound changes . . . . It should not come as a surprise that the rapid changes happening in the copyright world might require change to how and what the Copyright Office does.*

- Members of the Copyright Principles Project, January 1, 2010<sup>9</sup>

As many have observed, the Copyright Office sits at the center of a considerable copyright marketplace, one that seems to become more dynamic and more sophisticated every year. Consumers of all ages are demanding the ability to both access and share creative works (books, games, movies, videos, photographs, and music) in their homes and through a variety of mobile devices and other platforms. The copyright industries are investing not only in the content itself, but also in the software and hardware to deliver it securely.<sup>10</sup> Technology companies

<sup>5</sup> Association of American Publishers (“AAP”), Comments Submitted in Response to U.S. Copyright Office’s Mar. 22, 2013 Notice of Inquiry at 8 (May 21, 2013) [hereinafter “AAP Comments”].

<sup>6</sup> An API (or application programming interface) is a set of data structures, protocols, and other building blocks that facilitate the functionality of web-based software applications, and provide a channel for applications to work with each.

<sup>7</sup> SoundExchange, Inc., Comments Submitted in Response to U.S. Copyright Office’s Mar. 22, 2013 Notice of Inquiry at 6 (May 21, 2013) [hereinafter “SoundExchange Comments”].

<sup>8</sup> See MICHAEL WEINBERG ET AL., PUBLIC KNOWLEDGE, A COPYRIGHT OFFICE FOR THE 21ST CENTURY: RECOMMENDATIONS TO THE NEW REGISTER OF COPYRIGHTS 10 (2010), available at <http://www.publicknowledge.org/files/docs/ACopyrightOfficeforthe21stCentury.pdf>.

<sup>9</sup> Pamela Samuelson & Members of the Copyright Principles Project (“CPP”), *The Copyright Principles Project: Directions for Reform*, 25 BERKELEY TECH. L.J. 1175, 1202 (2010).

<sup>10</sup> See, e.g., STEPHEN E. SIWEK, ECONOMISTS INCORPORATED, COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY: THE 2013 REPORT 2 (2013) (prepared for the International Intellectual Property Alliance (“IIPA”)), available at [http://www.iipa.com/pdf/2013\\_Copyright\\_Industries\\_Full\\_Report.PDF](http://www.iipa.com/pdf/2013_Copyright_Industries_Full_Report.PDF) (stating that the value of the core copyright industries to U.S. gross domestic product (“GDP”) exceeded \$1 trillion (\$1,015.6 billion) in 2012, account-

continue to expand their businesses, making delivery over the Internet faster, more interactive, and more global than ever before.<sup>11</sup>

Earlier this year, I offered my thoughts as to why marketplace developments like these may require Congress to consider additional protections, remedies, and clarifications in the law for the benefit of most everyone in the ecosystem, including authors, distributors, and consumers.<sup>12</sup> While the courts are indispensable to the evolution of copyright law, and while they frequently perform yeomen's work in applying the law to the facts of new technologies, Congress remains uniquely situated and authorized to weigh the larger themes of copyright policy, including the ongoing viability of the law and the protection of the public interest.

Part of the equation involves assessing the relative state of the Copyright Office and its ability to administer the legal provisions of a twenty-first century law. But how does a government institution like the Copyright Office stay relevant to the public interest that it serves, particularly when its mission and services also support a business environment as dy-

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ing for 6.48% of the U.S. economy, and that the value of total copyright industries to U.S. GDP exceeded \$1.7 trillion (\$1,765 billion), accounting for 11.25% of the U.S. economy); ECON. & STATISTICS ADMIN. & U.S. PATENT AND TRADEMARK OFFICE, INTELLECTUAL PROPERTY AND THE U.S. ECONOMY: INDUSTRIES IN FOCUS at v (2013), available at <http://www.esa.doc.gov/sites/default/files/reports/documents/ipandtheuseconomyindustriesinfocus.pdf> (noting that intellectual property rights "support innovation and creativity in virtually every U.S. industry").

- <sup>11</sup> See Chris Williams, Davide Strusani, David Vincent & David Kovo, *The Economic Impact of Next-Generation Mobile Services: How 3G Connections and the Use of Mobile Data Impact GDP Growth*, in THE GLOBAL INFORMATION TECHNOLOGY REPORT 2013: GROWTH AND JOBS IN A HYPERCONNECTED WORLD 77, 77 (Beñat Bilbao-Osorio et al. eds., 2013) (prepared for the World Economic Forum), available at [http://www3.weforum.org/docs/WEF\\_GITR\\_Report\\_2013.pdf](http://www3.weforum.org/docs/WEF_GITR_Report_2013.pdf) (noting that the continued evolution of Internet-based distribution systems is having an "unprecedented" impact on the U.S. and global economy); THOMAS ROGERS & ANDREW SZAMOSZEGI, CAPITAL TRADE INC., FAIR USE IN THE U.S. ECONOMY: ECONOMIC CONTRIBUTION OF INDUSTRIES RELYING ON FAIR USE 10 (2011) (prepared for the Computer & Communications Industry Association ("CCIA")), available at <http://www.ccia.net/wp-content/uploads/library/CCIA-FairUseintheUSEconomy-2011.pdf> (noting that "[t]he advent of the Internet and networking technology . . . has been widely credited with reviving U.S. productivity growth after two decades of below-trend productivity").
- <sup>12</sup> See *The Register's Call for Updates to U.S. Copyright Law: Hearing Before the Subcomm. on Courts, Intellectual Prop. & the Internet of the H. Comm. on the Judiciary*, 113th Cong. (2013) (statement of Maria A. Pallante, Register of Copyrights and Director, U.S. Copyright Office); Maria A. Pallante, Register of Copyrights and Director, U.S. Copyright Office, *The Next Great Copyright Act*, Twenty-Sixth Horace S. Manges Lecture (Mar. 4, 2013), in 36 COLUM. J.L. & ARTS 315 (2013).

namic and commercially important as the creation and dissemination of content? At what point might the success of the institution depend not upon the faithful execution of long-established policies, but rather upon the willingness and flexibility to reimagine itself?

The Copyright Office dates back to 1897<sup>13</sup> and its statutory duties have evolved over time.<sup>14</sup> But stakeholders today want a twenty-first century enterprise. Some of their expectations arise from the premise that functions and standards of the Office should be interoperable with those of the marketplace it serves. This would require, for example, investing in or certifying global data standards for identifying content and licensing terms; adopting or certifying image recognition processes; installing commercial-grade digital security measures to ensure the safety of registered works; and making significant upgrades to the interface and operation of the Office website, which serves as the portal for registration, recordation, rulemakings, and other statutory obligations, including the critically important duty to administer a current directory of designated service provider agents relating to ISP liability under the Digital Millennium Copyright Act. Some would have the Office take on yet additional roles, such as administering an online small claims tribunal or new licensing databases. Others see little hope that the Office can acquire the resources or technical capacity that it needs to move forward, and would therefore redefine its role appreciably.<sup>15</sup>

To be fair, many of the Office's services are now online and its website is the point of contact for most communications, legal proceedings, and services. In fact, 80% of registration applications are now submitted in part through the website (about half these applications involve physical

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<sup>13</sup> See Act of Feb. 19, 1897, ch. 265, 29 Stat. 538, 545 (1897) (providing for the creation of a separate Copyright Department in the Library of Congress and the position of Register of Copyrights).

<sup>14</sup> Copyright Office duties are enumerated in Title 17 of the U.S. Code and include: examining and registering copyright claims; recording assignments, licenses, termination notices, security interests, and other copyright documents; administering statutory licenses (affecting online music services, cable operators, satellite carriers, and broadcasters); delivering policy assistance and expert studies to Congress; providing legal assistance to federal agencies, for example the Department of Justice, the U.S. Trade Representative, and the Department of Commerce; participating in negotiations and international meetings; conducting rulemakings and public hearings; reviewing final determinations of rates and terms for statutory licenses as set by the Copyright Royalty Judges; and maintaining public databases, an authoritative website, and related information and education services.

<sup>15</sup> See, e.g., Members of the CPP, *supra* note 9, at 1203 (suggesting that the Office should transition away from the "day-to-day operation of the copyright registry and toward a role of setting standards for and superintending a system of separate but networked and interoperable private registries").

deposits that the applicant then mails to the Office). Nonetheless, the Office's technical capacities (its bandwidth, networking equipment, electronic storage capacity, hardware and software, and the like) do not fully accommodate these services and require both short-term and long-term solutions.

In the long run, decisions about technology will not only inform but decide the success of the Copyright Office and its ability to interact with and support a modern copyright ecosystem. As the Copyright Office evolves and matures, one question is the degree to which its systems should continue to be intertwined with and managed through the Library's technology enterprises. It requires an assessment of institutional synergies, on the one hand, and the increasingly sophisticated and specific requirements of the copyright law, on the other hand.<sup>16</sup>

This is not to minimize the extraordinary scope of the Library as both an institution and mother agency. Its collections are incomparable by any number of standards<sup>17</sup> and its scholarship and programs are equally immeasurable.<sup>18</sup> The point is that the technology needs of the Copyright Office are distinct and require appropriately specific consideration.<sup>19</sup>

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<sup>16</sup> Organizationally, the Copyright Office is a department of the Library of Congress. Like other departments, it participates in agency-wide protocols and relies upon shared services as appropriate—for example, in the areas of legal counsel, labor relations, human resources, financial controls, and facilities support. However, the Office's duties are prescribed by the Copyright Act.

<sup>17</sup> See *Hearing Before the Subcomm. on the Leg. Branch of the H. Comm. on Appropriations*, 113th Cong. 2 (2013) (statement of Dr. James H. Billington, Librarian of Congress), available at <http://appropriations.house.gov/uploadedfiles/hhrg-113-ap24-wstate-billingtond-20130227.pdf> (“The Library is, quite simply, an irreplaceable asset for the United States. I have called it the nation's strategic information reserve. It was for instance the only institution anywhere able to give back to the Afghan people enough copies of historical records of their own legal past to resume a tradition that had been eradicated by the Taliban. And the Library possessed the only paper produced in the U.S. government that described from an obscure Arabic periodical the basic terrorist scenario followed on 9/11 before it happened.”).

<sup>18</sup> See *Hearing Before the Committee on Science, Space and Technology*, 113th Cong. 2 (2013) (statement of Dr. Stevan Dick, Baruch S. Blumberg NASA/Library of Congress Chair of Astrobiology), available at <http://science.house.gov/sites/republicans.science.house.gov/files/documents/HHRG-113-SY-WState-SDick-20131204.pdf> (discussing the search for microbial or intelligent life in the universe and what it means for the development of both scientific and societal theories).

<sup>19</sup> See Nanette Petruzzelli (former Associate Register for the Registration Program), Comments Submitted in Response to U.S. Copyright Office's Mar. 22, 2013 Notice of Inquiry at 3 (May, 18, 2013) (“Although the Office is a department of the Library of Congress, the Office now creates (unlike the

## II. THE FUTURE IS NOW

*There is little doubt that our copyright system faces new challenges today . . . . Even the Copyright Office itself faces challenges in meeting the growing needs of its customers — the American public.*

- House Judiciary Chairman Bob Goodlatte, April 24, 2013<sup>20</sup>

The customers of the Copyright Office are both copyright owners and those who seek copyright information for research or business needs, for example, those seeking data about copyright ownership, the termination of legal transfers, or the expiration of copyright term. They have high expectations and their needs will only increase in the years ahead. For the Office to ignore the growing demand for more innovative services would be irresponsible, even though staffing shortages, budget reductions, workload issues, systems challenges, and the general business of the day would seem to provide plenty of good reason. Indeed, in this environment, asking overworked public servants to contribute to the future viability of the institution may not only be abstract, but a little unfair. We asked them anyway, knowing that for many employees, the work of the Copyright Office is more than a job.

Throughout the summer of 2011, our senior leaders held dozens of internal meetings with staff at all levels (e.g., examiners and other registration experts, public information staff, lawyers, systems analysts, and finance experts) in order to discuss and prioritize the needs of the Office. From there, we crafted a number of priorities regarding future services, and invited interested employees to join, and in some cases, lead the efforts, as an adjunct to their usual duties.<sup>21</sup>

On October 25, 2011, we announced a series of “special projects” (the “Project(s)”) to the public and commenced a two-year work plan to carry them out.<sup>22</sup> As described in more detail in our 2011 *Priorities and Special*

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Library) records of works which . . . give copyright information as opposed to bibliographic (library) information.”).

<sup>20</sup> Press Release, U.S. House of Representatives Committee on the Judiciary, Chairman Goodlatte Announces Comprehensive Review of Copyright Law (Apr. 24, 2013), *available at* [http://judiciary.house.gov/news/2013/04242013\\_2.html](http://judiciary.house.gov/news/2013/04242013_2.html).

<sup>21</sup> While many employees participated, others served in leadership capacities, including: Doug Ament, Katrina Anderson, John Ashley, John St. Amour, Erik Bertin, Kim Brown, Mike Burke, David Christopher, Karyn Temple Claggett, Joanna Corwin, Melissa Crawford, Melissa Dadant, Adam Friedman, Annette James, Rob Kasunic, Zarifa Madyun, Wendi Maloney, Alicia Mroczyk, Larisa Pastuchiv, Christopher Reed, Megan Rivet, Catherine Rowland, Jacqueline Smith, Gail Sonnemann, Kathryn Sukites, Syreeta Swann, George Thuronyi, Susan Todd, and Thomas J. Willis.

<sup>22</sup> The Office announced the Projects as part of a broader publication that included the history of the Copyright Office and pending policy issues. *See*

*Projects* document,<sup>23</sup> the Projects focused the Office on a number of critical challenges, including: (1) attracting, retaining, and training a highly skilled and multi-talented staff; (2) creating relationships with academic institutions and scholars; (3) meeting the increasing public demand for copyright information and education; (4) updating, reconciling, and publishing registration practices; (5) reengineering the recordation process and making historic records available; (6) addressing problems in technology infrastructure and improving the website; and (7) updating the fee schedule and improving fiscal health.

The response was positive. For example, the Software and Information Industry Association called the *Priorities* document “an excellent roadmap for the most significant legislative, international and administrative copyright issues facing copyright holders and the Office now and into the immediate future.”<sup>24</sup> The U.S. Chamber of Commerce called it a “forward-thinking vision for the Copyright Office and the American copyright system.”<sup>25</sup> And the Copyright Clearance Center said the U.S. Congress should “consider the issues with urgency as recommendations are created.”<sup>26</sup>

### III. THE NEXT GENERATION COPYRIGHT OFFICE

*Given the increasing importance of both digital distribution and electronic recordkeeping with respect to all manner of copyrighted works, we believe*

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*Director of U.S. Copyright Office Announces Priorities, Special Projects for Next Two Years*, U.S. COPYRIGHT OFFICE NEWSNET, no. 435 (Oct. 25, 2011), <http://www.copyright.gov/newsnet/2011/435.html>.

<sup>23</sup> See MARIA A. PALLANTE, PRIORITIES AND SPECIAL PROJECTS OF THE U.S. COPYRIGHT OFFICE: OCTOBER 2011-OCTOBER 2013 (2011), available at <http://www.copyright.gov/docs/priorities.pdf>.

<sup>24</sup> Software & Information Industry Ass’n, *Digital Policy Roundup: Copyright Office Declares Priorities, Cybersecurity and Cloud Computing Still a Focus for the Hill*, SIIA DIGITAL DISCOURSE (Oct. 26, 2011), <http://www.siaa.net/blog/index.php/2011/10/copyright-office-declares-priorities-cybersecurity-and-cloud-computing-still-a-focus-for-the-hill>.

<sup>25</sup> *Chamber Applauds the Release of Copyright Office’s Strategic Plan*, GLOBAL INTELLECTUAL PROPERTY CENTER, U.S. CHAMBER OF COMMERCE (Oct. 25, 2011), <http://www.theglobalipcenter.com/chamber-applauds-release-copyright-offices-strategic-plan>.

<sup>26</sup> Press Release, Copyright Clearance Center, CCC Statement on the Priorities and Special Projects of the United States Copyright Office (Oct. 25, 2011), available at [http://www.copyright.com/content/cc3/en/toolbar/aboutUs/newsRoom/newsArticles/news\\_2011/news\\_2011\\_10/ccc\\_statement\\_ontheprioritiesandspecialprojectsoftheunitedstates.html](http://www.copyright.com/content/cc3/en/toolbar/aboutUs/newsRoom/newsArticles/news_2011/news_2011_10/ccc_statement_ontheprioritiesandspecialprojectsoftheunitedstates.html).

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*the Office would be remiss if it failed to position itself now to collect information that will be of increasing importance in the digital age.*

- Domestic and International ISRC Agencies, May 21, 2013<sup>27</sup>

In sharing the conclusions of the Projects, I should reiterate that some were easier to accomplish than others. Certain measured improvements (for example, the partnerships with academic institutions and scholars, and expert training for staff I mentioned at the outset) were possible to achieve before the Projects phase ended. In large part this is because they did not require significant expenditures or investments. It is also true that these particular projects were internally driven objectives, although the copyright community offered its enthusiastic support.

#### A. Staffing

Ultimately, I believe the Copyright Office will need to create a number of new positions to support both the volume and complexity of statutory, regulatory, and technology responsibilities. Meanwhile, as an initial step to realign resources and staff where there are gaps, we have begun the reconstruction of our Information and Records Division into two distinct divisions. One division will be dedicated to records and repositories, including the critical roles of: (1) making historic records available;<sup>28</sup> (2) improving and enforcing metadata standards for copyright records; and (3) ensuring the security of physical and digital copyright deposits. Secure repositories for digital files were not created during the previous reengineering process and are now urgent. The other division will remain focused on public information and education, including ongoing improvements to the website, but with a level of leadership, staffing, and programming that is required for twenty-first century demands. This is because the website is not only an authoritative source for copyright law and related information,

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<sup>27</sup> ISRC Agencies, Comments Submitted on behalf of the International Federation of the Phonographic Industry and Recording Industry Association of America in Response to U.S. Copyright Office's Mar. 22, 2013 Notice of Inquiry at 4 (May 21, 2013). The ISRC Agencies administer the International Standard Recording Code ("ISRC"), "an international identification system for sound recordings and music video recordings." *What Is an ISRC?*, ISRC, <http://www.usisrc.org/about/index.html> (last visited Feb. 26, 2014). The ISRC Agencies' comments were endorsed by the National Music Publishers' Association ("NMPA"), including its wholly-owned subsidiary, the Harry Fox Agency, Inc. See NMPA, Comments Submitted in Response to U.S. Copyright Office's Mar. 22, 2013 Notice of Inquiry at 1 (May 20, 2013).

<sup>28</sup> To date, the Copyright Office has digitized 31.2 million records using a two-step quality assurance process and has engaged with the public regarding ways in which to make these searchable and accessible as quickly as possible, even in rudimentary form.

but also the primary tool by which the Register carries out her statutory duty to administer the provisions of Title 17.

Staffing is an ongoing issue, in part because of the difficult budget environment of the past four years.<sup>29</sup> The ability to attract experts in law and technology is more challenging than ever. Salaries of the federal civil workforce have remained frozen at 2010 levels, and budget cuts have had a serious effect on morale.<sup>30</sup> In fiscal year 2012, the Library of Congress administered voluntary separation programs for employees as a way of reducing payroll obligations in response to decreasing budget authority levels. The program prevented furloughs at the time, but the Copyright Office lost ten percent of its staff, creating more work and more pressure for the employees that remain. During the five-year period from 2007 to 2012, the Office's number of full-time staff fell from 483 to 396, its lowest number in decades. In fiscal year 2013, the Copyright Office and all other parts of the Library were required to furlough staff for a period of three days.

### B. Technical Upgrades

*In the past five years, unit sales of trade eBooks have increased over 4,456%. This exponential expansion of digital content means that the technological capabilities and limitations of the Copyright Office are increasingly relevant to the business efficiency of AAP member publishers.*

- Association of American Publishers, Inc., May 21, 2013<sup>31</sup>

The Copyright Office's Technical Upgrades Project<sup>32</sup> acknowledged shortcomings that were already widely known among the Office's major

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<sup>29</sup> See generally OFFICE OF MANAGEMENT & BUDGET, OMB SEQUESTRATION UPDATE REPORT TO THE PRESIDENT AND CONGRESS FOR FISCAL YEAR 2014 (2013), available at [http://www.whitehouse.gov/sites/default/files/omb/assets/legislative\\_reports/sequestration/sequestration\\_update\\_august2013.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/sequestration/sequestration_update_august2013.pdf).

<sup>30</sup> A pay increase of one percent was implemented following this lecture. See Press Release, White House, Executive Order — Adjustments of Certain Rates of Pay (Dec. 23, 2013), available at <http://www.whitehouse.gov/the-press-office/2013/12/23/executive-order-adjustments-certain-rates-pay>; Lisa Rein, *Obama Issues Executive Order Giving 1 Percent Raise to Federal Workers*, WASH. POST, Dec. 23, 2013, [http://www.washingtonpost.com/politics/obama-issues-executive-order-giving-1-percent-raise-to-federal-workers/2013/12/23/9c52531e-6c21-11e3-aecc-85cb037b7236\\_story.html](http://www.washingtonpost.com/politics/obama-issues-executive-order-giving-1-percent-raise-to-federal-workers/2013/12/23/9c52531e-6c21-11e3-aecc-85cb037b7236_story.html).

<sup>31</sup> AAP Comments, *supra* note 5, at 1-2.

<sup>32</sup> The Technical Upgrades Project was the primary responsibility of Doug Amant, Chief Information Officer of the Copyright Office, with assistance from Joanna Corwin, Project Manager, Christopher Reed, Senior Advisor for Policy and Special Projects, Susan Todd, Registration Program Manager, Annette James, Business Analyst, and Vcentra, LLC, an independent consultant.

constituencies — authors, publishers, producers, and users of copyright information — regarding the reliability, security, and searchability of Office records. After meeting with a number of technology experts, we published a Federal Register Notice asking for written comments on a number of key questions.<sup>33</sup>

Public response to the Notice was extremely informative, touching on both the registration and recordation systems, and more specifically on shortcomings with the user interface, quality of data and public records, standard identifiers, digital repository, information architecture and infrastructure, and customer experience. The American Intellectual Property Law Association said its members want the Copyright Office re-engineered so that data can be processed “in a way that can be easily printed, viewed, and forwarded outside of the system, and that allows clients to sign applications prepared by attorneys.”<sup>34</sup> The American Society of Media Photographers noted “a real need to upgrade the Copyright Office’s system to incorporate cross-browser compatibility.”<sup>35</sup> And Educational Testing Service (which files high volumes of applications for secure tests) indicated that the ability to link multiple account profiles to a single deposit account in the online registration system would do much to alleviate unnecessary costs and burdens.<sup>36</sup>

Many cited more basic frustrations, such as the need to make the workflow viewable throughout the registration process, including making it possible for applicants to halt and then resume work on their applications and to access previous applications for reference.

Some asked for features such as animated wizard assistants, customized dashboards, instant message, video communication, and webinars. Others asked for routine access to related file histories; customer support during West Coast business hours; the ability to update contact information easily and inexpensively; and the availability of more venues for public engagement, if not satellite offices, outside of Washington, D.C.<sup>37</sup>

Some noted the obvious connection between the credibility of Copyright Office records and certain policy challenges such as solving orphan

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<sup>33</sup> See Notice of Inquiry, *supra* note 3.

<sup>34</sup> American Intellectual Property Law Association (“AIPLA”), Comments Submitted in Response to U.S. Copyright Office’s Mar. 22, 2013 Notice of Inquiry at 2 (May 20, 2013).

<sup>35</sup> ASMP Comments, *supra* note 4, at 3.

<sup>36</sup> Educational Testing Service, Comments Submitted in Response to U.S. Copyright Office’s Mar. 22, 2013 Notice of Inquiry at 1 (Apr. 23, 2013).

<sup>37</sup> These issues were raised in a variety of stakeholder discussions, as well as some of the written comments submitted to the Office. See, e.g., Comments of AIPLA, GAG, AAP, Legal Zoom.com, the American Bar Association (“ABA”), and the American Society of Composers, Authors and Publishers (“ASCAP”).

works problems. For example, the American Association of Independent Music said that the “Copyright Office database should become a key searchable source for copyright information so that creators’ works are easily identifiable and do not become Orphan Works.”<sup>38</sup> SoundExchange underscored the importance of incorporating the kinds of standards used in third-party databases (such as ISRC numbers for sound recordings), which will in turn strengthen “the public’s trust in and reliance on the Copyright Office as a repository of valuable information.”<sup>39</sup> ASCAP noted the importance of aligning public registration information with the “world musical works repertoires.”<sup>40</sup>

### C. Registering Copyrights in Digital Works

*As a special bonus for copyright geeks, we will finally be getting a revision to the Copyright Office Compendium!*

- Title17.net, October 25, 2011<sup>41</sup>

Nothing perhaps is as important for the Office as ensuring the ongoing integrity of the registration system as measured by its technical rules and practices. In other words, while the Office strives for speed and efficiency when registering copyright claims, it cannot do so at the expense of quality and accuracy.

Under the leadership of a project manager and senior attorneys in the Copyright Office,<sup>42</sup> an internal team of registration experts engaged in various schedules of auditing, reconciling, and documenting current registration practices across the Literary, Performing Arts, and Visual Arts divisions of the Office. The team devoted special attention to legal developments in the courts, as well as the more practical developments in the ways in which works of authorship are created and made available to the

<sup>38</sup> American Association of Independent Music (“A2IM”), Comments Submitted in Response to U.S. Copyright Office’s Mar. 22, 2013 Notice of Inquiry at 1 (May 21, 2013).

<sup>39</sup> SoundExchange Comments, *supra* note 7, at 3.

<sup>40</sup> ASCAP, Comments Submitted in Response to U.S. Copyright Office’s Mar. 22, 2013 Notice of Inquiry at 5 (May 21, 2013).

<sup>41</sup> See Paul Fakler, *Copyright Office Releases Report of Office Policies and Special Projects*, TITLE17.NET (Oct. 25, 2011), <http://title17.net/archives/221>.

<sup>42</sup> The Register’s Office assembled a team of experts to manage the rewrite of the Compendium, including Mary E. Rasenberger (independent legal consultant); Erik Bertin, Catherine Rowland, William Roberts, Maria Strong, Christopher Reed, and Abioye Oyewole (Copyright Office attorneys); Chad Becker, Kim Robinson, and Shawn Thompson (registration experts); McKenna Rain (information systems); and Dayna Cooper (paralegal support). Senior attorneys Rob Kasunic (head of registration policy) and Jacqueline Charlesworth (General Counsel) provided legal review and will jointly conduct ongoing rulemaking and other updates to registration practice.

public. Two professional organizations, the Copyright Society of the USA and the American Bar Association Section on Intellectual Property Law, formed reading committees on behalf of their memberships to support the highly technical drafting and editing process.

Where prior versions of the Compendium principally addressed the Copyright Office staff, the revised Compendium addresses its customers as well — providing statutory authority, regulatory guidance, and direction to those who submit registration applications, record copyright transactions, and inspect records. A key goal is to make the Office's practices more transparent and accessible: anyone who consults the Compendium will be able to find a wealth of legal and practical guidance.

The Copyright Office is aware that deference to its expert administrative authority turns upon the ongoing evaluation, upgrade, and articulation of our practices and the correlation of those practices to the state of the law. Thus the new Compendium will address authorship in the digital age, including the registration of website content and other born-digital works. It will provide assistance in determining whether online works are published, present new information on group registration options, and offer guidance as to what authorship or works may be covered by a given registration. (The scope of works covered by a registration is not always self-evident today, for instance, where a website contains a great number of contributions from many authors and when the content changes daily or several times a day.)

A critical part of our revision process has been reconciling practices that evolved since the last comprehensive update in 1984. During the intervening years, a combination of legal developments and practical concerns — for example, changes in workflow brought about by the transition to electronic processes — forced a number of adjustments and, in some cases, the adoption of abbreviated measures. The Office had implemented many of these measures to absorb and process the major backlog of registration applications that accumulated during the 2007–08 transition from a paper to electronic system. We have reevaluated these practices and in many cases will replace them with practices aimed at creating maximally useful registration records. The challenge will be doing so while maintaining an acceptable pace of service (the average time for electronic claims, barring complications in the claim itself, hovers around four months).

The Compendium revision is an extremely important undertaking as far as it goes. But what has become clear to the Office (in part from its discussions with stakeholders and in part from its own expertise in law and business) is that the Compendium revision is but the first step in developing a registration program for the twenty-first century. The symbiotic relationship between copyright law and technological change requires the Compendium to be a dynamic document that evolves with changes to the

marketplace. Indeed, the registration system itself must become more flexible to meet the changing needs of the creative communities and the general public. The Office will therefore be assessing its business organization and creating new teams of examiners with new kinds of expertise as appropriate. For example, we are concerned about the challenges that photographers and visual artists face within the current registration system, and may well need to add specialized staff to examine computer software registrations. We also understand the points raised by the recording industry in suggesting that registrations would ideally identify separate tracks of recorded music, even when registered as part of an album.<sup>43</sup>

The Copyright Office will be convening many stakeholder meetings in the coming year to discuss the continued development of registration practices, both evolutionary and wholly new.<sup>44</sup> One complexity is the nature of the deposit that is required both for the examination process and the preservation of the copyright record (the Office must be able to certify the copyright record for parties as necessary, for example, in the case of infringement litigation). For published works, copyright owners must deposit copies that meet “best edition” criteria.<sup>45</sup> But Title 17 provides some flexibility to the Register to define the format and quality of the deposit as appropriate.<sup>46</sup> If registration is currently too cumbersome and too expensive for some, it might be significantly improved by requiring more efficient deposits (MP3s for sound recordings or thumbnail images for photographers, even for published works, for example). This kind of paradigm shift would make it more possible to design a process that achieves registration using an app on a mobile device.

At the same time, the Library of Congress has long been a beneficiary of the registration system. It consults the deposits submitted for copyright registration and makes selections for the national collection, although to date these have been primarily physical formats.<sup>47</sup> Addressing these com-

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<sup>43</sup> Recording Industry Association of America (“RIAA”), Comments Submitted in Response to U.S. Copyright Office’s March 22, 2013 Notice of Inquiry at 2 (May 21, 2013) [hereinafter “RIAA Comments”].

<sup>44</sup> These discussions will be convened jointly by the Registration Program and General Counsel’s Office.

<sup>45</sup> See 17 U.S.C. § 101 (2012).

<sup>46</sup> See *id.* § 408(c).

<sup>47</sup> In fiscal 2012, the Library selected approximately 8.6% of its acquisitions from the Copyright Office registration program, *i.e.*, works submitted by copyright owners for the purpose of legal examination and registration. In fiscal 2013, the number increased slightly to 10.4%. See LIBRARY OF CONGRESS, FISCAL 2014 BUDGET JUSTIFICATION 133, 141 (2013), available at <http://www.loc.gov/about/reports/budget/fy2014.pdf> (providing fiscal 2012 statistics); LIBRARY OF CONGRESS, FISCAL 2015 BUDGET JUSTIFICATION (Feb.

peting desires in the context of digital works, i.e., the desire to make the registration process more efficient, more secure, and less expensive for copyright owners, and the desire to supplement the Library's collection with works that are in preservation-quality formats is no small challenge. It will inevitably require some imagination, as well as changes to the copyright law and adjustments in agency operations.<sup>48</sup>

Data security also requires a new paradigm. As digital works become more and more prevalent, copyright owners deserve clarity as to the security of their digital files. Particularly in the context of registration, where copyright owners submit their works for the purpose of obtaining legal protections, both the Copyright Office (for its registration needs) and the Library (for its collection needs) will have to offer and maintain secure repositories and other safeguards that inspire confidence and participation in the copyright system.<sup>49</sup> This concern is further heightened for works

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2014) (providing fiscal 2013 statistics) (on file with the U.S. Copyright Office).

The concept of copyright registration predates the Library of Congress, but it became a major catalyst in the Library's growth during the period following the Civil War. *See generally* JOHN Y. COLE, *JEFFERSON'S LEGACY: A BRIEF HISTORY OF THE LIBRARY OF CONGRESS* (1993), available at <http://www.loc.gov/loc/legacy/loc.html> (explaining that between the years 1865 and 1897, registered works played a crucial role in the development of the Library of Congress into a national institution); *see also* Act of May 31, 1790 (Copyright Act of 1790), § 3, 1 Stat. 124.

<sup>48</sup> In one example, Mother Nature provided the impetus to move forward. The March 2011 earthquake and tsunami in Japan destroyed the Sony plant responsible for 100% of the global supply of IIDCAM-SR media, 40% of the Blu-Ray media, and other production-quality tapes. The Copyright Office reworked its deposit requirements to allow the copyright owners of television programs to transmit digital files to the Library's state-of-the-art facility for audio-visual preservation in Culpepper, Virginia (David Packard campus). Although participation in the program has been minimal, it may nonetheless offer a starting point for discussing the registration preferences and security expectations of stakeholders when it comes to digital files.

<sup>49</sup> The Library also receives certain published works through the separate provisions of "mandatory deposit" in Title 17, provisions that the Copyright Office administers on behalf of the Library and in accordance with the statute. These provisions legally require copyright owners to deposit copies of their works within three months of publication in formats specified by regulation. *See* 17 U.S.C. § 407(a) (2012). Most national libraries around the world have similar provisions and most are struggling with the complexities of demanding and securing works that are digital. *See generally* *WIPO Second Survey on Voluntary Registration and Deposit Systems*, WORLD INTELLECTUAL PROPERTY ORGANIZATION (2010), [http://www.wipo.int/copyright/en/registration/registration\\_and\\_deposit\\_system\\_03\\_10.html](http://www.wipo.int/copyright/en/registration/registration_and_deposit_system_03_10.html).

that are unpublished, as such works generally receive a higher presumption of protection against unauthorized copying or dissemination.<sup>50</sup>

*D. Recording Transfers, Security Interests, and Other Documents*

*At a time when virtually all business-to-business communications are carried out electronically, the inability of registrants to file transfers of copyright ownership, license agreements and other relevant documents with the Office electronically deters copyright owners from filing relevant documents.*

- Recording Industry Association of America, May 21, 2013<sup>51</sup>

There is no general requirement that copyright owners or, for that matter, anyone, record with the Copyright Office transfers of copyright ownership, licensing information, security interests, or other matters relevant to the progression of copyright interests. But as with registration, the law provides some incentives.<sup>52</sup> For those who do participate, the Office sets certain minimum standards for the form and content of various recordable documents. It also maintains true and accurate copies of documents that are generally accepted by courts of law as authentic evidence of official transactions.<sup>53</sup>

Originally part of the strategy to bring registration processes online, the reengineering of the recordation system was tabled when the conversion of the registration program proved more urgent and expensive than expected. Like many things viewed in hindsight, it may in fact be advantageous that this was so. The Office now has an opportunity to remake the recordation function in a manner that will better serve the current marketplace, rather than migrating the system of the twentieth century.<sup>54</sup> As stated by one expert, if the Copyright Office were to create a system that used global standard identifiers, it would make the Office data “interoperable with worldwide databases.”<sup>55</sup>

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<sup>50</sup> See *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 553 (1985) (“The right of first publication implicates a threshold decision by the author whether and in what form to release his work . . . . Because the potential damage to the author from judicially enforced ‘sharing’ of the first publication right with unauthorized users of his manuscript is substantial, the balance of equities in evaluating such a claim of fair use inevitably shifts.”).

<sup>51</sup> RIAA Comments, *supra* note 43, at 2.

<sup>52</sup> See 17 U.S.C. §§ 205, 302(d), 304(c)(4)(A) (2012).

<sup>53</sup> See *id.* § 410(c).

<sup>54</sup> Also helpful are the 2010 congressional resolutions that validated the use of e-signatures for online transactions. See H.R. Con. Res. 290, 111th Cong. (2010) (enacted); S. Res. 576, 111th Cong. (2010) (enacted).

<sup>55</sup> Paul Jessop, County Analytics, Ltd, Comments Submitted in Response to U.S. Copyright Office’s Mar. 22, 2013 Notice of Inquiry at 9 (May 20, 2013).

The documents recorded with the Copyright Office are not only a helpful resource but also, at times, the authoritative source of information for legal purposes. Among other things, people may rely on this information to resolve ownership issues; document transfer agreements, assignments, and licensing agreements; verify the legitimacy of alleged prior transactions before entering into new ones; compile information on a copyright owner's portfolio of registrations; and research the extent to which a work is protected by the copyright law. Notwithstanding the usefulness of the Office's data, there is room for significant improvement. For example, Author Services, Inc., explained that "there is not enough information to determine the ownership if there is a transfer and the contact information of the parties and/or owner and/or new owner are not available as part of the online card record."<sup>56</sup>

For certain termination documents (the notices sent by authors or their heirs to terminate a prior grant of copyright interests), recordation with the Copyright Office is mandatory to exercise the right. Termination is a significant legal entitlement, making it possible for authors to recapture the value of their works later in life, but no earlier than either thirty-five years from execution of the grant to be terminated or fifty-six years after the copyright was issued (depending on the date of the transfer).<sup>57</sup> For books, movies, films, and songs that are still lucrative after many years, the stakes can be high. Thus, the regulations and practices of the Copyright Office must be clear, and the Office must be accurate and timely in its review and public indexing of the notices. Many issues relating to termination notices are now becoming ripe for the first time for transfers executed after effective date of the 1976 Act, and there is consequently some urgency for the Office to maximize the usefulness of its termination records.

After meeting with law firms, businesses, and trade associations in the past year and half, we have clarified a few issues. For example, we recognize that some legal changes to the recordation process may be prudent to make recordation optimally useful. In other words, the system ideally would be far less voluntary than it currently is, meaning that more authors, publishers, producers, licensees, heirs, and assignees would be incentivized, if not required, publicly to assert their ownership interests as a condition of maintaining certain remedies or other protections, including the ability to seek statutory damages. I have discussed this issue before, as have many others.<sup>58</sup>

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<sup>56</sup> Author Services, Inc., Comments Submitted in Response to U.S. Copyright Office's Mar. 22, 2013 Notice of Inquiry at 3 (May 3, 2013).

<sup>57</sup> See 17 U.S.C. §§ 203, 304 (2012).

<sup>58</sup> See, e.g., Remarks at the Revitalizing Formalities Symposium sponsored by the Berkeley Center for Law & Technology and the Berkeley Technology Law

Legal incentives to record, however, are only half the story of building a comprehensive, accessible public record of copyright transactions, and hence of ownership of copyright interests. Recording is now a cumbersome, costly process that requires manual examination and data entry from paper documents. That process must become far easier, more efficient, and less expensive than it now is. Some local government offices that record real property documents now have systems that accept “self-examining” and “self-cataloging” electronic documents. The documents contain integrated, formatted information that can be validated and used to create catalog entries. As a result, the systems can “examine” and catalog most documents without human intervention, and can place processed documents on public record within minutes.

The Copyright Office can and should work with its customers to create similar kinds of electronic submission standards for copyright documents. We might also need to ask remitters to enter their own cataloging information — with proper guidance, validation, and quality control from Copyright Office staff — placing the legal burden of submitting accurate information on the remitters. Such innovations could dramatically reduce the cost and increase the speed of recording, and go a long way toward making recording an inexpensive, ingrained habit of everyone engaged in significant copyright transactions.

Whatever the answer, addressing the recordation process is not something that can wait. It is as urgent and essential as the national registration system, and indeed, the effectiveness of one is intertwined with the other. Unfortunately, the public won’t tolerate a system that doesn’t work well. Said one company, when “search results are returned by the Office’s systems, they tend to include numerous irrelevant results” and that “[i]mplementing search filtering by work type would be a useful improvement to the Office’s public-facing search capabilities.”<sup>59</sup> And as noted at the beginning of this lecture, if the Office could adopt unique identifiers for authors, musical works, and sound recordings, it could significantly improve the performance of registration and recordation registries. Thus, in the months ahead (notwithstanding the long-term budget needs in this

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Journal (April 18, 2013). For more information on this symposium, see BERKELEYLAW, <http://www.law.berkeley.edu/14263.htm> (last visited Dec. 23, 2013); Jane C. Ginsburg, “With Untried Spirits and Formal Constancy”: Berne-Compatibility of Formal Declaratory Measures to Enhance Title-Searching, Columbia Public Law Research Paper No. 13-346 (2013), *available at* [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2262924##](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2262924##).

<sup>59</sup> Music Reports, Inc., Comments Submitted in Response to U.S. Copyright Office’s Mar. 22, 2013 Notice of Inquiry at 3 (May 21, 2013).

area), the Office will seek additional input from stakeholders and experts through a number of public fora.<sup>60</sup>

### III. TOO SMALL TO FAIL

*[We] hope that Congress will recognize the pressing need to upgrade the Copyright Office's digital systems and to make the same kind of continuing investment in digital technologies as working photographers and most businesses have had to make in order to remain in business.*

- American Society of Media Photographers, May 21, 2013<sup>61</sup>

Although it is small,<sup>62</sup> the Copyright Office contributes enormously to the development of copyright law, the economy, and cultural heritage of the nation.<sup>63</sup> But funding is scarce. In fiscal year 2013, the Office had an overall budget of just \$44.2 million. About \$28.7 million of that (or two-thirds) came from fees paid by copyright owners for registration, rec- ordation, and other public services.<sup>64</sup> The other third (approximately \$15.5 million) came from appropriated dollars.<sup>65</sup>

<sup>60</sup> Professor Robert Brauneis, Abraham Kaminstein Scholar in Residence at the Copyright Office, will be coordinating these proceedings. Students from the Copyright Office Practicum at Stanford Law School, working under the general direction of Professor Paul Goldstein, are also studying these issues and considering solutions.

<sup>61</sup> ASMP Comments, *supra* note 4, at 6.

<sup>62</sup> In fiscal year 2012, the Library employed 3,270 staff, as follows: Library Services (1,350); Congressional Research Service (616); U.S. Copyright Office (396); Library Office of Strategic Initiatives (337); Library Office of Support Operations (230); Office of the Librarian (131); National Library of Service for the Blind and Physically Handicapped (105); Law Library of Congress (90); and Office of the Inspector General (15). LIBRARY OF CONGRESS, ANNUAL REPORT OF THE LIBRARIAN OF CONGRESS 88 (2013), *available at* <http://www.loc.gov/about/reports/annualreports/fy2012.pdf>.

<sup>63</sup> See 159 CONG. REC. H5777 (daily ed. Sept. 20, 2013) (statement of Rep. Visclosky), *available at* <http://www.gpo.gov/fdsys/pkg/CREC-2013-09-20/pdf/CREC-2013-09-20-pt1-PgH5773-3.pdf#page=5>, (“What about the U.S. Copyright Office? For God’s sake, what is there to fight over in funding the Copyright Office?”).

<sup>64</sup> In keeping with 17 U.S.C. § 708, the Office conducts periodic studies of costs and adjusts fees accordingly. It undertook this process most recently as one of the Projects discussed herein. In raising some fees but not others, it considered the costs of its services as well as the objectives of the copyright system. See U.S. COPYRIGHT OFFICE, PROPOSED SCHEDULE AND ANALYSIS OF COPYRIGHT FEES TO GO INTO EFFECT ON OR ABOUT APRIL 1, 2014 (2013), *available at* <http://www.copyright.gov/docs/newfees/USCOFeeStudy-Nov13.pdf>.

<sup>65</sup> From 2010 to 2013, the Office has absorbed a 20.7% reduction in appropriated dollars and an 8.5% reduction in total budget authority, leading to staffing shortages and gaps in technology maintenance plans.

An appropriation of \$15.5 million seems modest in comparison to the public importance of the copyright system, including free access to ownership information, transfers, and other data that drive commercial and cultural development. Moreover, the value of the works acquired by the Library through the Copyright Office — from registration as well as the mandatory deposit provisions of the Copyright Act — is almost double the annual appropriation. In Fiscal 2012, the total estimated value of works transferred to the Library was over \$30 million.<sup>66</sup> This is a remarkable positive return on the Office's appropriation, making it one of the great government bargains for taxpayers. The question is whether this system is a sustainable equation.

How well the Copyright Office will be able to perform its services in the future will turn on the strategies of the kind proffered by the staff and stakeholders, as well as the investments that are put in place today. As the fee provisions of Title 17 do not encompass capital improvements, these would require either a statutory change or additional appropriated dollars.<sup>67</sup> (As I mentioned earlier, this also assumes more direct responsibility for the Copyright Office in managing our technology needs.)

More generally, the Office would benefit greatly from more flexibility in its legal spending authority. Three things stand out in this regard. First is the ability to build a reserve account from the fees collected that the Office can rely upon both for necessities and emergencies across budget cycles, including during periods when incoming fee receipts fluctuate.<sup>68</sup>

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<sup>66</sup> See FISCAL 2014 BUDGET JUSTIFICATION, *supra* note 47, at 141.

<sup>67</sup> See Press Release, Public Knowledge, Public Knowledge Commends Copyright Office on New Priorities (Oct. 25, 2011), available at <http://www.publicknowledge.org/public-knowledge-commends-copyright-office-new-pri> (“We hope that Congress will recognize the great needs of the Office to bring its technical registration systems into the 21st century and give the Office the resources it needs to complete that important task.”).

<sup>68</sup> 17 U.S.C. § 708(d) states, “Such fees that are collected shall remain available until expended.” However, in the practical context of the budget process, Congress has frequently required the Office to offset its request for appropriated dollars by the amount of reserve income it may have at the end of a fiscal year. In addition to leaving the Office with no financial cushion by which to run its operations, this approach has left copyright owners, who pay fees, with subpar service and the general public, who depend upon appropriations, with subpar databases and other services. *Cf.* Leahy-Smith America Invents Act, Pub. L. No. 112-29 § 22, 125 Stat. 284, 336 (2011) (codified at 35 U.S.C. § 42(c) (2012)) (authorizing the U.S. Patent and Trademark Office to deposit a portion of patent and trademark fees into a reserve fund, which the Office may access and spend as needed to run its operations, irrespective of its annual appropriations from Congress); Innovation Protection Act, H.R. 3349, 113 Cong. (2013) (proposed legislation providing for the permanent funding of the U.S. Patent and Trademark Office).

Second, and even better, would be a multiyear budget cycle, as this would allow the Copyright Office to engage in a level of entrepreneurial planning that is not possible under an annual appropriations process. The Office's budgetary challenges have been greatly exacerbated in the past three years, in which Congress has enacted reduced budgets late in the fiscal year. But even apart from such extremes, a twelve-month cycle is inefficient, if not impossible, when so much of the administration of registration, recordation, and statutory licenses depends upon strategic, longer-range improvements to information technology systems.<sup>69</sup> And third, we should explore whether and how costs might be assessed through more innovative equations. This might include mechanisms to allow for the recovery of costs in the aggregate, or the recovery of capital costs that are in the interest of the copyright system, as a supplement to such funds as Congress may continue to appropriate and invest in the Copyright Office.

### *CONCLUSION*

My lecture tonight reflects not the end of a process but the beginning. The Copyright Office is an important institution, serving a diversity of customers, a dynamic marketplace, and a field of law that continues to grow more and more complex. The special projects of the past two years were fulfilling, and at times exciting, but they were largely exploratory. Thus we will continue our work, making measured improvements under the Office's current administrative authority and working appropriately within budget realities.

However, the larger, future-looking issues — the next generation of services that so many of you envision — are another story. For me, these are issues of copyright policy, but they also speak to broader themes of government institutions and the meaning of public service. Such issues deserve, and will undoubtedly require, the talent and participation of the entire copyright community.

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<sup>69</sup> Unlike the U.S. Patent and Trademark Office and federal courts, the Copyright Office did not have the legal authority to spend reserve fees during the October 2013 lapse in appropriations. It might otherwise have managed a small staff to process urgent registrations, such as those required by applicants for major business dealings or to get into court.