



Annual Report of the Register of Copyrights

FISCAL YEAR ENDING SEPTEMBER 30, 2007

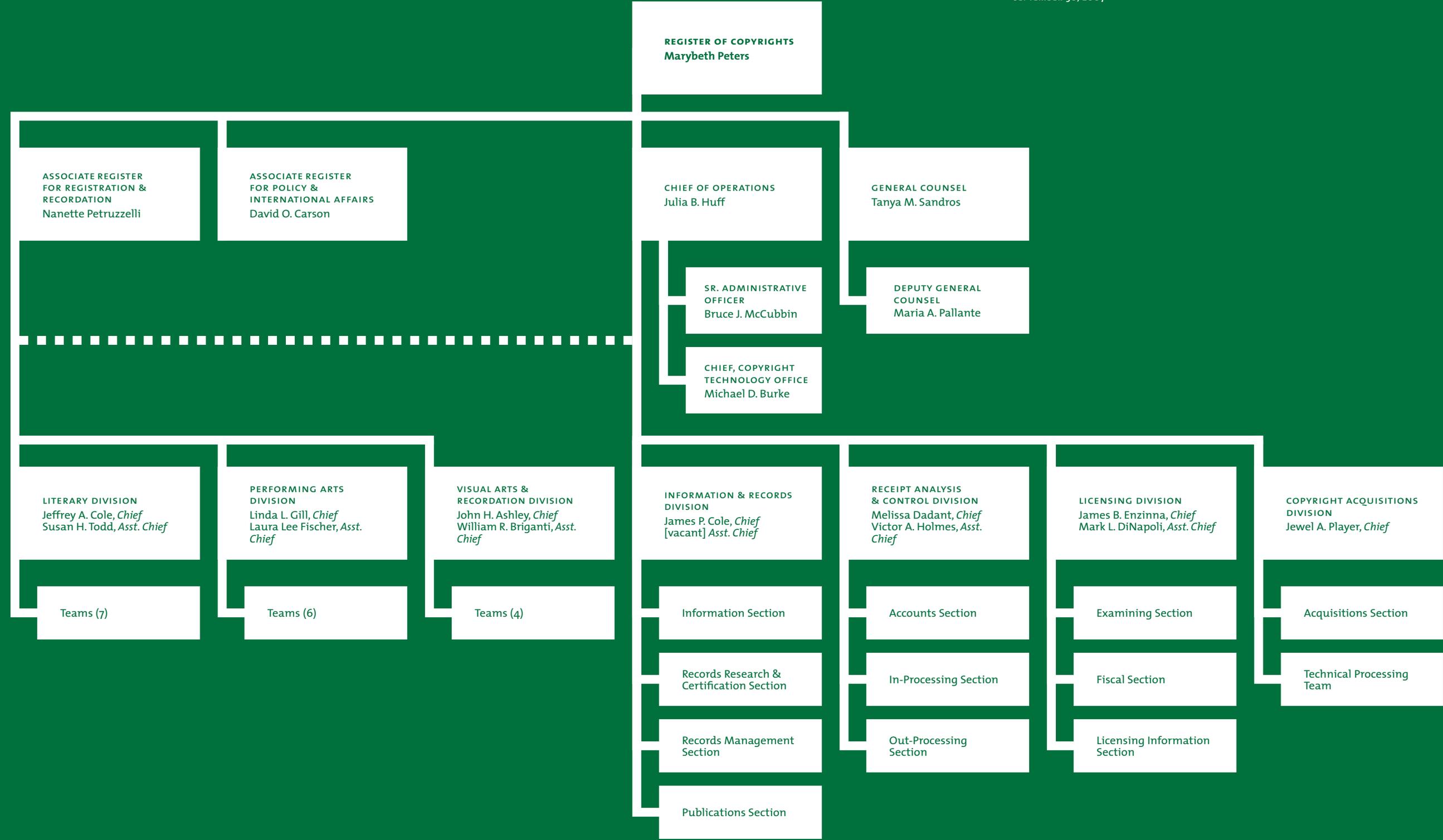
United States Copyright Office

COVER / TITLE PAGE PHOTO:
The dome of Library of Congress's
Thomas Jefferson Building

Organization of the U.S. Copyright Office INSIDE ►

Organization of the U.S. Copyright Office

SEPTEMBER 30, 2007



Annual Report of the Register of Copyrights

FISCAL YEAR ENDING SEPTEMBER 30, 2007



United States Copyright Office

CONTENTS

i	A message from the Register <i>Facts at a Glance</i> · 3
4	The new Copyright Office <i>Implementing Reengineering</i> · 5
10	Copyright law administration <i>Registration</i> · 11 <i>Recordation</i> · 14 <i>Online Service Provider Designations of Agents</i> · 15 <i>Mandatory Deposit</i> · 15 <i>Statutory Licenses and Obligations</i> · 16 <i>Budget</i> · 21
22	Regulatory activities, policy assistance, and litigation <i>Copyright Office Regulations</i> · 23 <i>Reports and Legislation</i> · 27 <i>International Activities</i> · 35 <i>Litigation</i> · 40 <i>Legal Opinions</i> · 46
48	Public information and education
54	Appendices & tables
	INSIDE FRONT COVER · <i>Organization of the United States Copyright Office Copyright Office Contact Information</i> · 66

A message from the Register



*Register of Copyrights
Marybeth Peters*

the Register

This annual report for fiscal year 2007 highlights the many accomplishments of the Copyright Office for October 2006 through September 2007. The year will be remembered as a watershed in the history of the Copyright Office.

The multiyear business process reengineering effort that began as an idea in 2000 reached major milestones across all fronts in 2007. On the facilities front, Office staff who had been moved to temporary work space in Arlington, Virginia, and throughout the Library of Congress campus on Capitol Hill moved back into permanent renovated space in the James Madison Memorial Building. The office renovations were not merely cosmetic enhancements but a top-to-bottom overhaul of Copyright Office work areas designed to optimize efficiency by aligning the Office's various processing units with newly reengineered workflows.

On the organization front, the Office's reorganization plan, a document representing three years of labor, was approved and implemented. As a result, a large majority of Office staff entered new positions and in many cases assumed new duties and responsibilities. As with the facilities renovations, the new positions and revised organizational structure were developed in concert with the reengineered business processes. They will result in increased productivity by consolidating tasks and streamlining functions.

On the information technology front, the electronic Copyright Office (eCO) web portal, the online registration system that serves as the cornerstone of the entire reengineering effort, entered a beta test phase in which a limited group of participants began filing basic registration claims for literary works, visual arts works, performing arts works, and sound recordings online via the e-Service component of eCO. At the same time, Office staff began processing claims internally in eCO—both claims filed online under the beta test and paper claims received through the mail and scanned

into the system—thereby accomplishing a giant leap in the Office’s transition from a paper-based to a web-based processing environment. The beta test will expand and continue until the eCO e-Service has been fully tested and exercised. Release of eCO e-Service to the public for the purpose of filing basic registrations is anticipated in 2008. Other registration claim types, such as group registrations and corrections and amplifications of existing registrations, will be offered through eCO as well.

On the legal front, the Office developed and published interim regulations covering electronic registrations (72 FR 36883 July 6, 2007) and a new fee structure that includes a lower filing fee for online registrations (72 FR 33690 June 19, 2007). These and other planned regulatory actions serve to modernize the Office’s rules of operation to help ensure that both the Office and the users of copyright services delivered over the Internet are in compliance with the copyright law.

Apart from the reengineering effort, the Copyright Office was busily engaged in legislative activities, domestic and international policy discussions, copyright-related litigation, and educational outreach and information sharing.

The accomplishments noted in this report reflect a tremendous amount of hard work and dedication, and Copyright Office staff are to be commended for continuing to manage a demanding workload while learning and adopting a new way of doing business. Change is difficult, but we recognize the need to change the way we operate in order to achieve our goal of becoming the Copyright Office of the 21st century.



Marybeth Peters
Register of Copyrights

FACTS AT A GLANCE

In fiscal year 2007 the Copyright Office...

- Implemented reengineered processes, launched a new integrated IT system, occupied redesigned facilities, and implemented a new organizational structure
- Began beta testing of e-Service, the online copyright registration system
- Registered 526,378 claims to copyright, 284 claims in mask works, and 26 claims in vessel hull designs
- Recorded 11,534 documents covering more than 500,000 titles of works
- Transferred 1,077,152 items to the Library valued at more than \$45 million; of these, more than half, valued at nearly \$16 million, were received through the mandatory deposit provisions of the copyright law
- Collected licensing royalties totaling nearly \$234 million and distributed royalties totaling nearly \$280 million
- Issued a regulation in the triennial §1201 rulemaking on the classes of work exempt from the prohibition on circumvention of technological measures
- Testified at congressional hearings on §115 reform (license for the making and distribution of phonorecords, including digital deliveries), public performance right in sound recordings, and the future of digital libraries
- Provided ongoing assistance to Congress in relation to orphan works—works still within their copyright term but for which a user cannot identify or locate the copyright owner; various licensing issues, including a report to Congress on §109 of the Satellite Home Viewer Extension and Reauthorization Act (SHVERA)
- Engaged in negotiation of intellectual property provisions of bilateral and multilateral free trade agreements
- Participated in proceedings of the World Intellectual Property Organization and World Trade Organization
- Held an International Copyright Institute on emerging issues in copyright and related rights for countries developing or transitioning to market economies; there were representatives from 17 countries and one regional organization
- Assisted in copyright-related litigation regarding constitutionality of certain legal provisions (e.g., *U.S. v. Martignon*, *Kahle v. Ashcroft*, *Golan v. Gonzales*), non-copyrightability of individual settlement prices (*New York Mercantile Exchange v. Intercontinental Exchange Inc.*), the Register's refusal to register certain works (e.g. *Darden v. Peters*), and other issues
- Issued legal opinions on two novel questions of law referred by the Copyright Royalty Board regarding ringtones and preexisting subscription services
- Enhanced the Office's website with a portal to e-Service beta testing, access to the powerful new records search system, and an interactive site aimed at middle-school children
- Answered 304,688 requests for direct reference services

The new The new Copyright Office

Reengineering Objectives

- *improve the efficiency and timeliness of Copyright Office public services*
- *provide more services online*
- *ensure the prompt availability of new copyright records*
- *provide better tracking of individual items in the workflow*
- *increase the acquisition of digital works for Library of Congress collections*



Receipt Analysis and Control Division staff in the newly renovated mail processing area ingest paper copyright applications into the eCO system.

Copyright Office

IMPLEMENTING REENGINEERING

The Copyright Office's goal is to provide the right services to its customers in a timely way. It was this challenge that led the Office to carry out its multiyear effort to reengineer its business processes and the delivery of its principal public services. This significant project enlisted the participation of staff in affected areas, required major moves to temporary offsite locations, necessitated a major staff training program, and required the rewriting of most of the Office's position descriptions. The Office's efforts have focused on coordinated implementation of new information technologies, a reorganized office structure, and renovated facilities to support redesigned business processes. In fiscal year 2007¹, a transformed Copyright Office came into being with the implementation of most of the Office's reengineered principal public services.

Information Technology

The Office worked with SRA International Inc. of Fairfax, Virginia, to design and develop a new information systems infrastructure, the electronic Copyright Office (eCO) system, which integrates the functions previously performed by several relatively large, discrete IT systems and many smaller applications. The eCO system has two components. The first, eCO Service, uses Siebel Customer Relations Management software and Captiva optical character recognition software to provide online registration (e-Service) as well as support for processing both electronic and hard-copy registrations. The second, eCO Search, uses Voyager library software to search more than 20 million copyright records.

1. See reports for fiscal years 2000 through 2006 for additional background on the project.

The new eCO system will accept applications for copyright registration, payments, and copyright deposited works through the Internet. The searching component of the system will allow applicants to track the progress of their claims and to search the records of all works registered since 1978, 24 hours a day, seven days a week. The eCO system enables the Office to provide its services to the public online and manage its internal processes through a centralized case management system. In addition to supporting a more efficient registration process, eCO allows users of Copyright Office electronic services to check the status of in-process e-service requests, supply additional information, and resolve discrepancies. Implementation of most of eCO's operating capability occurred upon the return of Copyright Office staff to the Library of Congress Madison Building in late fiscal year 2007 following reconfiguration of the Office's workspace. The Office anticipates implementing document recordation, group registrations, renewals, acquisition of copies of copyright works, and central printing during fiscal year 2008, with licensing activities to follow in fiscal year 2009.

ECO E-SERVICE BETA TESTING. e-Service is the public facing web component of eCO Service through which copyright claimants will be able to complete applications online, pay with a credit card or deposit account, and upload copies of works that qualify for electronic submission. Claimants may also mail physical copies of works after completing the application and payment online. During the year, the Copyright Office started alpha testing of e-Service by inviting a small number of applicants to begin submitting claims online. The alpha testing identified what worked well and what needed improvement. Based on successful alpha testing, the Office began beta testing by extending the invitation to more applicants via the Copyright Office website. By the end of fiscal year 2007, over 1,400 applicants had established eCO accounts and several hundred had submitted electronic claims. In fiscal year 2008, the Office expects to open eCO e-Service to the general public.

The Office made progress in designing new forms that incorporate 2-D barcoding technology. The forms, which will be completed online, are intended for applicants who prefer not to transact business over the Internet. When printed out, each form will have a scannable 2-D barcode that encapsulates all the data entered in the form. When the Office scans the 2-D barcode, all fields of the eCO record are populated automatically without the need for manual data entry.

REGISTRATION RECORDS. As part of the reengineering program, the Office and the Library's Information Technology Service (ITS) determined that the Office should

transfer approximately 20 million registration records from the decades-old Copyright Office Publication and Interactive Cataloging System (COPICS) to the Library's Voyager platform due to obsolete technology supporting the COPICS system, and the more powerful search capability and increased compatibility with Library records in the Voyager platform. In August 2007, the Office successfully completed the conversion.

Organization

The Office introduced a new organization on August 5, 2007, aligned with the new processes. The most significant change was the transformation of the former Examining and Cataloging Divisions into the newly created Registration and Recordation Program. The new organization consists of seven divisions: the Receipt Analysis, and Control Division; the Registration and Recordation Program with three divisions (Literary Division, Performing Arts Division, and Visual Arts and Recordation Division); the Information and Records Division; the Copyright Acquisitions Division; and the Licensing Division.

Facilities

On the facilities front, the Office accomplished three major milestones in fiscal year 2007. First, after years of planning, the Architect of the Capitol renovated the Copyright Office space in the Madison Building. Second, nearly all staff and contractors moved back to the newly renovated space in the Madison Building from swing space in Arlington, Virginia, and other sites in the Capitol Hill complex. Finally, the Copyright Office opened the Copyright Public Records Reading Room, which consolidated all Copyright Office records for more convenient public access.

Processes

In August 2007 the Office implemented its new processes, outlined in the reengineering effort, to eliminate duplicate handling and data entry. The Office takes basic mailed claims into the eCO system in the Receipt Analysis and Control Division, creating a service request record, scanning the application, and processing payments. A separate operation transfers information from scanned applications into the eCO

service request record. The new processes minimize physical handling of copies of works. Registration specialists retrieve electronic service requests by scanning barcodes on deposited works. They examine the claim, ensuring an accurate public registration record of the application and work, and select certain types of works for inclusion in Library of Congress collections. After approval and quality assurance, the record moves directly into the certificate queue for storage of the scanned application and creation of the certificate. Deposit copies go to Copyright Office storage or to the Library's custodial divisions.

Registrations via eCO's e-Service move more rapidly because intake is accomplished electronically, including credit card or deposit account payment made online. This entirely bypasses the need for scanning, transferring data from scanned applications to the database, and processing checks. If the claimant uploads an electronic deposit copy of the work, there is no need for physical transport of the work. If the claimant sends a separate physical deposit copy, the deposit copy is matched to the electronic record upon receipt through a barcoded shipping slip that the claimant mails with the deposit.

TRAINING. The year saw extensive staff preparation for the implementation of eCO, the main focus of which was training in the use of Siebel software. The training took place in classroom and individual sessions through the use of OnDemand, an automated training tool that provides step-by-step instructions. OnDemand demonstrates an entire operation, allowing the staff member to interact via on-screen prompts. The Office also used the software to produce trainer guides, user guides, and fact sheets.

Since every job in the reengineered Office requires computer use, the Office provided classes in basic computer skills for staff who did not use computers in their previous jobs.

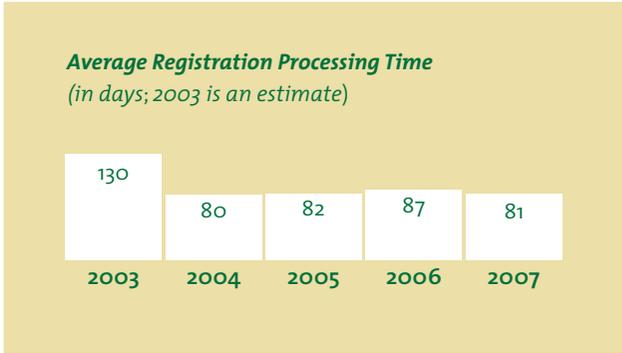
During the fiscal year, the Office continued its major program to train registration specialists (former examiners and catalogers) in the processes of copyright examination and creation of the registration record. As all online copyright records moved to the Library-wide Voyager database for searching (eCO Search), the Office provided additional training in the Voyager system. All new registration and recordation records will be in Voyager. Most will be created in eCO and automatically sent to Voyager; some serials records will be created directly in Voyager. Staff

and contractors also learned to use Captiva software to enter data from scanned application images.

MOTION PICTURE PROCESSING. The motion picture pilot, the first reengineering pilot project, began in fiscal year 2005 and continued through fiscal year 2007. The pilot effectively ended in August 2007 as processing all basic claims in eCO, including motion picture claims, became the new norm for registration processing.

SELECTION. Selection is the process of determining which works should be added to the Library of Congress permanent collections. This pilot project tested new procedures under which Copyright Office staff members make selection decisions for routine categories of copies of copyrighted works. Supervisors who led the pilot wrote an assessment recommending the implementation of selection by registration specialists as part of the reengineered registration process. As a result of this decision, deposit copies will not have to wait for Library selection officials to review the materials but can be promptly handled by registration specialists during the registration process.

TIMELINESS. Timely service is a constant goal of the Copyright Office. The Office expected that it would experience a learning curve as reengineered processes are implemented. However, the Copyright Office was able to maintain its delivery times for products and services when measured across the entire year, with the average processing time of 81 days to process a copyright claim. Large new information technology systems invariably have startup issues related to processing, programming, and usability. With implementation of the new systems, the Office needs to work through challenges that may take months to resolve. Indeed, the Office experienced a marked slowing of productivity in the final two months of fiscal year 2007 as staff transitioned from old to new operations.



Copyright Copyright law administration



“Taggers” place the information received on paper application forms into eCO, working with two monitors—one showing the scanned application and the other showing the eCO screen.

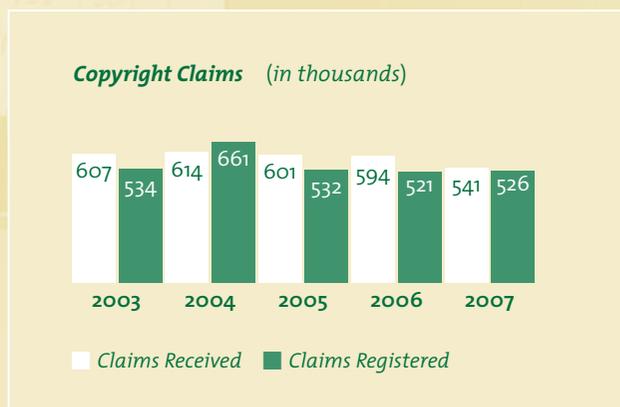
Copyright Administration

The Copyright Office administers the provisions of the copyright law (title 17 of the *United States Code*) for the benefit of owners and users of copyrighted works, mask works, and vessel hull designs. Copyright Office regulations governing copyright law administration are in chapter 37 of the *Code of Federal Regulations*.

REGISTRATION

Copyrighted Works

The Office examines copyright claims to determine whether the deposited work contains copyrightable content and whether there has been compliance with U.S. copyright law and Office regulations. During fiscal year 2007, the Copyright Office received 541,212 claims to copyright covering well over a million works and registered 526,378 claims, more than 5 percent of which were submitted electronically.



Preregistration

Preregistration, a relatively new service introduced in fiscal year 2006 as a result of legislation, is available only online. Preregistration, as distinct from registration, is available only for certain types of unpublished works being prepared for commercial distribution that the Register of Copyrights finds to have a history of infringement

prior to commercial distribution. Preregistration requires only an application with a brief description of the work, other basic information, and a fee. Preregistration is not a substitute for registration; after publication, a follow-up registration is required. There were 496 preregistrations during fiscal year 2007.

Creation of the Registration Record

The copyright law requires the Register of Copyrights to create, maintain, and index records of all deposits, registrations, recordations, and other copyright-related matters and to make these records available to the public. Records of copyright registrations provide important information about ownership of copyrighted works, helping users to make lawful use of such works and providing information for researchers about the history of American creativity. During its final year of existence before its incorporation into the new Registration and Recordation Program, the Cataloging Division created records for 569,405 registrations

Reconsiderations of Denial of Registration

Under title 17, the Register of Copyrights may determine that the material deposited for copyright registration does not constitute copyrightable subject matter or that the claim is not registrable for other reasons. In such cases, the Register refuses registration and communicates to the applicant, in writing, the reason(s) for such refusal. Applicants whose claims for registration are rejected can seek reconsideration of such decisions in a two-stage process. The claimant first requests reconsideration by the appropriate division in the Registration and Recordation Program (formerly the Examining Division). If the Division upholds the refusal, the claimant may make a second request to the Copyright Office Review Board. The Register of Copyrights, the General Counsel, and the Associate Register for Registration and Recordation or her designee, constitute the Review Board.

During fiscal year 2007, the Examining Division handled 426 first requests for reconsideration covering 629 claims. Of the initial refusals to register claims, 113 refusals were reversed upon first request.

The Copyright Office Review Board met five times during the year to reconsider the Office's prior refusals to register claims in particular works and to decide what the

final Office action would be. During the year, nine decisional letters, each involving a single work, were issued refusing registration.

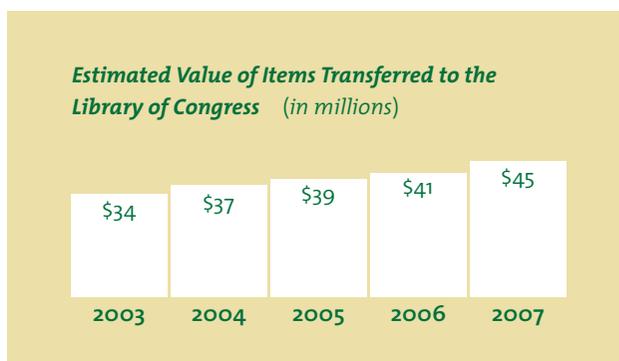
Copies of Deposits and Certifications

Upon request, the Copyright Office makes certified copies of its records, including registration certificates and deposited works, usually when the owner is engaged in infringement-related litigation. To obtain a certified copy, one of three conditions must be met: (1) the Office receives a written authorization from the copyright claimant of record, from a claimant’s designated agent, or from the owner of any of the exclusive rights in the copyright, as long as this ownership can be demonstrated by written documentation of the transfer of ownership; (2) an attorney or authorized representative completes and submits the Copyright Office Litigation Statement Form in connection with litigation involving the copyrighted work, and the Office finds a basis for providing a copy; or (3) the Office receives a court-issued order for a reproduction of a deposited article, facsimile, or identifying portion of a work that is the subject of litigation in the court’s jurisdiction.

During the fiscal year, the Information and Records Division’s Records Research and Certification Section, formerly the Certifications and Documents Section, produced 3,371 copies of certificates of registration. The section made 1,427 copies of copyright deposits and certified 1,060 deposits and records.

Contributions to Library of Congress Collections

The Library of Congress may select for its collections copies of works submitted for registration or to fulfill the mandatory deposit provision of the law. Copyright deposits form the core of the Library’s “Americana” collections and serve as the primary record of American creativity.



During the fiscal year, the Office transferred 1,077,152 copies of registered and nonregistered works valued at more than \$45 million to the Library of Congress for its collections.

Mask Works

The Semiconductor Chip Protection Act of 1984, chapter 9 of title 17, created a new type of intellectual property protection for mask works, a series of related three-dimensional images or patterns formed on or in the layers of metallic, insulating, or semiconductor material and fixed in a semiconductor chip product, i.e. the “topography” of the “chip.” In fiscal year 2007, the Office received applications for 273 mask works and registered 284.

Vessel Hull Designs

Chapter 13 of title 17 grants the owner of an original vessel hull design certain exclusive rights, provided that application for registration of the design is made in the Copyright Office within two years of the design being made public. The Office received 23 applications for registration of vessel hull designs this fiscal year and registered 26.

RECORDATION

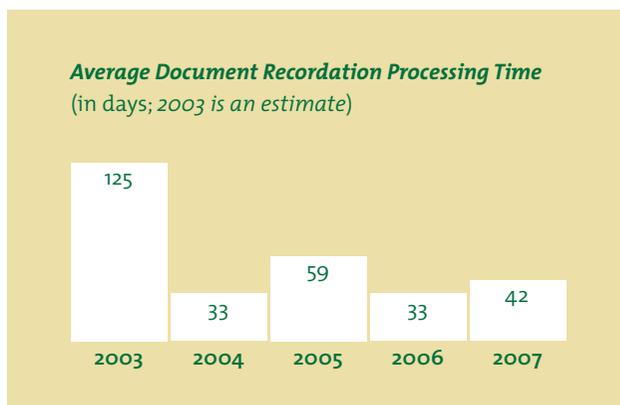
The Copyright Office creates records of documents relating to a copyrighted work, a

mask work, or a vessel hull design that have been recorded in the Office. Documents may involve, for example, transfers of rights from one copyright owner to another, security interests, contracts between authors and publishers, and notices of termination of grants of rights. These documents frequently reflect popular and



economically valuable intellectual property.

During fiscal year 2007, the Office recorded 11,534 documents covering more than 500,000 titles of works. Documents were processed in an average 42 days.



ONLINE SERVICE PROVIDER DESIGNATIONS OF AGENTS

Congress amended the copyright law in 1998 to limit potential liability of service providers for monetary and injunctive relief for copyright infringement for certain activities carried out on their systems or networks. To take advantage of this limitation on liability, certain kinds of service providers must file a designation of agent statement identifying the agent to receive notification of claims of infringement. The service provider must also post such information on its publicly accessible website. The Office processes these online service provider designations of agents and makes them available to the public through a directory of agents on its website, one of the website's most-visited areas with 4.3 millions hits in fiscal year 2007. During the year, the Office posted an additional 1,116 designations of agents to the website, for a total of 7,927.

MANDATORY DEPOSIT

The mandatory deposit provision in §407 of the copyright law requires, with certain exceptions, that the owner of copyright or of the exclusive right of publication deposit two copies of copyrighted works published in the United States within three months of publication. The Library may add these works to its collection, or it may use them in its exchange program with other libraries.

The Copyright Acquisitions Division (CAD) encourages copyright owners to deposit or register works regularly and voluntarily immediately after publication;

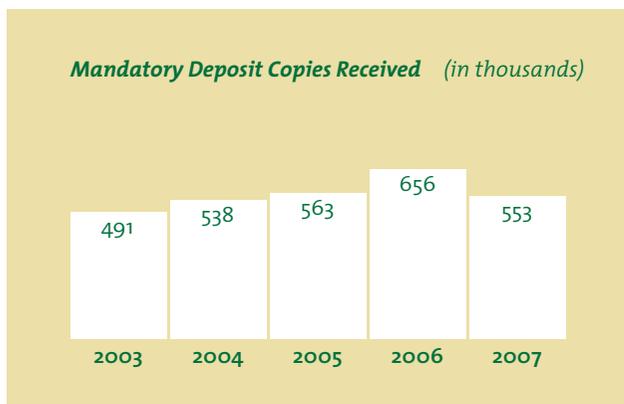
however, the copyright law authorizes the Register to issue demands for the required copies any time after publication.

CAD made demands for 4,630 titles based on recommendations by CAD librarians and Library of Congress recommending officers, and on congressional requests. CAD

received 4,103 titles from publishers in response to these demands. CAD also completed 11 publisher reviews and six follow-up compliance reviews. The Office referred one noncompliant publisher to the Department of Justice for legal action.

Over half of the copies of works the Office transferred to the Library of Congress for its use arrived under the mandatory deposit provisions of the copyright law (553,218 out of 1,077,152 copies). The value of these mandatory

deposit copies was nearly \$16 million or more than a third of the estimated \$45 million value of all materials transferred to the Library.



STATUTORY LICENSES AND OBLIGATIONS

The Copyright Office oversees the statutory licenses and obligations in the copyright law. Congress created statutory copyright licenses to remove the burden of negotiating individual licenses from certain users and owners of copyrighted works.

Statutory Licenses

Some statutory licenses require the users of protected works to deposit royalty funds with the Copyright Office. Statutory licenses were included in the Copyright Act of 1976, Pub. L. No. 94-553, 90 Stat. 2541 (title 17 U.S.C.) and later laws amending it. The Licensing Division dates from 1978 when the Copyright Act of 1976 became effective.

The Licensing Division is responsible for collecting royalty fees from cable operators, satellite carriers, and importers and manufacturers of digital audio recording devices and media (DART); investing the royalty fees, minus operating costs, in interest-bearing securities with the U.S. Treasury for later distribution to copyright owners; recording voluntary licensing agreements between copyright owners and specified users of their works; and examining licensing documents submitted for these statutory licenses to determine whether they meet the requirements of the law and the Office's regulations.

Since 1978 royalty rates, terms, and conditions of statutory licenses as well as distribution determinations have been made by three different bodies that Congress created: first, by the Copyright Royalty Tribunal, 1978–1993, an independent agency outside the Library of Congress; second, by Copyright Arbitration Royalty Panels (CARPs), 1993–2005, under the aegis of the Librarian of Congress and administered through the Copyright Office; and third, by the Copyright Royalty Board, beginning in 2005, an independent and separate unit also under the aegis of the Librarian of Congress.

The Licensing Division collected close to \$234 million in royalty payments during the fiscal year. Beginning on October 1, 2006, the division used its new electronic funds transfer (EFT) regulation to require that remitters submit royalty fee payments using EFT, resulting in a more efficient, timely, and orderly investment of royalty funds. In addition, the division developed options for electronic filing for cable Statements of Account (SA) to be tested in a future pilot e-filing program.

The Copyright Office receives royalty fee payments related to licenses that deal with secondary transmissions of radio and television programs by cable television systems; secondary transmissions of superstations and network stations by satellite carriers; and the importation, manufacture, and distribution of digital audio recording devices and media.

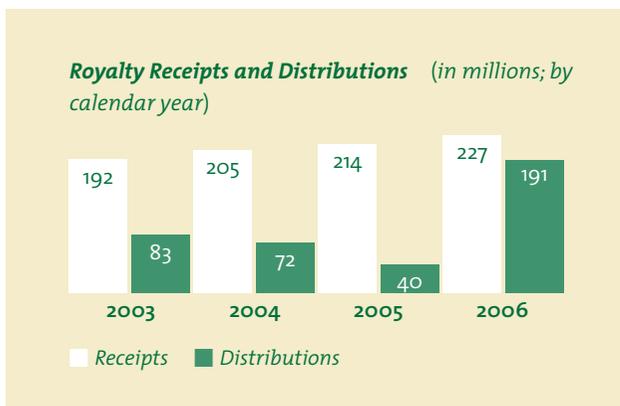
In addition, the Office receives various filing fees related to these and other licenses, such as the making of ephemeral recordings, the noninteractive digital transmission of performances of sound recordings, the making and distributing of phonorecords of nondramatic musical works which includes digital phonorecord deliveries, and the use of published nondramatic musical, pictorial, graphic, and sculptural works and nondramatic literary works in connection with noncommercial broadcasting.

Royalty Fee Distributions

The Copyright Office distributes royalties collected under §111, §119, and chapter 10 of the copyright law, as determined by agreements among claimants or by proceedings of the Copyright Royalty Board.

In fiscal year 2007, the Office distributed royalties totaling nearly \$280 million in the following distributions:

- On October 19, 2006, a distribution totaling \$3,002,596.73 of the 2002, 2003, and 2004 Musical Works Fund
- On November 30, 2006, a distribution totaling \$1,538,780.83 of the 2005 Copyright Owners of Sound Recordings and Featured Artists Subfunds
- On January 25, 2007, a distribution totaling \$938,605.32 of the 1993 to 2001 final supplemental distribution to Non-Featured Musicians Subfund, Non-Featured Vocalists Subfund, Featured Artist Subfund, Sound Recording Copyright Owners Subfund, Music Publishers Subfund and Writers Subfund
- On March 22, 2007, a final supplement distribution of \$1,658,959.68 to Major League Central Fund, for the 1993 to 1997 Cable and 1994 to 1995 Satellite Funds
- On April 19, 2007, a distribution totaling \$194,220,505.37, comprising the final cable royalty distributions from the 1999–2002 cable royalty pool to the Music Claimants, Joint Sports, Commercial Television Claimants, Public Television Claimants, and Canadian Claimants
- On June 7, 2007, a partial distribution totaling \$76,484,928.33 to Joint Sports and Program Suppliers of the 1998 and 1999 cable royalties
- On August 23, 2007, a distribution totaling \$2,086,531.64 of the 2006 Sound Recording Copyright Owners and Featured Artists Subfunds



Financial statements for royalty fees available for distribution in the cable and satellite statutory licenses and in the digital audio recording technology statutory obligation are compiled and audited on a calendar-year basis as required by law. The total royalty receipts and disbursements

shown in calendar-year statements are therefore not the same as the fiscal year total. Calendar-year 2006 financial statements are included in the appendices to this report. Calendar-year 2007 financial statement figures will appear in the fiscal year 2008 report.

Compulsory License Administration: Terminations

On November 30, 2004, the President signed into law the Copyright Royalty and Distribution Reform Act of 2004 (CRDRA). The act, which became effective on May 31, 2005, phased out the Copyright Arbitration Royalty Panel (CARP) system and replaced it with three Copyright Royalty Judges. Section 6(b)(1) of the act allows for the termination of any CARP proceeding commenced by the date of the enactment of the act. Any terminated proceeding becomes null and void, and the Copyright Royalty Judges can initiate a new proceeding in accordance with regulations adopted pursuant to §803(b)(6) of title 17. On August 10, 2007, the Copyright Office published a notice announcing the termination of all open proceedings under provision 6(b)(1) of the CRDRA. The notice also announced that the authority to set rates or to make determinations regarding the future distribution of royalty funds associated with the proceedings was transferred to the Copyright Royalty Board (www.loc.gov/crb/).

Notices of Intent to Audit

Pursuant to §262.6(c) of the Office's regulations, the Office is required to publish in the *Federal Register* within 30 days of receipt of a notice of intent to audit a public notice announcing the designated agent's intent to conduct the audit.

On December 23, 2005, SoundExchange, a performing rights entity that was designated by the Librarian to collect and distribute royalty fee payments made under §114(d)(2) of the copyright law, filed with the Copyright Office a notice of intent to audit Live365 Inc.'s eligible nonsubscription and new subscription services for the years 2002, 2003, and 2004. Subsequently, on October 5, 2006, SoundExchange filed a second notice of intent to audit Live365, pursuant to §262.6(c), notifying the Copyright Office of its intent to expand its current audit to cover 2005. In accordance with this regulation, the Office published the required notice on November 1, 2006.

On November 22, 2006, SoundExchange filed with the Copyright Office a notice of intent to audit Beethoven.com’s eligible nonsubscription and new subscription services for the year 2005. The Office published the required notice on December 20, 2006.

On March 29, 2007, SoundExchange filed with the Copyright Office a notice of intent to audit Microsoft Corporation’s eligible nonsubscription and new subscription services for the year 2005. The Office published the required notice on May 3, 2007.

Cable Compulsory License: Specialty Station List

A specialty station is “a commercial television broadcast station that generally carries foreign– language, religious, and/or automated programming in one-third of the hours of an average broadcast week and one-third of the weekly prime-time hours” (47 CFR 76.5(kk)). Specialty stations pay lower royalties for the programs they broadcast. On February 8, 2007, the Copyright Office published a request for information in order to compile a new specialty station list identifying commercial television broadcast stations that, according to their owners, qualify as specialty stations for purposes of the former distant signal carriage rules of the Federal Communications Commission (FCC). The Copyright Office requested all interested owners of television broadcast stations that qualify as specialty stations, including those that previously filed affidavits, to submit sworn affidavits to the Copyright Office stating that the programming of their stations meets the requirements specified under the FCC regulations in effect on June 24, 1981.

On June 15, 2007, the Copyright Office published a final list of stations listed in affidavits sent to the Copyright Office in which the owner or licensee of the station attested that the station qualifies as a specialty station. The publication of the list also included a request for comments from any party who may object to an owner’s claim of specialty station status.

BUDGET

The Copyright Office annually receives two appropriations from Congress: Basic and Licensing. Total fiscal year 2007 Copyright Office budget authority was \$52,816,000 with a full-time equivalent (FTE) staff ceiling of 517. The Basic appropriation derives its funding from two revenue sources: net appropriations from the U.S. Treasury (\$22,662,000 in fiscal year 2007) and authority to spend user fees (\$30,300,000). The Basic appropriation funded the majority of the Office's activities. The Licensing budget activities (\$3,854,000) were fully funded from user fees withdrawn from royalty pools.

Regulatory activities, policy assistance, and litigation



Copyright Office staff briefed two dozen international copyright officials from developing countries who were participants in the Patent and Trademark Office's weeklong Global Intellectual Property Academy.

COPYRIGHT OFFICE REGULATIONS

The Register of Copyrights is authorized under §702 of the copyright law to establish regulations for the administration of the copyright law. In addition to regulatory activities discussed elsewhere in this report, regulations issued during fiscal year 2007 included the following:

Registration of Copyright Renewals

The 1976 Copyright Act retained the renewal system for works that were copyrighted before 1978 and were still in their first terms on January 1, 1978. For these works, the statute provides for a first term of copyright protection lasting for 28 years, with the possibility for a second term of 47 years. The Sonny Bono Copyright Term Extension Act increased the renewal term to 67 years. In 1992, amending legislation was enacted that automatically secured the renewal term for works copyrighted between January 1, 1964, and December 31, 1977. Under this amendment, registration of a claim to the renewal term could be made at any time during the renewal term. On April 4, 2007, the Copyright Office published a notice of proposed rulemaking seeking comment on amending its rule governing applications for registration of claims to the renewal term of copyright. The proposed regulation takes into account the fact that, since January 1, 2006, no copyright claim registered for renewal has been in the 28th year of the original term. The proposed rule clarifies that, where no renewal registration has been made in the name of a party identified as entitled to the renewal right in the statute at 304(a)(1)(B) and (C), an application form may be filed at any time during the renewal term by any successor or assignee of such statutorily enumerated party. Included in the proposed rule are revised application forms for the registration of renewal claims. The ruling is scheduled to be published early in fiscal year 2008.

Fees for Copyright Claims Submitted Electronically

The Copyright Office lowered its basic registration fee from \$45 to \$35 for copyright claims submitted electronically. In 1997, Congress delegated to the Register of Copyrights authority to adjust fees in accordance with a new procedure. In 2006 the Office used this authority to raise the basic registration fee from \$30 to \$45. In February 2007 a cost study was submitted to Congress proposing to reduce the basic registration fee for copyright claims submitted electronically to \$35. In developing the new fee, the Copyright Office utilized data from a small-scale testbed for electronic registration and data from prior studies relating to the costs of certain paper processes that do not form part of the online registration process. The dual fee structure anticipates the reduced cost of processing electronic claims and serves as an incentive to the public to utilize the new online electronic registration system. In June 2007 the Office issued a final regulation establishing the \$35 fee for electronic registration.

Section 1201 Rulemaking

As reported in the Annual Report for fiscal year 2006, the Copyright Office initiated a triennial rulemaking proceeding pursuant to §1201(a)(1) to determine what, if any, classes of works shall be subject to exceptions to the prohibition on circumvention of access controls for the next three-year period. After reviewing the entire record in the rulemaking, including written comments and reply comments, hearing testimony, follow-up written questions to a number of the witnesses to clarify the record, and consultation with the National Telecommunications and Information Administration, the Register of Copyrights presented her recommendations to the Librarian of Congress.

On November 27, 2006, the Librarian of Congress published six classes of work exempt from the prohibition on circumvention in the *Federal Register*. The classes are:

- 1 Audiovisual works included in the educational library of a college or university's film or media studies department, when circumvention is accomplished for the purpose of making compilations of portions of those works for educational use in the classroom by media studies or film professors.
- 2 Computer programs and video games distributed in formats that have become obsolete and that require the original media or hardware as a condition of access, when circumvention is accomplished for the purpose of preservation or archival

reproduction of published digital works by a library or archive. A format shall be considered obsolete if the machine or system necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.

- 3 Computer programs protected by dongles² that prevent access due to malfunction or damage and which are obsolete. A dongle shall be considered obsolete if it is no longer manufactured or if a replacement or repair is no longer reasonably available in the commercial marketplace.
- 4 Literary works distributed in ebook format when all existing ebook editions of the work (including digital text editions made available by authorized entities) contain access controls that prevent the enabling either of the book's read-aloud function or of screen readers that render the text into a specialized format.
- 5 Computer programs in the form of firmware that enable wireless telephone handsets to connect to a wireless telephone communication network, when circumvention is accomplished for the sole purpose of lawfully connecting to a wireless telephone communication network.
- 6 Sound recordings, and audiovisual works associated with those sound recordings, distributed in compact disc format and protected by technological protection measures that control access to lawfully purchased works and create or exploit security flaws or vulnerabilities that compromise the security of personal computers, when circumvention is accomplished solely for the purpose of good faith testing, investigating, or correcting such security flaws or vulnerabilities.

These exemptions remain in effect through October 27, 2009.

Section 115 Roundtable

On June 15, 2007, the Office held a roundtable discussion to reconsider regulatory options for facilitating the use of §115 of the copyright law, which provides a compulsory statutory license for the making and distribution of phonorecords of nondramatic musical works, including distributions by means of a “digital

2. A dongle is a security key—a small hardware device that plugs into the serial or USB port of a computer—the purpose of which is to ensure that only authorized users can use certain software applications.

phonorecord delivery.” The roundtable elicited input from interested parties on the scope of the license and ways to improve the efficacy of license administration, including service of the required notices of intention to use works under the terms of the license. The roundtable provided the input for the preparation of a future Notice of Proposed Rulemaking that will seek further comment on this issue.

Section 508 Notices

Section 508 of the copyright law requires the clerks of the courts to send written notification to the Register of Copyrights of any action filed under the copyright law and of any final order or judgment issued thereon. The Copyright Office worked with Library officials and staff at the National Archives and Records Administration to establish a three-year retention schedule for these notices. A notice of the proposed schedule appeared in the *Federal Register* on May 16, 2007.

Fees for Recording Certain ISP’s Designated Agents

On February 8, 2007, the Copyright Office issued a technical amendment to the regulations regarding fees for recordation of an interim or amended designation of agent to receive notification of claimed infringement under the copyright law. The Copyright Office had previously published a final rule on June 1, 2006, adjusting the Copyright Office fees for recordation of an interim or amended designation of agent. The June 2006 final rule included the fee adjustment designation of \$80.00 for recordation in the new §201.3(c) fee schedule. However, other technical amendments meant to bring all fees within §201.3 of the Regulations of the Copyright Office did not address this type of recordation. In order to correct this oversight, the Office amended §§201.38(e) and 201.38(f) of the Regulations to reference the established §201.3(c) fee schedule for recordation under §512(c)(2).

Online Registration

As part of the Copyright Office reengineering effort, implementation of the online registration system required an amendment to the regulations governing the procedures for public submission and Office processing of copyright registrations

and recordations. As a result, on July 6, 2007, the Office published interim regulations explaining the necessary changes.

The interim regulations identified the principal changes and upgrades to the registration system and announced the amendments to the regulations to accommodate online registration. These changes became effective with the commencement of eCO's e-Service electronic online registration beta test in July 2007. The beta test phase is limited to selected participants until the online system opens to the public, expected in fiscal year 2008.

A full listing of Federal Register documents with their citations can be found in the appendix.

REPORTS AND LEGISLATION

The Copyright Office provides advice and testimony to Congress on copyright matters and proposed copyright legislation, and undertakes studies and provides authoritative reports on current issues affecting copyright.

Hearings

The Register of Copyrights presented testimony in five congressional hearings during fiscal year 2007, two of which dealt with the Copyright Office budget. The subjects of the other three hearings were:

Before the Subcommittee on Courts, the Internet, and Intellectual Property of the House Committee on the Judiciary:

- Reforming Section 115 of the Copyright Act for the Digital Age, March 22, 2007
- Ensuring Artists Fair Compensation: Updating the Performance Right and Platform Parity for the 21st Century, July 31, 2007

Before the Subcommittee on the Legislative Branch of the House Appropriations Committee:

- Future of Digital Libraries, March 20, 2007

Reforming Section 115 of the Copyright Act for the Digital Age

On March 22, 2007, the House Subcommittee on Courts, the Internet, and Intellectual Property held a hearing to consider further reforming the §115 compulsory license that provides for the making and distribution of phonorecords, including digital phonorecord deliveries. The Register of Copyrights testified that reform of digital music licensing is the most important music issue currently before Congress. Specifically, the Register identified four key issues that need to be addressed in any legislation that seeks to streamline music licensing: (1) scope of the license and clarification of rights; (2) collection and distribution of royalty fees; (3) efficiency of the licensing process; and (4) ratesetting procedures.

A major problem with online licensing of music stems from the fact that certain digital transmissions, i.e., streaming over the Internet, implicates both the mechanical (reproduction and distribution) and public performance rights of the songwriters and publishers, and these rights are administered by two different sets of agents on behalf of the same copyright owners. Another longstanding problem with the licensing system is the requirement under §115 to serve notice upon and pay each copyright owner for the use of his or her musical work in a world where the music service must offer thousands of works to be a viable choice in the marketplace. To solve these and other administrative problems, the Office again supported the creation of a statutory blanket license. Alternatively, the Office proposed that an existing provision permitting sublicensing by record companies be clarified and elaborated. Congress has yet to enact any new legislation to address the music licensing dilemma, although it remains an issue of concern.

Public Performance Right in Sound Recordings

Songwriters and music publishers receive royalty payments for public performances of over-the-air radio broadcasts, while performers and record companies do not.

Broadcasters argue that promotional airplay enhances record sales, which makes a payment for public performance unnecessary. Performers and record companies argue that if this were true, then the existing royalty payments to songwriters and music publishers would also be unnecessary, since they also benefit from promotional airplay.

The broadcasters' argument is weakened by the fact that record sales have been dropping precipitously in recent years. One reason for this sales drop is the continued widespread use, despite the Supreme Court's ruling in *Metro-Goldwyn-Mayer Studios*

Inc. v. Grokster Ltd., of peer-to-peer file sharing services that permit millions of users to obtain infringing copies of sound recordings, with devastating effect on the legitimate market for phonorecords. Parallel to this development is the availability of technology that allows a listener to rip a stream of music to a computer drive and copy the song for future use.

The broadcast radio industry continues to advocate for the right to use sound recordings without payment, using the music as a hook to get listeners and profit-generating advertising dollars. This arrangement stands in stark contrast to most other businesses, such as satellite radio and digital music services, that derive their existence from the public performance of sound recordings. These services compensate the performers and record companies for the works they use even though they presumably provide at least as much promotional value to sound recordings as to broadcasters. Digital music services have been seeking parity with terrestrial broadcasters on this point as a way to strike a competitive balance in the marketplace. They maintain that terrestrial broadcasters also should pay the performance royalty for sound recordings especially now that terrestrial radio is positioned to transition to a digital format—HD radio—on a wide-scale basis. HD radio broadcasters stand to gain an even greater marketplace advantage over the other music services.

On July 31, 2007, the Register testified at a hearing of the House Subcommittee on Courts, the Internet, and Intellectual Property that Congress should find a way to minimize unauthorized copying and to ensure that performers and record companies receive compensation from the use of their contributions. The Register of Copyrights recounted the Office's long-held support for the creation of a full public performance right in sound recordings as well as the circumstances that have heretofore prevented a full performance right from being included in title 17.

Citing technological and business developments that have affected the music industry, the Register pointed out that expanding the public performance right in sound recordings would: (1) establish legal parity among similarly situated parties with respect to users and creators; (2) provide a much needed and dependable source of income to performers and record companies from performances both in the United States and abroad, thereby ensuring that the creators have an incentive to invest their time and talents in producing new works; and (3) ensure that minimum safeguards are utilized to protect the copyright owners from unauthorized copying in accordance with the conditions set forth in currently established statutory licenses.

Future of Digital Libraries

The Register presented written and oral testimony at a March 20, 2007, hearing on the “Future of Digital Libraries” before the Subcommittee on Legislative Branch, House Committee on Appropriations. The testimony set forth three important copyright activities, that will affect libraries in general and the Library of Congress in particular with respect to acquisition, preservation, and dissemination of digital materials.

The first initiative of the Office is its seven-year reengineering effort, a key goal of which is to facilitate deposits of “born digital” works for the Library of Congress. The new eCO system will accept copyright registrations and copyright deposits through the Internet. The searching component of the system will allow applicants to track the progress of their electronic claims and to search the records of all works registered since 1978, 24 hours a day, seven days a week.

The second initiative of the Office is digitizing the 70 million pre-1978 registration records to preserve them and make them accessible online. These records reflect the copyright status and ownership of millions of works and are of vital importance to the public and to the copyright industries that make up a significant part of the U.S. economy. Phase I of the initiative calls for digitizing the records; phase II will add item-level indexing and enhanced searching and retrieval capability.

The third initiative of the Office is legislative. The Office called for an amendment to the copyright law that would allow the Library of Congress some flexibility to acquire the digital version of a work that best meets the Library’s future needs, even if that edition has not been made available to the public. The Office also testified that §108 of the law, which provides limited exceptions for libraries and archives, does not adequately address many of the issues unique to digital media. The Office will evaluate an amendment to §108 following release of a 2007 study by the Section 108 Study Group, which deliberated during 2005–2007 under the Office of Strategic Initiatives’ Preservation Program, in cooperation with the Copyright Office.

Other Legislation and Studies

Orphan Works

The Copyright Office held ongoing meetings with diverse members of the copyright community on orphan works for the purpose of advising the 110th Congress on possible legislative solutions. Orphan works include photographs, writings, sound

recordings, and other materials that are still within their copyright term but for which a user cannot identify or locate a legitimate copyright owner. Potential users of orphan works include commercial publishers and producers who wish to salvage and transform the works into new, valuable formats at their own cost, as well as museums, libraries, and archives that collect and wish to publish or otherwise make available thousands of culturally important materials in accordance with their noncommercial, educational missions.

The Office's work this year follows on the publication of its comprehensive *Report on Orphan Works* in 2006, which concluded that orphan works were a problem and recommended language for a new §514 in title 17. The Office proposed a statutory framework in which a good-faith user could proceed to use an orphan work after first searching for the copyright owner in a reasonably diligent manner, with the reasonableness of the search being judged on a case-by-case basis. A copyright owner who later emerged would be assured reasonable compensation from the user, except in limited circumstances where certain noncommercial users elected to cease expeditiously their use of the relevant content.

In reaching its recommendation, the Copyright Office carefully balanced four primary concerns: (1) the proprietary interests of copyright owners; (2) the valuable contributions of nonprofits, publishers, and other users in making orphan works accessible; (3) the prospective benefit to the public and public discourse; and (4) the international treaty obligations of the United States. In 2006, a slightly modified version of the Copyright Office's proposal was introduced but not enacted as "Orphan Works Act of 2006" (H.R. 5439). This was incorporated into the unenacted "Copyright Modernization Act of 2006" (H.R. 6052). The proposed legislation had broad-based support from copyright owners and user groups alike and was the product of much deliberation.

This year the Office continued to review and address the legal standards that would be relevant to an orphan works regime, including: what constitutes a search, when should an injunction be available to an owner, what constitutes bad faith, and what are the measures of reasonable compensation.

Amendment of Section 119 (S. 258)

The Copyright Office assisted the Senate Judiciary Committee in drafting language to amend §119 of the copyright law, the statutory copyright license for satellite carriers

that retransmit the signals of distant television network stations and superstations to satellite dish owners. The §119 statutory license limits the secondary transmissions of network station signals to persons who reside in unserved households. At least three million homes are receiving such transmissions. An “unserved household” is defined as one that cannot receive an over-the-air signal of Grade B intensity of a network station using a rooftop antenna.

Section 119’s unserved household limitation has given rise to significant litigation between Echostar, a large satellite carrier, and the broadcast television networks. The case, which began nine years ago, arose out of claims that Echostar was delivering network station signals to subscribers who were not eligible to receive such stations under §119. In May 2006 the U.S. Court of Appeals for the Eleventh Circuit Court of Appeals upheld a District Court’s determination that Echostar had engaged in a “pattern or practice” of violating the unserved household limitation. Upon the direction of the Eleventh Circuit, the District Court issued an order directing Echostar to cease all retransmissions of distant broadcast station signals affiliated with ABC, CBS, NBC, and Fox, effective December 1, 2006.

Unable to find relief in the courts, Echostar sought a legislative solution. In the fourth quarter of calendar 2006, Senator Patrick Leahy introduced S. 4067; it would have restored Echostar’s ability to retransmit network station signals to certain subscribers under certain circumstances. There has been no action on this legislation.

Satellite Home Viewer Extension and Reauthorization Act (SHVERA)

Section 109: Report to Congress

The Office continued preparations for reporting to Congress on the statutory licensing systems for the cable and satellite television industries under the copyright law. The law contains three statutory licenses governing the retransmission of distant and local broadcast station signals. One statutory license is applicable to cable television systems, and two statutory licenses are applicable to satellite carriers. The §111 cable statutory license permits a cable operator to retransmit both local and distant radio and television signals to its subscribers, who pay a fee for cable service. The §119 satellite carrier statutory license permits a satellite carrier to retransmit out-of-market network station and superstation signals (but not radio signals) to its subscribers for private home viewing as well as to commercial establishments. The §122 statutory license permits satellite carriers to retransmit local television signals (but not radio) into

the stations' local market on a royalty-free basis. This license is contingent upon the satellite carrier complying with the rules, regulations, and authorizations established by the Federal Communications Commission (FCC) governing the carriage of television broadcast signals.

Section 109 of the SHVERA requires the Copyright Office to examine and compare the statutory licensing systems for the cable and satellite television industries under the copyright law and recommend any necessary legislative changes in a report due to Congress by June 30, 2008.

Congress indicated that the report include, but not be limited to, the following:

- 1 A comparison of the royalties paid by licensees, including historical rates of increases in these royalties, and a comparison between the royalties and the prices paid in the marketplace for comparable programming;
- 2 An analysis of the differences in the terms and conditions of the licenses, an analysis of whether these differences are required or justified by historical, technological, or regulatory differences that affect the satellite and cable industries, and an analysis of whether the cable or satellite industry is placed in a competitive disadvantage due to these terms and conditions;
- 3 An analysis of whether the licenses are still justified by the bases upon which they were originally created;
- 4 An analysis of the correlation, if any, between the royalties, or lack thereof, and the fees charged to cable and satellite subscribers, addressing whether cable and satellite companies have passed to subscribers any savings realized as a result of the royalty structure and amounts under such sections; and
- 5 An analysis of issues that may arise with respect to the application of the licenses to the secondary transmissions of the primary transmissions of network stations and superstations that originate as digital signals, including issues that relate to the application of the unserved household limitations under §119 and to the determination of royalties of cable systems and satellite carriers.

The legislative history of the SHVERA further instructs the Copyright Office to analyze the differences among the three licenses and consider whether they should be eliminated, changed, or maintained with the goal of harmonizing their operation.

To fulfill its statutory mandate, the Copyright Office issued a Notice of Inquiry on April 16, 2007, to collect information from interested parties. The Office received over a dozen comments from such entities as AT&T, Verizon, the National Cable and Telecommunications Association, the National Association of Broadcasters, DirecTV, Echostar, and the Motion Picture Association of America. Comments were due on July 2, 2007; reply comments were due on October 1, 2007.

The Copyright Office also held three days of hearings in July 2007. The purpose of the hearings was to discuss initial comments to the Notice of Inquiry and to elicit information, through oral testimony from the cable, satellite, broadcast, and program content industries, that is critical to a balanced and comprehensive report to Congress. Representatives of the cable, satellite, and broadcasting industries as well as copyright owners testified at the hearing. The comments and reply comments, which are available on the Copyright Office website, along with testimony from Copyright Office hearings will form the basis upon which the Copyright Office will make recommendations to Congress on the future of the statutory licenses.

Section 108 Study Group

As reported in the Annual Report of 2006, the Library of Congress National Digital Information and Infrastructure and Preservation Program (NDIIP), in cooperation with the Copyright Office, has been sponsoring the Section 108 Study Group. Convened in April 2005, the Group was asked to: 1) reexamine the copyright exemption and limitations applicable to libraries and archives in light of the widespread use of digital technologies, 2) identify relevant areas of the law in need of updating, and 3) formulate recommendations for legislative change.

The Study Group met throughout fiscal year 2007. On December 4, 2006, the group published a notice in the *Federal Register* announcing a public roundtable to be held in Chicago on January 31, 2007, and seeking comments on a variety of topics. The focus was on access to copies, specifically to the provisions in §108 that deal with copies for users, including copies made under interlibrary loan arrangements. Included were questions on whether any subsections should be amended to include more categories of works, e.g., musical compositions, pictorial, graphic and sculptural works, as well as motion pictures and other audiovisual works. (Subsection (i) limits the categories of works that can be made in subsections (d) and (e) to most textual works and sound recordings. Twenty-seven individuals representing a wide variety

of interest participated in the round table discussions. Thirty-three comments were received.

Work on the final report of the Study Group commenced in spring 2007; release is expected in the first quarter of 2008 and will be posted on the Office's website.

INTERNATIONAL ACTIVITIES

The Copyright Office's international activities advance America's prosperity by promoting adherence to treaties and foreign copyright laws and enforcement that ensure appropriate levels of protection and compensation for U.S. creators and copyright owners, thereby encouraging the creation and dissemination of works to a global audience.

The Copyright Office's international activities include participation in U.S. delegations to international institutions that administer copyright treaties or otherwise address copyright issues, participation in U.S. delegations that meet with foreign governments relating to copyright issues, and advising Congress and other U.S. government agencies on international copyright matters.

Around the world, copyright protection depends primarily on the national laws of the country in which protection is sought. However, most countries are parties to international copyright treaties and conventions that impose certain minimum requirements upon national laws.

The Copyright Office continued to work with executive branch agencies on international matters, particularly with the United States Trade Representative (USTR), the Patent and Trademark Office (PTO), and the Departments of State and Commerce.

During fiscal year 2007, a primary area of international focus was a proposed new treaty for the protection of broadcasting organizations being considered in the World Intellectual Property Organization (WIPO). The proposed treaty would provide new international standards of protection against piracy of broadcast signals across national borders. Staff from the Copyright Office served as key members of the U.S. delegation to two special sessions of the WIPO Standing Committee on Copyright and Related Rights (SCCR) in January and June 2007. The purpose of these special sessions was to attempt to reach agreement on the key provisions of the proposed treaty, but no such agreement could be reached. In advance of those meetings, Copyright Office staff,

along with PTO staff, convened formal and informal public consultation meetings with a diverse array of parties interested in this treaty. The Register and the Associate Register for Policy and International Affairs also served on the U.S. government's delegation to the WIPO General Assemblies meeting, where it was agreed to maintain the proposed treaty on the agenda of the SCCR, but no timetable was set for further activity on the treaty.

Staff participated in numerous multilateral, regional, and bilateral negotiations during the year. The Copyright Office also participated in other copyright-related meetings at WIPO, such as the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Traditional Cultural Expressions and various meetings related to the WIPO "Development Agenda" to address issues related to the role of intellectual property in developing countries.

Copyright Office staff were instrumental in drafting and negotiating the intellectual property provisions of bilateral free trade agreements (FTAs) concluded by the United States and Korea, as well as in the ongoing negotiations concerning a prospective free trade agreement with Malaysia. In connection with the implementation of copyright-related obligations in the FTAs with Australia, Bahrain, Chile, Costa Rica, Jordan, Korea, and Oman, staff provided technical assistance to the USTR and/or those countries.

The Office assisted the USTR in preparing a World Trade Organization (WTO) dispute settlement proceeding against China relating to intellectual property protection and enforcement in China and participated in discussions with the Chinese government in connection with that proceeding. The Office also participated in negotiations over various Organization for Economic Cooperation and Development (OECD) discussion documents on the "Future of the Internet Economy" for the lead-up to the OECD's Ministerial Meeting to be held in Seoul, Korea in June 2008.

Also, throughout the year Copyright Office staff actively participated in numerous additional bilateral negotiations and consultations with dozens of countries around the world, including Cambodia, China, France, India, Ireland, Israel, Italy, Japan, Kazakhstan, Kuwait, Malaysia, Morocco, New Zealand, Nigeria, Russia, Saudi Arabia, South Korea, Taiwan, Thailand, Ukraine, and the United Kingdom on issues ranging from enforcement to copyright law revision. For the USTR, the Copyright Office provided assistance to a number of nations, including Azerbaijan, Iraq, Kazakhstan, Lebanon, Russia, Saudi Arabia, Ukraine, Vietnam, and Yemen in connection with

their WTO accession processes, and participated in WTO trade policy review queries relating to countries including Bahrain, Cameroon, Central African Republic, Chad, Colombia, Gabon, India, and Indonesia.

In June 2007 staff met with Mexican and Canadian government officials in connection with the Security and Prosperity Partnership, a partnership of those two countries and the United States created to increase security and enhance prosperity through greater cooperation and information-sharing. They developed action items to implement a previously adopted action strategy plan, and the leaders of all three governments adopted those action items at the North American Leaders' Summit in Montebello, Quebec, on August 21, 2007.

Staff also represented the Copyright Office 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. In addition to the normally-scheduled Special 301 process, staff assisted in out-of-cycle reviews of Russia and Saudi Arabia.

The Copyright Office also advised the Department of Commerce on matters relating to legislation and regulations pertaining to interoperability of devices in France. The Office advised the Department of State on matters relating to Internet service provider liability in Spain and on intellectual property implications of the United Nations Commission on International Trade Law (UNCITRAL) Draft Legislative Guide on Secured Transactions.

The Office hosted a number of visitors from other countries during the year. From November 27 to December 1, 2006, the Office conducted its International Copyright Institute (ICI) in cooperation with the WIPO Worldwide Academy. A program was presented to officials from foreign countries, including Barbados, Belarus, China, Colombia, Georgia, Jamaica, Kenya, Lebanon, Malawi, Malaysia, Mauritius, Mexico, Namibia, Oman, Russia, Thailand, Uruguay, and the League of Arab States. This year's ICI was a symposium on emerging issues in copyright and related rights for countries developing or transitioning to market economies. The program included presentation, discussions, and reports on

- the history, organization, and activities of WIPO;

- the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT);
- protection of copyright and related rights in the countries of the participants in the program;
- U.S. copyright law;
- U.S. implementation of the WIPO Treaties (in the Digital Millennium Copyright Act);
- collective management of copyright in the age of new technologies;
- exceptions and limitations, including fair use;
- the orphan works study and the Section 108 Study Group;
- copyright enforcement and border protection;
- the role of rights holders in enforcement; copyright in the context of international trade;
- collective management of copyright in practice: the ASCAP model;
- fingerprinting music performance technology;
- the cultural and economic importance of copyright;
- technological protection measures and digital rights management in the marketplace;
- secondary liability for peer-to-peer services and Internet service providers;
- intellectual property enforcement coordination; and
- the U.S. government intellectual property rights training database.

Engaging in public discussion about copyright and educating the public about copyright law are primary responsibilities of the Copyright Office. To this end, staff gave presentations and participated in a number of international conferences on copyright.

In February 2007 the Register of Copyrights attended the First Seminar of Juridical Information Management in Digital Environments in Brasilia, Brazil. She spoke on “Copyright Law and Libraries: The U.S. Scenario” and discussed §108 of the copyright law, which covers limitation on exclusive rights by permitting libraries and archives to engage in certain limited reproduction and distribution of works. Later in the same month, at the invitation of the French government, the Register and other U.S. government officials participated in a “French Creation Tour” regarding fashion design protection.

In May the Register delivered the keynote address at “*Bridgeman v. Corel*: Copyrighted Creativity or Commerce?,” an event sponsored by the Queen Mary’s College, University of London, in association with the British Association of Picture Libraries and Agencies (BAPLA) and the Bridgeman Art Library. The gathering reassessed a 1999 legal challenge brought by the Bridgeman Art Library against Corel Corporation, in which the United States District Court for the Southern District of New York ruled that exact photographic copies of public domain images could not be protected by copyright under U.S. law because the copies lack originality.

At the invitation of the Department of State, the Register also participated in a Taipei-Washington-California digital video conference to discuss intellectual property rights issues for digital libraries.

Copyright Office staff participated in a number of other symposia and conferences outside the United States. The Associate Register for Policy and International Affairs spoke on “Why Digital Is Different—and What to Do about It” at the National Copyright Administration of China, 2007 International Copyright Forum in Beijing. Office staff also conducted presentations and delivered talks as part of the U.S. Government Speaker Program on various intellectual property-related topics to a wide range of audiences including APEC member states in Bangkok, Thailand, on exceptions and limitations in the digital age; the Taiwan Intellectual Property Office on treatment of digital copyright issues in U.S. copyright law; a seminar on Intellectual Property in the Global Marketplace in Egypt on infringement liability and safe harbors for Internet service providers; the Egyptian Center for Intellectual Property and Information Technology in Cairo; the USPTO Global Intellectual Property Academy in Johannesburg, South Africa, on exceptions and limitations to copyright and on secondary liability; the U.S. Embassy in Dublin, Ireland on “Copyright Protection in a Globalized World”; the U.S. Embassy in San Salvador, El Salvador, on “Current Copyright Issues Facing Academic and Public Libraries”; and the Conference on Actual Problematic Issues of Intellectual Property, hosted by the Ukraine State Department of Intellectual Property, Yalta, on “Collective Management of Copyright and Related Rights.”

LITIGATION

The Copyright Office does not enforce the provisions of title 17. However, the Office may be involved in copyright infringement litigation by: (1) choosing to intervene under §411(a) in a copyright infringement case where registration has been refused; (2) being sued under the Administrative Procedure Act; (3) being asked to assist in the preparation of an amicus curiae brief in support of a particular position; (4) assisting the Department of Justice in defending or prosecuting a particular action; or (5) asking the Department of Justice to bring a suit under §407 to compel the deposit of copies of the best edition of a copyrighted work published in the U.S.

U.S. v. Martignon

In 2004, the United States District Court for the Southern District of New York held that 18 U.S.C. §2319A (a criminal “anti-bootlegging” statute) was unconstitutional under the Copyright Clause because the protected public performances are not fixed in a tangible medium, thereby violating a requirement in the Copyright Clause that a protected work be fixed, and because the statute provides protection without any limitation in time in violation of the Copyright Clause’s requirement that protection be for “limited times.” The Court also held that, in this circumstance, the Commerce Clause does not provide Congress with alternative means by which to enact such legislation. The Copyright Office assisted the Department of Justice in drafting the government’s appeal to the Second Circuit, which was filed and argued in June 2005. Two years later, on June 13, 2007, the United States Court of Appeals for the Second Circuit issued its decision. It found that §2319A was not enacted under the Copyright Clause because it is a criminal statute that does not create, bestow, or allocate property rights in expression, does not share the defining characteristics of other laws that are “copyright laws,” and differs significantly from the Copyright Act that was enacted pursuant to the Copyright Clause. Based on this finding, the Court also concluded that the enactment of §2319A is well within the scope of Congress’s Commerce Clause authority. However, the Court of Appeals remanded the case to the District Court to address claims that §2319A violates the First Amendment as an unconstitutionally overbroad enactment containing no fair use exception or idea-expression dichotomy.

Kahle v. Ashcroft

As reported in the Annual Reports for fiscal years 2004, 2005, and 2006, this lawsuit initiated in the United States District Court for the Northern District of California challenges the constitutionality of four copyright statutes: the 1976 Copyright Act, the Berne Convention Implementation Act, the Copyright Renewal Act of 1992, and the Sonny Bono Copyright Term Extension Act, arguing that, among other things, the removal of various formalities such as copyright notice and renewal violate the First Amendment and the Copyright Clause of the Constitution. On November 19, 2004, the District Court granted the government's motion to dismiss for failure to state a claim upon which relief may be granted, rejecting all of the plaintiffs' constitutional challenges.

The plaintiffs appealed that decision to the United States Court of Appeals for the Ninth Circuit. On May 14, 2007, the Ninth Circuit affirmed the decision of the District Court. The Ninth Circuit held that the plaintiffs' claims were essentially the same as the claims presented to the Supreme Court and rejected by the Court in *Eldred v. Ashcroft*, 537 U.S. 186, 221 (2003). In August the plaintiffs filed a petition for certiorari to the Supreme Court.

Golan v. Gonzales

As reported in the annual reports for the fiscal years 2004, 2005, and 2006, this case challenges the constitutionality of two legislative changes to the copyright law. The Copyright Office assisted the Department of Justice in the defense of the constitutionality of the Sonny Bono Copyright Term Extension Act (CTEA) and the restoration provisions of the Uruguay Round Agreements Act (URAA). The District Court's dismissal of the plaintiffs' challenge was appealed to the Tenth Circuit.

On September 4, 2007, the United States Court of Appeals for the Tenth Circuit remanded this case, in part, to the District Court for the District of Colorado for First Amendment review. The plaintiffs challenged the CTEA and the restoration provisions of the URAA. The term extension claims were dismissed in 2004. On April 20, 2005, the District Court granted summary judgment dismissing the remaining claims, concluding that Congress acted within its authority and had a rational basis for enacting §514 of the URAA and that §514 did not violate the First Amendment and was not unconstitutionally retroactive.

The United States Court of Appeals for the Tenth Circuit found that §514 of the URAA altered the traditional contours of copyright by restoring copyright in a manner that implicates the plaintiffs' rights to free expression, and remanded the case to the District Court.

New York Mercantile Exchange v. Intercontinental Exchange Inc.

As reported in the annual report for fiscal year 2005, the United States District Court for the Southern District of New York ruled that individual settlement prices of futures contracts, such as those listed on the plaintiff's commodities exchange, are not copyrightable. In so ruling, the court found that the prices are facts or, alternatively, that the idea of a settlement price, which can only be expressed as a single number, cannot be distinguished from its expression, the position set forth by the Copyright Office in a Statement of Interest.

In October 2005 the plaintiff appealed the decision to the United States Court of Appeals for the Second Circuit and the government entered the case in March 2006 by filing an amicus brief supporting the appellee and arguing that the District Court correctly held that: (1) settlement prices are uncopyrightable facts rather than copyrightable, original, creative works; (2) settlement prices are uncopyrightable words or short phrases; and (3) the merger doctrine precludes a claim for copyright infringement in this instance. In a decision issued August 1, 2007, the Court declined to rule on whether the settlement prices were facts and thus uncopyrightable. Instead, the Court relied on the merger doctrine to find that the settlement prices were uncopyrightable because there was only one way to express the price of the settlement contract. The Copyright Office provided counsel to the United States Attorney's Office in drafting the United States's amicus brief.

Darden v. Peters

As previously reported in recent annual reports, plaintiff William Darden brought suit against the Register of Copyrights in the U.S. District Court for the Eastern District of North Carolina for refusing to register Darden's copyright claims in two works. One work consisted of maps and the other of pages from a website that included the maps.

After both parties filed motions for summary judgement, the Court held a hearing on June 6, 2005. The District Court ruled in favor of the Register on December 7, 2005.

The plaintiff appealed the District Court's decision to the U.S. Court of Appeals for the Fourth Circuit on December 28, 2005. Challenging the District Court's deference to the Office, he argued that the issue of copyrightability for purposes of registration is a question of law subject to de novo review by the Court. Darden also maintained that, contrary to the Register's decision, the works are copyrightable. The Copyright Office responded on May 23, 2006, arguing that the Register's decisions are supported by the record and that the correct standard of review is the abuse of discretion standard set forth in §706(2)(A) of the Administrative Procedures Act.

After a February 1, 2007, hearing in which both parties presented oral arguments, the Fourth Circuit Court of Appeals ruled on May 24 in favor of the Register of Copyrights. Rejecting Darden's arguments in support of a de novo standard of review, the Court ruled that the Register's refusals to register the plaintiff's works were not an abuse of discretion. On July 23, 2007, the Circuit Court also rejected Darden's petition for rehearing.

TracFone Wireless v. The Librarian of Congress

The Copyright Office worked closely with the Department of Justice to defend the actions of the Register of Copyrights and the Librarian of Congress in this case. TracFone filed its complaint in the United States District Court for the Southern District of Florida on December 5, 2006, challenging the validity of the exemption promulgated by the Librarian (upon the recommendation of the Register) for "computer programs in the form of firmware that enable wireless telephone handsets to connect to a wireless telephone communications network, when circumvention is accomplished for the sole purpose of lawfully connecting to a wireless telephone communications network." The government filed a motion to dismiss on February 5, 2007. The matter was briefed and oral argument was heard on April 11, 2007. On May 18, 2007, TracFone filed a motion for voluntary dismissal of the case without prejudice, and the case was dismissed.

New Form Inc. v. Sabina

The Copyright Office worked with the Department of Justice to defend the deposition of the chief of the Information and Records Division. This case regards civil litigation over the alleged infringement of certain audiovisual works. At an earlier point in the litigation, the defendant had put forward what appeared to be fraudulent registration documents. The Office provided video testimony on October 23, 2006, as to the apparent authenticity of the various registration documents in the case.

Mullen, et al. v. Society of Stage Directors and Choreographers

Together with the Department of Justice, the Copyright Office is monitoring this copyright infringement case brought to its attention through a §411(a) filing. The case involves the theatrical production “Urinetown!” and was filed in the United States District Court for the Northern District of Illinois, Eastern Division. The question is whether stage directions in a theatrical production are copyrightable. In 2006 the Copyright Office refused to register a copyright claim for the stage directions on the grounds that the expressions of stage direction are not fixed and do not rise to a level of originality that is sufficient to achieve copyright protection.

Quanta Computer Inc. v. LG Electronics Inc.

The Copyright Office assisted the Department of Justice in its consideration of whether to file an amicus curiae brief of the United States concerning whether the Supreme Court should grant certiorari to hear an appeal of the Federal Circuit’s decision. That decision allowed the first sale doctrine in patent law to be limited in its application by virtue of a unilateral declaration of the patent holder. This case addresses the important issue of the scope of the first sale doctrine under patent law and what, if any, limitations might apply. Unlike the first sale doctrine in patent law, the first sale doctrine in copyright is codified in the statute. Nonetheless, the Office is monitoring this case for comparisons and/or analogies drawn to the first sale doctrine in copyright law and the ability of copyright owners to limit the application of that doctrine. The government submitted its brief to the Supreme Court, and the Court granted certiorari on September 25, 2007.

Judicial Enforcement Regarding Certain Publications of Africa World Press

The Office requested that the Department of Justice proceed with judicial enforcement of mandatory deposit regarding 56 books published by Africa World Press. Under §407 of the copyright law, the owner of copyright or of the exclusive right of publication of a copyrighted work published in the United States is required to deposit in the Copyright Office two complete copies of the best edition of the work for the use or disposition of the Library of Congress. Failure to comply subjects the copyright owner to penalties prescribed by the copyright law, including a fine of up to \$250 per work and payment to the Library of the total retail price of the copies claimed. The Copyright Acquisitions Division issued a demand for 65 works and sent three follow-up letters. In addition, the General Counsel's Office wrote a letter in an effort to seek compliance. After referral to the U.S. Department of Justice, the publisher was notified that if copies were not promptly deposited, a complaint would be filed in Federal District Court seeking the statutorily designated penalties. Of the 65 titles demanded, the publisher deposited nine titles. No explanation was provided of why the remaining 56 titles were not deposited, and, as a result, the General Counsel's Office requested that an enforcement action be brought.

Motorcycle Safety Foundation v. Oregon State University

The Copyright Office advised the Department of Justice on the merits of federal government involvement in this case, noting that the case was an unremarkable instance of a copyright infringement suit against a state entity.

Plaintiff Motorcycle Safety Foundation Inc. (MSF) is a nonprofit corporation that has produced, published, and registered several written works concerning motorcycle instruction and safety. For approximately 20 years, MSF licensed those works for use by the Team Oregon Motorcycle Safety Program (Team Oregon), which is housed within Oregon State University (OSU) and staffed by OSU employees. Sometime in 2005 the relationship soured, and MSF revoked the relevant license(s). Team Oregon subsequently produced and distributed its own motorcycle instruction and safety materials, which MSF claims are infringing its registered works.

The First Amended Complaint was filed on April 4, 2007, in the U.S. District Court for the Central District of California. Defendants include OSU, Team Oregon, the

president of OSU, the director of Team Oregon, and other Team Oregon employees. The OSU president is being sued in his official capacity. The other various individuals are sued in both their official and individual capacity. The plaintiff seeks attorney's fees and costs, destruction of the infringing goods, and an injunction against further infringement.

Citing the doctrine of state sovereign immunity from such suits, on August 2, 2007, OSU moved for a judgment on the pleadings. That motion is pending before the Court. The individual defendants and Team Oregon do not appear to have made similar motions.

LEGAL OPINIONS

Late in fiscal year 2006, the Copyright Royalty Board (CRB), acting pursuant to statute, referred two novel questions of law from the Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding to the Register of Copyrights. The first question examined the applicability of the §115 license to ringtones, and the second centered on the definition of "preexisting subscription services."

Ringtones

The Copyright Royalty Board requested a decision by the Register of Copyrights regarding whether: (1) ringtones (monophonic, polyphonic, or mastertone) qualified as digital phonorecord deliveries and thus were subject to the statutory license for making and distributing phonorecords under §115 of the copyright law, and (2) if so, what legal conditions and/or limitations would apply. The Copyright Office held an oral argument in which the parties to the case, the Recording Industry Association of America and the National Music Publishers Association (NMPA), presented their arguments on the questions. On October 16, 2006, the Register transmitted a Memorandum Opinion to the Copyright Royalty Board stating that, in general, a ringtone would fall within the scope of the §115 statutory license unless it has so altered the musical composition as to constitute a derivative work. Simply excerpting a single portion of a licensed sound recording of a musical composition would not constitute the making of a derivative work. The Register stated that it is clear that many, but

not all, ringtones would fall within the scope of the §115 license. [Final Order, 71 FR 64303 (November 1, 2006)]. Therefore, it was deemed appropriate for the Copyright Royalty Judges to determine royalties to be payable for the making and distribution of ringtones under the §115 compulsory license. The NMPA filed suit against the Copyright Office in the United States Court of Appeals for the District of Columbia Circuit. NMPA's appeal is being held in abeyance as the CRB considers the appropriate rates, terms, and conditions for those who use the §115 compulsory license.

Preexisting Subscription Services

The Copyright Royalty Board sought a decision by the Register as to whether the universe of those entities that satisfy the definition of “preexisting subscription services” at 17 U.S.C. §114(j)(11) is limited to only Muzak (provided over the DISH Network), Music Choice, and DMX. Concurrent with its request, the Copyright Royalty Judges also provided the Register with the initial and reply briefs filed by SoundExchange Inc., Sirius Satellite Radio, and THP Capstar Acquisition Corp. doing business as DMX Music.

The Register's decision focused on the meaning and use of the term “preexisting subscription service,” concluding that the statutory provisions relating to the §114 statutory license sometimes use it to refer to the aggregate of the subscription transmissions that were made by the entities identified in the legislative history and sometimes to identify the business entities operating under the statutory license on or before July 31, 1998. On October 20, 2006, the Register transmitted her memorandum opinion to the Copyright Royalty Board, ruling that only three music services qualify as preexisting subscription services for purposes of performing a sound recording publicly by means of a subscription digital audio transmission pursuant to a statutory license. [Final Order, 71 FR 64639 (November 3, 2006)]. The Copyright Royalty Judges incorporated the Register's decision into the record of the proceeding to set rates for the performance of digital audio sound recordings.

Public information and education



Students in the 2007 Junior Fellows Summer Intern Program presented the results of their search through original copyright registrations and deposits from 1898 to 1909 for significant items to add to the Library's collections.

Information Education

As the agency responsible for copyright law administration, the Copyright Office is highly experienced in disseminating information on copyright law and its application, providing copyright education to the public, and responding to telephone, correspondence, and in-person information requests.

The Register and her staff spoke more than fifty times at domestic symposia, conferences, and workshops on various aspects of copyright law and the intellectual property world's current challenges. These included successful programs sponsored by state bar intellectual property sections: "The Copyright Office Comes to California" (Los Angeles and San Jose) and "The Copyright Office Comes to New York." In addition, the First Amendment Center sponsored "The Copyright Office Comes to Music City" (Nashville).

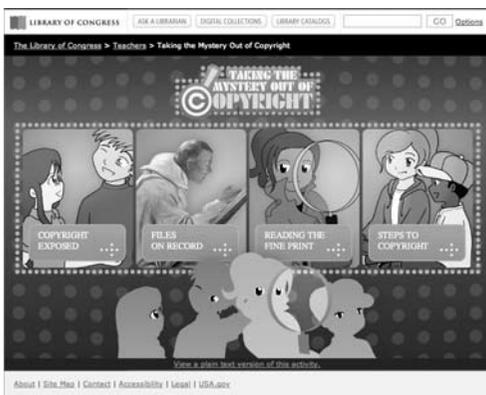
Copyright Office Website

The Copyright Office website is a critical public face for the Copyright Office and continues to play an essential role in fulfilling the Copyright Office's strategic goal to "improve public understanding of copyright law." The website (www.copyright.gov) makes available information circulars, announcements, regulations, the copyright law and related material, application forms, and historical information on copyright. The website also provides the capability to search records of copyright registrations and recorded documents from 1978 to the present. Portions of the website and popular circulars are available in Spanish.

The Office logged millions of external hits on key pages of its website during the year, including over two million public searches of the Copyright Office registration database utilizing the Office website's search feature, and nearly 50,000 visits to Spanish language pages. The website also served as a vehicle for information about changes directly affecting members of the public.

This year, the Office launched several enhancements to the website including:

- Beta-testing of the Copyright Office’s e-Service (web-based registration system) component of eCO. Participants in beta-testing filed applications for registration, paid fees, and uploaded digital deposits or printed out a shipping slip to send in with their physical works, all through this online service.
- A powerful new records search system that accesses more than 20 million digital records of registrations and recorded documents from 1978 to the present. The new system allows searching by title, name, keyword, and registration or document number. The search tool uses Voyager software, the same system used by the Library of Congress Online Catalog.



- An interactive website aimed at middle-school children called “Taking the Mystery Out of Copyright” to explain U.S. copyright law. The colorful and animated website includes a set of learning activities and employs a character named Detective Cop E. Wright and other original characters to help bring a greater understanding of how U.S. copyright law operates. The children’s pages received 800,000 hits in the first three months online.
- Multiple topic areas, such as “What’s New at the Copyright Office” with the existing email subscription news service.

Jefferson Patterson Junior Fellows Summer Intern Program

The Copyright Office again served as a cosponsor of the Library’s Jefferson Patterson Junior Fellows Summer Intern Program, and a Copyright Office staff member served as the program’s project manager. This 10-week program was designed to enable the Library of Congress to locate and itemize copyright deposits in its collections and in Copyright Office collections that have grown in significance since they were originally registered. Forty-seven junior fellows participated in this program, and two worked

with Copyright Office deposits and records. They reviewed approximately 50,000 registration applications contained in 70 cubic-foot boxes that were retrieved from offsite storage. The interns discovered a total of 3,700 photographs, prints, maps, manuscripts, musical scores, and other ephemeral materials that they then itemized, inventoried, and prepared for transfer to the Library's Prints and Photographs Division, where the items will be made available to researchers and scholars. In addition to preparing a comprehensive inventory, which will serve as an invaluable research tool to both patrons of the Prints and Photographs Division and the Copyright Office, the interns also stabilized many of the treasures by placing them in archival folders.

Copyright Records Project

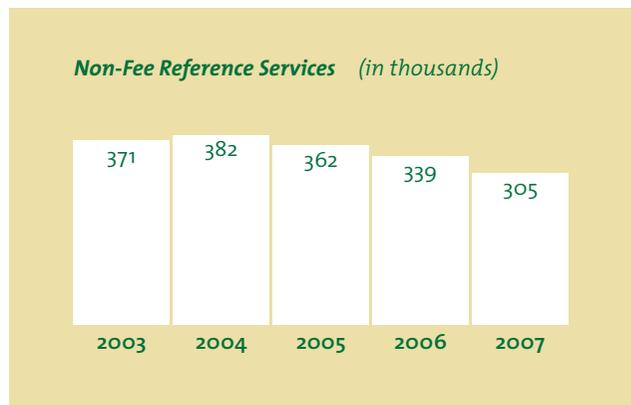
As noted previously in this report, the Copyright Office determined the feasibility of digitizing millions of Copyright Office paper records from 1790 through 1977 for purposes of preservation and access. The Office planned to handle the conversion in two stages: first, a six-year period of scanning for preservation and basic online access; and second, item level indexing, enhanced searching, and retrieval. The Copyright Office's budget request for \$1 million in fiscal year 2007 did not receive funding. The project is expected to receive funding in either fiscal year 2009 or 2010.

Public Information Outputs

In fiscal year 2007, the Office responded to a total of 304,688 requests from the public for direct reference services within all areas of the Office, including more than 800 related to using the e-Service component of eCO. The Office as a whole also assisted approximately 20,000 public visitors.

The Public Information

Section took in 12,547 registration applications and 3,206 documents for recordation from members of the public. The section answered 100,391 telephone inquiries, 5,607 letter requests, and 24,916 email requests for information. Because of loss of staff in the Public Information Office, the average public telephone caller



faced a wait time that was double the target of under 90 seconds. However, by the end of the fiscal year, the Office had filled all open positions. In response to public requests, the Office searched 18,292 titles, prepared 444 search reports, and fulfilled almost 60,000 requests for forms and publications.

The Office distributed 29 issues of *NewsNet*, an electronic news service about the Copyright Office and copyright-related activities, to over 6,000 subscribers during the fiscal year.

During the fiscal year, the Office processed 262,121 deposit copies, constituting 4,885 cubic feet, for storage at the Deposit Copies Storage Unit in Landover, Maryland. The unit transferred 3,489 cubic feet of records, consisting of unpublished deposits and numbered applications of registered works, to other remote off-site storage facilities. The unit consistently met its performance goal of retrieving requested deposits within one business day.

Freedom of Information Act (FOIA)

The Office received and responded to 40 requests under the FOIA during the fiscal year. The Copyright Office average turnaround time for FOIA requests is four business days.

Respectfully submitted to the Librarian of Congress by

MARYBETH PETERS

*Register of Copyrights and
Associate Librarian of Congress for Copyright Services*

Appendices & tables

Copyright Office staff demonstrated the use of the Copyright Card Catalog to members of the American Library Association. Comprising 45 million cards in more than 25,000 drawers, the card catalog is a remarkable record of copyright ownership from 1890 through 1977 and of American's cultural and historical heritage.



Testimony to Congress

- Before the Subcommittee on the Legislative Branch, House Appropriations Committee, on the Future of Digital Libraries (March 20, 2007)
- Before the Subcommittee on Courts, the Internet, and Intellectual Property, House Committee on the Judiciary, on Reforming Section 115 of the Copyright Act for the Digital Age (March 22, 2007)
- Before the Subcommittee on the Legislative Branch, House Appropriations Committee, on the FY 2008 Budget Request (March 22, 2007)
- Before the Senate Appropriations Committee, on the FY 2008 Budget Request (April 13, 2007)
- Before the Subcommittee on Courts, the Internet, and Intellectual Property, House Committee on the Judiciary, on Ensuring Artists Fair Compensation: Updating the Performance Right and Platform Parity for the 21st Century (July 31, 2007)

Federal Register Documents Issued

- Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies: Interim rule (71 FR 63247, October 30, 2006)
- Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding: Final order (71 FR 64303, November 1, 2006)
- Notice of Intent to Audit: Public notice (71 FR 64317, November 1, 2006)

- Designation as a Preexisting Subscription Service: Final order (71 FR 64639, November 3, 2006)
- Retransmission of Digital Broadcast Signals Pursuant to the Cable Statutory License: Notice of inquiry (71 FR 67508, November 22, 2006)
- Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies: Final rule (71 FR 68472, November 27, 2006)
- Section 108 Study Group; Copyright Exceptions for Libraries and Archives: Notice of a public roundtable with request for comments (71 FR 70434, December 4, 2006)
- Notice of Roundtable on the World Intellectual Property Organization (WIPO) Treaty on the Protection of the Rights of Broadcasting Organizations: Notice announcing public forum (71 FR 74565, December 12, 2006)
- Notice of Intent to Audit: Public notice (71 FR 76375, December 20, 2006)
- Fees: Final rule; technical amendment (72 FR 5931, February 8, 2007)
- Cable Compulsory License: Specialty Station List: Request for information (72 FR 6008, February 8, 2007)
- Registration of Claims to Copyright—Renewals: Notice of proposed rulemaking (72 FR 16306, April 4, 2007)
- Notice of Roundtable on the World Intellectual Property Organization (WIPO) Treaty on the Protection of the Rights of Broadcasting Organizations: Notice announcing public forum (72 FR 18493, April 12, 2007)
- Section 109 Report to Congress: Notice of inquiry (72 FR 19039, April 16, 2007) [shown with typographical error corrected]
- Notice of Intent to Audit: Public notice (72 FR 24623, May 3, 2007)
- Section 109 Report to Congress: Notice of public hearings (72 FR 28998, May 23, 2007)
- Notice of Roundtable Regarding the Section 115 Compulsory License for Making and Distributing Phonorecords, Including Digital Phonorecord Deliveries: Notice announcing public roundtable (72 FR 30039, May 30, 2007)
- Soliciting Participation in Electronic Copyright Office (eCO) Beta Test: Public notice (72 FR 30641, June 1, 2007)
- Cable Compulsory License: Specialty Station List: Notice of filings, request for comments (72 FR 33251, June 15, 2007)

- Section 109 Report to Congress: Extension of time to file reply comments (72 FR 33776, June 19, 2007)
- Fees: Final rule (72 FR 33690, June 19, 2007)
- Online Registration of Claims to Copyright: Interim regulations for online registration (72 FR 36883, July 6, 2007)
- Technical Amendments to Online Registration of Claims to Copyright; Corrections: Interim regulations for online registration; correction (72 FR 40745, July 25, 2007)
- Notice of Terminations: Notice of termination of proceedings (72 FR 45071, August 10, 2007)

Registrations, 1790-2007

<i>Date</i>	<i>Total</i>	<i>Date</i>	<i>Total</i>	<i>Date</i>	<i>Total</i>	<i>Date</i>	<i>Total</i>
1790-1869	150,000 ¹	1904	104,431	1939	175,450	1974	372,832
1870	5,600	1905	114,747	1940	179,467	1975	401,274
1871	12,688	1906	118,799	1941	180,647	1976	410,969
1872	14,164	1907	124,814	1942	182,232	1976	108,762
1873	15,352	1908	120,657	1943	160,789	1977	452,702 ²
1874	16,283	1909	121,141	1944	169,269	1978	331,942
1875	16,194	1910	109,309	1945	178,848	1979	429,004
1876	15,392	1911	115,955	1946	202,144	1980	464,743
1877	16,082	1912	121,824	1947	230,215	1981	471,178
1878	16,290	1913	120,413	1948	238,121	1982	468,149
1879	18,528	1914	124,213	1949	201,190	1983	488,256
1880	20,993	1915	116,276	1950	210,564	1984	502,628
1881	21,256	1916	117,202	1951	200,354	1985	540,081 ³
1882	23,141	1917	112,561	1952	203,705	1986	561,208 ³
1883	25,892	1918	107,436	1953	218,506	1987	582,239 ³
1884	27,727	1919	113,771	1954	222,665	1988	565,801
1885	28,748	1920	127,342	1955	224,732	1989	619,543 ⁴
1886	31,638	1921	136,765	1956	224,908	1990	643,602
1887	35,467	1922	140,734	1957	225,807	1991	663,684
1888	38,907	1923	151,087	1958	238,935	1992	606,253
1889	41,297	1924	164,710	1959	241,735	1993	604,894
1890	43,098	1925	167,863	1960	243,926	1994	530,332
1891	49,197	1926	180,179	1961	247,014	1995	609,195
1892	54,741	1927	186,856	1962	254,776	1996	550,422
1893	58,957	1928	196,715	1963	264,845	1997	569,226
1894	62,764	1929	164,666	1964	278,987	1998	558,645
1895	67,578	1930	175,125	1965	293,617	1999	594,501
1896	72,482	1931	167,107	1966	286,866	2000	515,612
1897	75,035	1932	153,710	1967	294,406	2001	601,659
1898	75,634	1933	139,361	1968	303,451	2002	521,041
1899	81,416	1934	141,217	1969	301,258	2003	534,122
1900	95,573	1935	144,439	1970	316,466	2004	661,469
1901	93,299	1936	159,268	1971	329,696	2005	531,720
1902	93,891	1937	156,930	1972	344,574	2006	520,906
1903	99,122	1938	168,663	1973	353,648	2007	526,378
Total							33,039,497

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.
3. The totals for 1985-1987 were corrected as of the FY 2004 annual report to include mask works registrations
4. The total for 1989 was corrected as of the FY 2004 annual report to be consistent with the FY 1989 table of "Number of Registrations by Subject Matter."

Number of Registrations by Subject Matter, Fiscal year 2007

<i>Category of Material</i>	<i>Published</i>	<i>Unpublished</i>	<i>Total</i>
Non-dramatic literary works			
<i>Monographs and computer-related works</i>	143,014	55,582	198,596
<i>Serials:</i>			
Serials (non-group)	40,324		40,324
Group Daily Newspapers	2,123		2,123
Group Serials	10,160		10,160
Total Literary Works	195,621	55,582	251,203
<hr/>			
Works of the performing arts, including musical works, dramatic works, choreography and pantomimes, and motion pictures and filmstrips	49,712	80,873	130,585
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	50,785	38,480	89,265
Sound recordings	15,535	38,116	53,651
Total Basic Registrations	311,653	213,051	524,704
<hr/>			
Renewals			1,364
Mask work registrations			284
Vessel hull design registrations			26
<hr/>			
Grand Total All Registrations			526,378
Preregistrations			496
Documents Recorded			11,534

Financial information published in this table is unaudited.

Fee Receipts and Interest, Fiscal year 2007

<i>Fees</i>	<i>Receipts Recorded¹</i>
Copyright Registration	\$24,728,996
Mask Works Registration	\$25,745
Vessel Hull Design Registration	\$4,715
Renewal Registration	\$57,395
Subtotal	\$24,816,851
<hr/>	
Recordation of Documents	\$2,130,000
Certifications	\$272,463
Searches	\$93,150
Special Handling/Expedited Services	\$1,928,761
Preregistrations	\$40,900
Other Services	\$630,072
Subtotal	\$5,095,346
<hr/>	
Total Receipts Recorded	\$29,912,197
<hr/>	
Fee Receipts Applied to the Appropriation	\$29,261,052
Interest Earned on Deposit Accounts	\$238,463
Fee Receipts and Interest Applied to the Appropriation²	\$29,499,515

1. "Receipts Recorded" are fee receipts entered into the Copyright Office's in-process system.

2. "Fee Receipts and Interest Applied to the Appropriation" are income from fees and deposit account interest that were fully cleared for deposit to the Copyright Office appropriation account within the fiscal year. The amount of Fee Receipts Applied to the Appropriation during the fiscal year does not equal the Total Receipts Recorded, since some receipts recorded at the end of the year are applied in the next fiscal year.

Estimated Value of Materials Transferred to the Library of Congress, Fiscal year 2007

	Registered works transferred to other Library departments	Non-registered works transferred to other Library departments	Total works transferred to other Library departments	Average Unit Price	Total value of works transferred to other Library departments
Books¹	164,632	84,114	248,746		\$15,053,003
Ink Print	140,100	37,066	177,166	\$80.81	\$14,316,784
Electronic Works (ProQuest)	22,063	46,049	68,112	\$4.31	\$293,563
Microfilm	2,469	999	3,468	\$127.64	\$442,656
Serials²	286,172	460,923	747,095		\$17,056,638
Periodicals	256,863	422,952 ³	679,815	\$40.44	\$16,495,031
Ink Print Newspapers	27,186	36,000	63,186	\$1.03	\$39,049
Microfilm Newspapers	2,123	1,971	4,094	\$127.64	\$522,558
Computer-related works	6,050	2,292	8,342		\$2,691,093
Software	2,118	33	2,151	\$30.23	\$65,025
CD-ROMs	1,210	2,259	3,469	\$757.01	\$2,626,068
Printouts	2,723	0	2,723	indeterminate value	
Motion Pictures	12,020	1,386	13,406		\$7,730,334
Videotapes	11,419	1,369	12,788	\$92.89	\$1,187,877
Feature Films	601	17	618	\$10,586.50	\$6,542,457
Music	27,903	79	27,982	\$64.81	\$1,813,513
Dramatic Works, choreography and pantomimes	676	0	676	\$80.81	\$54,628
Sound Recordings	20,844	4,074	24,918	\$16.36	\$407,658
Maps	1,692	300	1,992	\$39.35	\$78,385
Prints, pictures, and works of art	3,945	50	3,995	\$31.80	\$127,041
Total	523,934	553,218	1,077,152		\$45,012,293

- 60% of "BOOKS" are selected for the collections; 40% are used for the Library's exchange program.
- 60% of "SERIALS" are selected for the collections, except in the case of Microfilm Newspapers (100% of which are selected).
- The figure for non-registered Periodicals includes: (1) an estimate based on average loads in hampers delivered to Library processing and custodial divisions and (2) a count of serials issues checked in through Copyright Acquisitions Division. For the estimated portion, there was an earlier change in physical method of delivery which decreased the average amount per hamper, but the former per hamper estimate was inadvertently retained. The amount reported in the FY 2006 report was possibly overestimated by up to 20 percent. The FY 2007 figure reflects a temporary methodology to reach a reasonable estimate. A new method of estimating will be developed for FY 2008.

Non-Fee Information Services to Public, Fiscal year 2007

Information and Records Division direct reference services	
In person	21,844
By correspondence	63,398
By email	41,127
By telephone	149,364
Total	275,733
<hr/>	
Office of the General Counsel direct reference services	
By correspondence	1,080
By telephone	1,410
Total	2,490
<hr/>	
Receipt Analysis and Control Division services	
By correspondence	4,610
By email	4,829
By telephone	13,420
Total	18,030
<hr/>	
Licensing Division direct reference services¹	
By correspondence or email	838
By telephone	6,759
Total	7,597
<hr/>	
eCO Service Help Desk	
By email	482
By telephone	356
Total	838
<hr/>	
Grand total direct reference services	304,688

1. As of FY 2005, the Licensing Division figures do not include correspondence and telephone contacts initiated by licensing examiners.

Financial information published in this table is unaudited.

Financial Statement of Royalty Fees for Compulsory Licenses for Secondary Transmission by Cable Systems for Calendar Year 2006

Royalty fees deposited	\$141,154,291.25
Interest income	\$4,675,980.00
Gain on matured securities	\$1,289,031.81
Transfers in	\$502.41
Total	\$147,119,805.47

Less:

Licensing operating costs	\$3,215,185.82
Refunds issued	\$113,022.26
Cost of investments	\$142,544,940.32
Cost of initial investments	\$414,567.33
CARP Operating costs	\$6,290.13
CRJ Operating Costs	\$729,294.06
Transfers out	\$68,889.82
Total	\$147,092,189.74

Balance as of September 30, 2007	\$27,615.73
Plus: Face amount of securities due	\$143,105,077.93
Less: Pending refunds	\$0.00

Cable royalty fees for calendar year 2006 available for distribution by the Library of Congress	\$143,132,693.66
--	-------------------------

Financial information published in this table is unaudited.

Financial Statement of Royalty Fees for Statutory Obligations for Distribution of Digital Audio Recording Equipment and Media for Calendar Year 2006

Royalty fees deposited	\$3,253,645.56
Interest income	\$38,550.00
Gain on matured securities	\$72,258.43
Transfers in	\$0.00
Total	\$3,364,453.99

Less:

Licensing operating costs	\$81,351.57
Refunds	\$32,906.00
Cost of investments	\$1,105,833.77
Cost of initial investments	\$4,957.28
CARP operating costs	\$2,256.87
CRJ operating costs	\$49,032.72
Distribution of fees	\$2,086,531.64
Transfers out	
Total	\$3,362,869.85

Balance as of September 30, 2007	\$1,584.14
Plus: Face amount of securities due	\$1,109,211.32

Audio Home Recording Act royalty fees for calendar year 2006 available for distribution by the Library of Congress	\$1,110,795.46
---	-----------------------

Financial information published in this table is unaudited.

Financial Statement of Royalty Fees for Statutory Licenses for Secondary Transmission by Satellite Carriers for Calendar Year 2006

Royalty fees deposited	\$86,462,001.24
Interest income	\$3,005,508.13
Gain on matured securities	\$532,662.65
Total	\$90,000,172.02

Less:	
Licensing operating costs	\$34,812.61
Refunds	\$290.05
Cost of investments	\$90,110,852.95
Cost of initial investments	(\$273,654.61)
CARP operating costs	\$2,453.00
CRJ operating costs	\$123,673.22
Total	\$89,998,427.22

Balance as of September 30, 2007	\$1,744.80
Plus: Face amount of securities due	\$90,404,856.78

Satellite carrier royalty fees for calendar year 2006 available for distribution by the Library of Congress	\$90,406,601.58
--	------------------------

COPYRIGHT OFFICE CONTACT INFORMATION

U. S. Copyright Office
Library of Congress
Copyright Office-COPUBS
101 Independence Avenue, SE
Washington, D.C. 20559-6304

Website · www.copyright.gov

Public Information Office · (202) 707-3000

Staff members are on duty to answer questions by phone from 8:30 A.M. to 5:00 P.M., eastern time, Monday through Friday, except federal holidays. Recorded information is also available 24 hours a day.

Forms and Publications Hotline · (202) 707-9100

NewsNet

Subscribe to the Copyright Office free electronic mailing list via the Copyright Office website at www.copyright.gov. Click on “News.”

PHOTOGRAPHY CREDITS

Cover and Title Page	Cecelia Rogers
Page 1 and inset	Cecelia Rogers
Page 4	Judith Nierman
Page 4 inset	Cecelia Rogers
Page 10	Wendi A. Maloney
Page 10 inset	Judith Nierman
Page 22	Cecelia Rogers
Page 22 inset	Judith Nierman
Page 48	Charles Gibbons
Page 48 inset	Judith Nierman
Page 54	Cecelia Rogers
Page 54 inset	Judith Nierman



Library of Congress
United States Copyright Office
101 Independence Avenue SE
Washington, DC 20559-6000

www.copyright.gov