

**Statement of
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Before the
Subcommittee on the Legislative Branch
Committee on Appropriations
United States Senate**

April 28, 2021

Chairman Reed, Ranking Member Braun, and Members of the Subcommittee:

Thank you for the opportunity to submit the United States Copyright Office’s fiscal 2022 budget request.

As the principal federal entity charged with administering the Copyright Act, the Copyright Office has many responsibilities, including overseeing the national copyright registration and recordation systems, advising Congress on copyright policy and legislation, working with the Department of Justice and other federal agencies on copyright litigation, conducting administrative and regulatory activity with respect to statutory copyright licenses, and educating the public about copyright law. We do all of this with a lean staff of less than 450 employees who pursue copyright’s Constitutional mission of “promot[ing] the progress of science and useful arts.”¹ Since I joined the Copyright Office in late October, I have been privileged to oversee the impressive work performed by the Office’s dedicated staff.

SUMMARY OF THIS PAST YEAR

This past year, the Office has achieved many noteworthy successes while addressing significant operational challenges, including those posed by limits on onsite operations as a result of the global pandemic. When the Library shut down the Madison building on March 13, 2020, the Office quickly transitioned most staff to telework. Some of our work, however, involves physical materials (including paper-based recordation documents, paper-based registration claims, and physical copyright deposits). Office staff was unable to process these materials until June 2020, when limited in-office work resumed, as discussed below.

¹ U.S. CONST. art. I, § 8, cl. 8.

We have accomplished a lot this past year in administering the national registration and recordation systems. In fiscal 2020, the Office registered 443,911 claims to copyright involving millions of works. Ninety-eight percent of registration applications closed were received electronically and two percent by mail. Even with the pandemic, we made significant strides in improving processing time: the average overall processing time for examining all copyright claims dropped from 4.0 months in the second half of fiscal 2019 to 2.6 months in the second half of fiscal 2020, representing a 35 percent decrease. The average processing times for fully electronic claims that did not require correspondence (74 percent of all electronic claims) dropped from 3.0 months to 1.6 months, and those that did require correspondence (26 percent) dropped from 6.0 months to 3.6 months. Despite the overall reduction, however, the pandemic did negatively impact processing times for electronic applications that required the submission of physical deposits, as well as paper applications, which make up less than 3 percent of all registration applications the Office receives, as registration staff was not on-site for many months.²

With respect to recordation work in fiscal 2020, the Office recorded 7,098 documents, on paper and through the new electronic pilot, containing titles of 233,694 works. The average time from submission to generation of the public record for electronic pilot submissions was within weeks of receipt for most submissions. The average processing time for paper submissions was approximately 11.5 months; this was an increase of 3.5 months from the average fiscal 2019 processing times and again reflects the impact of the pandemic on physical operations.³ Recordation staff were unable to retrieve submissions from March 2020 until some on-site work resumed in June 2020.

Limited on-site operations also impacted the Office's acquisition of physical materials for Library collections in the third and fourth quarters of fiscal 2020. The Office was able, however, to maintain an effective e-deposit program throughout the fiscal year. E-serial and, in particular, e-book acquisitions made up a significant portion of the Office's contributions to the Library's collections. For fiscal 2020, the value of deposits, \$40.03 million, was just shy of the previous year's total. The value of the access that special relief relationships with major e-serial

² Registration processing times are posted on our website at <https://copyright.gov/registration/docs/processing-times-faqs.pdf>.

³ Recordation processing times are posted on our website at <https://copyright.gov/recordation/>. We are currently processing September 2019 basic recordation filings and April 2020 notices of termination. Also due to COVID-19, the Copyright Office mail unit is now processing mail submitted in August 2020.

and e-book publishers provided for Library staff and patrons increased from \$69.87 million in fiscal 2019 to \$75.26 million in fiscal 2020.

The Office was able to continue our longstanding role of providing expert legal and policy advice without interruption. This included promulgating regulations to implement various provisions of the Music Modernization Act (MMA),⁴ as well as to update rules to facilitate new practices for group registrations, deposit of electronic books for the Library's collections, and improved administration with respect to recordation of notices of termination. The Office has also commenced regulatory activities to implement the Copyright Alternative in Small-Claims Enforcement Act (CASE Act), as discussed further below. On the policy front, the Office issued a comprehensive study on section 512 of the Copyright Act last May, and continues work on three other studies (unclaimed music royalties, sovereign immunity, and the market impact of termination of certain section 119 licenses), to be completed later in 2021. The Office also continued to provide legal advice and assistance across the government regarding complex and emerging areas of copyright law and policy, including Supreme Court and appellate litigation and work with executive branch agencies on international matters.

The Office has engaged in numerous outreach activities to provide accurate and unbiased information on copyright law. We continued to produce events to educate the public and stakeholders about copyright, including specifically to reach music and songwriter communities around the world with information about the MMA. In fiscal 2020, the Office answered some 170,000 public inquiries regarding copyright, helping people understand copyright and the Office's services. We also continued our effective stewardship of the over \$1.4 billion in statutory licensing revenues; for the third consecutive year, the Office received an unmodified or "clean" audit opinion of the statutory licensing fiduciary asset financial statements.

Regarding information technology (IT), fiscal 2019 marked the first year Congress appropriated funds specifically for IT modernization (for five years, recurring). This allowed the Office and the Library of Congress's Office of the Chief Information Officer (OCIO) to continue making progress on a modernized Office IT system. The Office worked closely with OCIO to provide the business information needed for OCIO to undertake the development work. In fiscal 2020, we met our objectives on three major IT modernization work streams: the April 2020 launch of an electronic recordation pilot; the September 2020 release of an internal version and a December 2020 public version of a new interface for the Copyright Public Records System; and

⁴ Orrin G. Hatch–Bob Goodlatte Music Modernization Act, Pub. L. No. 115-264, 132 Stat. 3676 (2018).

the year-end internal release of a clickable prototype of the planned new registration system. More details on our plans for fiscal 2022 follow below.

To be sure, modernization involves more than just IT; it also involves updates to Office processes, organization, and culture. The Office has made significant progress in business process reengineering efforts—last summer we completed work with a consultant on 66 distinct processes for improvement. We are now reviewing those results and moving forward to identify processes that can benefit from IT support as well as those that can be implemented without it. In addition, the Office continues to work with the Office of Personnel Management (OPM) on organizational issues. After a review of the Office’s organization and structural needs for modernization, OPM is now assisting us in devising competency models for two of our most populated occupation series in order to improve succession planning and talent management. Finally, last summer the Office completed work with a consultant on an organizational change initiative, which involves the development of key change management processes and documents, staff training, and strategic coaching on structuring and leading business transformation. The Office is pivoting to apply these skills internally, and we have created a community of practice to spread and better integrate them within our workforce.

Adapting Operations to the Coronavirus (COVID-19)

While fiscal 2020 brought unexpected and unprecedented adversities for the Office, our staff rose to the challenges. The Office implemented a pandemic response plan in March 2020, successfully transitioning 98% of the staff to full or partial telework within just a few weeks. More staff gradually returned on-site throughout the summer and fall, in accordance with the Library’s plan for restored on-site operations. We currently have about 27% of our staff on-site, either full-time or on rotating schedules; the rest are teleworking.

As noted above, the bulk of the Office’s operations have been largely unaffected by the transition to telework operations, including all legal and policy work, registration processing of fully electronic claims, and ongoing modernization activities. Although processing of physical materials was suspended for several months after the Madison building was closed in March 2020, the Office issued a new rule that allows us to offer an electronic option for some services that previously required paper submission. We also adjusted practices to receive certain additional applications and submissions via email during pandemic operations.

To further relieve the impact of constraints imposed by the pandemic on users of Office services, the Acting Register had exercised, and I am now exercising, the authority granted by Congress in the 2020 Coronavirus Aid, Relief, and Economic Security Act (CARES Act). So far, we have issued notices that temporarily adjust certain timing provisions and I continue to

review conditions to determine whether further extensions are needed. The Office is also monitoring the impact of COVID-19 on our fee receipts. While there has not yet been a significant shortfall, the Office appreciates the Committee's support going forward if funding flexibility is needed to adjust to disruptions in operations or to address increased workloads when normal operations and backlog processing resume.

In sum, the Office is proud to have accomplished so much during this challenging year, and to have continued to serve the country and the copyright system well. Our budget request would enable this important work to continue in fiscal 2022.

FUNDING AND OVERALL FISCAL 2022 BUDGET REQUEST

The recurring financial support for the Office's modernization efforts, initially funded as part of the fiscal 2019 budget, continues for fiscal 2022, and the Office is pleased to provide an update on a number of initiatives that are now fully underway. In addition to ongoing modernization, the Office and the Copyright Royalty Judges (CRJ) are fully engaged in addressing new responsibilities under the MMA. Congress provided an additional \$1.6 million in fiscal 2021, primarily for Office and CRJ staffing. To support implementation of the CASE Act, enacted as part of the fiscal 2021 omnibus appropriations legislation on December 27, 2020, the Office is requesting \$3.2 million in additional funding for fiscal 2022 as described further below.

The Copyright Office's overall budget is composed of three separate budgets or program areas:

- (1) *Basic Budget*, which funds most of the Office's core operations, including the majority of payroll-related expenses. Historically the basic budget has been composed of a combination of appropriated dollars and authority to spend fee revenue, with fees constituting a majority of this funding (generally in the range of 50% to 67%);
- (2) *Licensing Budget*, which is derived completely from licensing royalty collections otherwise payable to copyright owners and filing fees paid by cable and satellite licensees pursuant to statutory licenses administered by the Office; and
- (3) *Copyright Royalty Judges Budget*. Although the CRJ program is not a part of the Office, the Office provides it with budget formulation and execution support on behalf of the Library of Congress.

For fiscal 2022, the Office requests a combined total of \$98.0 million in funding and 472 FTEs, of which \$45.0 million would be funded through offsetting collections of fees collected in fiscal 2022 and in prior years.

The Office's fiscal 2022 requests are:

- *Basic Budget:* \$88.7 million and 439 FTEs. \$38.0 million in offsetting fee collections (43%) and \$50.7 million (57%) in appropriated dollars. The request includes mandatory pay-related and price level increases of \$1.209 million and a program increase of \$3.2 million for staffing, facilities, computer and audiovisual technology, and services to implement the CASE Act. Of this latter amount, \$1.0 million is one-time funding for IT system development, audiovisual system acquisition, and facilities expenses, and \$2.2 million is permanent funding for staff, operations and maintenance, and services.
- *Licensing Division Budget:* \$6.4 million and 26 FTEs, all of which are to be funded via filing and royalty fees. The requested increase includes mandatory pay-related and price level increases of \$0.2 million.
- *Copyright Royalty Judges Budget:* \$2.9 million and 7 FTEs, with \$0.1 million to support mandatory pay-related and price level increases. Of the total, royalties and participation fees offset \$0.5 million (for non-personnel-related expenses). The remainder, \$2.4 million in appropriated dollars, is to cover the personnel and other related expenses of the judges and their staff.

OUR FOCUS FOR FISCAL 2022 ACTIVITIES

The Copyright Office's fiscal 2022 funding request seeks resources necessary to continue the progress already underway towards accomplishment of the Office's strategic goals, which include focus areas such as providing expert law and policy advice, modernizing information technology, as well as to fulfilling the additional responsibilities entrusted to the Office by Congress as part of the MMA and CASE Act. To advance these goals, the Office is seeking specific funding: (1) implementing the CASE Act by standing up the Copyright Claims Board (CCB); (2) meeting the mandates of the MMA; (3) modernizing the Office's IT systems and applications, including the Office's historical records initiative. Our modernization webpage⁵ reflects ongoing work for both IT and non-IT initiatives.

CASE Act

The CASE Act established the new CCB in the Copyright Office to serve as an "alternative forum in which parties may voluntarily seek to resolve certain copyright claims regarding any category of copyrighted work."⁶ The Copyright Office is undertaking a number of work

⁵ See <https://www.copyright.gov/copyright-modernization/>.

⁶ Copyright Alternatives in Small Claims Act, 17 U.S.C. § 1502 (2020).

streams in support of standing up the CCB over the next several quarters. Last month, the Office published an educational webpage with FAQs about the CCB that will be regularly updated to keep the public informed of its progress. The Library and the Office has publicized job postings to recruit the three Copyright Claims Officers. The Office also has issued a notice of inquiry to solicit public comment regarding all aspects of regulatory implementation. The Office, OCIO, and other Library units are collaborating to identify and ready the IT technology, office space, and other needs for the CCB within the statutorily required timeframe.

In support of these activities, the Office's fiscal 2022 budget includes a program increase request of \$3.2 million and 8 FTEs. This amount includes \$1.0 million in one-time costs for office construction and furniture, audiovisual system acquisition, and development of an online case management system; and \$2.2 million in recurring costs for the 8 FTEs (\$1.7 for salary, benefits, and related costs and \$500 thousand for systems operation and maintenance, printing, and other services).

MMA

The enactment of the MMA assigned new responsibilities to both the Copyright Office and the CRJ. The MMA requires the Register of Copyrights to "engage in public outreach and educational activities" regarding the amendments made to section 115 of title 17, in addition to a number of rulemakings.⁷ Specifically, the Register must engage in public education and other outreach activities to inform interested members of the public and songwriters about the process by which a copyright owner may claim ownership of musical works through the mechanical licensing collective (MLC), which will administer a blanket licensing system for digital music providers to make and distribute digital phonorecord deliveries (*e.g.*, permanent downloads, interactive streams). The Office has produced several dozen outreach events over the past year to inform the public about the requirements of the MMA, and in fiscal 2021 the Office requested and Congress provided a program increase that included three additional FTEs to ensure these efforts are fully resourced.

The MMA also assigned additional responsibilities to the CRJ, requiring it to ascertain the reasonableness of the MLC's operating budget and the allocation of contributions to that budget by the various licensees or licensee representative groups.⁸ Previously, under section 802(b) of the Copyright Act, the number of support staff authorized to support the CRJ was capped at

⁷ Orrin G. Hatch–Bob Goodlatte Music Modernization Act, Pub. L. No. 115-264, § 102(e), 132 Stat. 3676, 3722 (2018).

⁸ *Id.* § 102(c).

three. A proviso in the fiscal 2020 Further Consolidated Appropriations Act permanently removed the staffing cap, allowing for the new hires requested in fiscal 2021.⁹

Copyright IT Modernization

The Office has a number of accomplishments to report in the third year of the Congressionally-appropriated five-year funding for modernization. OCIO is working alongside the Office on software development activities, which are progressing across multiple programmatic areas—including registration, recordation, statutory licensing, and access to public records. Building on our agile software foundation, this year the Office implemented the Scaled Agile Framework (SAFe) to improve collaboration across all of our projects and to improve our program-level view of the IT modernization work.

We are pleased to report that we met our target of a spring launch for the public pilot of the new electronic recordation system, which went live on April 27, 2020. The pilot was initially available to a limited number of public users, enabling them to record documents related to copyright ownership that fall under section 205 of title 17. We are now incorporating user feedback from this pilot into iterative improvements, with four point releases behind us. In this continuous development phase, additional functionality and additional waves of users will be added, with this year's focus turning to recordation of notices of termination.

The pilot for the new Copyright Public Records System, an endeavor that will eventually replace the existing Copyright Office Online Public Catalog, also launched this past year. The initial public release in late 2020 has already been supplemented by our first point release incorporating bug fixes and user feedback, and the process of point releases is expected to continue into the coming year.

In addition, moderated user testing has begun on a limited prototype for the copyright registration standard application, from which we will gather public feedback and commence with improvements and a second round of user testing. Iterative development of internal workflows has also begun, and a second development team is expected to join the team working on this functionality over the summer.

User Experience Design for licensing components begun earlier this year, with development against these requirements expected to begin later in the spring.

As part of our historical records project and commitment to the preservation of and access to records, a comprehensive effort is underway to digitize print and microfilm records and make

⁹ Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, § 1405, 133 Stat. 2534, 3208 (2019).

them available online; this includes the card catalog, record books, and the Catalogs of Copyright Entries (CCE). The Office is currently working with the Library's experts in digital collections management to ensure that the digitization of the Office's more than 26,000 physical copyright record books incorporates best practices and the resulting records can be made available for public, online viewing. These record books contain well over 20 million pages of records from between 1870 and 1977, covering works as diverse as books, photographs, musical compositions, sound recordings, motion pictures, and more. A contract for the digitization of these record books has been awarded. Another contract is underway to perfect the metadata and improve access to the more than 40 million registration application and index cards that are already publicly viewable using the Office's Virtual Card Catalog (VCC). The Office also has a contract to create a data-mapping schedule for the historical record collections to use in the development of the Copyright Public Records System. These efforts will enhance the public's user experience by providing more accurate online search capability.

As directed by the Committee, the Office has developed an integrated master schedule (IMS) for IT modernization activities. The Office brought in expert consulting services to assist in developing a program for IMS management that allows for continuous improvement and refinement of the IMS and its estimates. The consultant services were procured in early calendar 2020 as the first task order under the Library's contract for Library-wide performance planning and measurement services. After a slight COVID-19-related delay in the start of these services, the work commenced and was completed in February of this year.

Consolidation of Copyright Office Storage Facilities

The Copyright Office has made great progress in the planned consolidation of copyright materials from several geographically dispersed storage facilities into a single, modern facility. The collaborative warehouse construction project between the Library, the Office, and Architect of the Capitol was completed ahead of schedule, and the Copyright Office moved into the new facility in November 2020. This facility will allow the Office to provide faster location services, better tracking, and improved security of the significant inventory of copyright deposits. The Office is now working to bring copyright materials stored in other locations to Cabin Branch in order to fully consolidate our materials.

MORE FLEXIBLE FEE AUTHORITY

The Copyright Office's operations would benefit significantly from greater flexibility in the use of our fee collections, specifically the authority to use existing fee balances to provide services to the public in the event of a lapse in appropriations. As we have noted before, flexibility in management of fee balances across budget cycles also would provide for more efficient and

cost-effective administration of large, non-recurring projects related to modernization and other capital expenditures. To that end, once authorized, the Office anticipates including in a future budget request two changes in appropriations language: (1) to make 20% of the balance of fees collected in prior years available each year, in addition to appropriated amounts, for obligation without fiscal year limitation, and (2) to allow the Office to access existing fee balances to continue operations during a lapse in appropriations.

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The Copyright Office appreciates the Subcommittee's and Committee's continued support of the Office's efforts to modernize both our technology and services, and of the work involved in the operation of the copyright system overall.