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ANNUAL REPORT OF THE  
LIBRARIAN OF CONGRESS

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FOR THE FISCAL YEAR ENDING  
30 SEPTEMBER 1998

LIBRARY OF CONGRESS  
WASHINGTON  
1999

## COPYRIGHT SERVICES

During fiscal 1998, the Copyright Office advised Congress on national and international issues; created and maintained the public record of copyright registrations and recorded documents; administered compulsory licenses and statutory obligations; furthered the effort to create an automated registration, recordation, and deposit system; and offered technical, legal, and educational assistance in the international arena. In addition, increased attention was given to the security of the materials submitted to the office.

On December 10, the Copyright Office celebrated the one hundredth anniversary of its establishment as a separate office within the Library and of the creation of the position of Register of Copyrights. A week-long program culminated with a celebration that featured Librarian of Congress James H. Billington, Register of Copyrights Marybeth Peters, and Pulitzer Prize-winning poet Anthony Hecht. Chairman Howard Coble (R-N.C.) of the House Subcommittee on Courts and Intellectual Property sent a congratulatory message stating that the office “has evolved into a vital congressional agency that grants invaluable domestic and international policy advice and takes part in treaty negotiations, in cooperation with the Administration.”

During the year, the Copyright Office received approximately 645,000 claims and registered 558,645 claims. In all, 14,368 documents were recorded, covering hundreds of thousands of titles. The office forwarded more than 862,000 copies of works—worth more than \$25,697,000—to the Library for its collections and exchange programs.

The office met its statutory obligations by handling a large number of Notices of Intent to Enforce copyrights restored under the Uruguay Round Agreements Act as the filing period ended for authors from most countries. Approximately 14,000 titles were recorded and published in the *Federal Register*, representing 11,848 filings; more than 2,500 claims were examined for registration.

The office responded to more than 383,000 requests from the public for copyright information; processed filings by cable operators, satellite carriers, and

manufacturers and importers of digital audio recording devices and media; and processed claims to the various royalty pools. More than \$153 million in royalty fees were collected, and the Licensing Division distributed more than \$270,950,509 in royalties.

On October 15, the office launched *NewsNet*, a free electronic news service that alerted some 2,500 subscribers to hearings, deadlines for comments, new and proposed regulations, new publications, and other copyright-related issues.

The office also improved public service by increasing the number of materials available on the Copyright Office Web site. During the year, nearly 2 million people accessed the Web site, and some 520,000 people accessed information circulars or form letters on-line. Information currently available on the Web site includes Frequently Asked Questions, an HTML version of the copyright law, two revised chapters (1600 and 1900) of the *Compendium of Copyright Office Practices* that were published this fiscal year, all copyright application forms, new and revised Copyright Office regulations, Copyright Office studies, information circulars, and World Intellectual Property Office (WIPO) documents and treaties.

## **Security**

The office worked toward mitigating security risks and ensuring that all of its automated systems would be fully operational in 2000. In February, the mail room began placing accession stamp labels on compact discs determined to be high security risks. The office also expanded its security tagging program to include paperback novels.

The Pitney Bowes Mail Center design package received in February provided greater workflow efficiencies and contained new technology for introducing, recording, organizing, and safeguarding submissions to the office. The mail room was reorganized to implement the package.

The office also improved its "missing items" database to track and locate materials more effectively. The office developed a database tracking system to locate deposit copies removed from off-site storage facilities for use by the staff or inspection by the public.

## Legislation

The office provided expert assistance to Congress on important copyright-related issues, giving policy and technical advice and testifying on legislation. Assistance was provided on the No Electronic Theft Act, enacted into law on December 15 (PL 105-147), the Collections of Information Antipiracy Act (H.R. 2652), and the Vessel Hull Design Protection Act (H.R. 2606).<sup>1</sup> In a letter to Dr. Billington, Senator Patrick Leahy (D-Vt.) commended the expertise and advice offered by the office on the Digital Millennium Copyright Act (DMCA) (PL 105-304).

The Copyright Office and the Congressional Research Service conducted a joint study on the economic effects of extending the copyright term by twenty years (to conform to the European Union directive making the term life plus seventy years). The office considered a proposal requiring proprietors of works made for hire to pay a fee to obtain the twenty-year extension. The proposal was that money from the fees be used to help fund the National Endowment for the Arts. The office considered the costs and benefits of such a system and whether this would violate international treaty obligations. In its report to Senators Christopher Dodd (D-Conn.), Ted Kennedy (D-Mass.), and Patrick Leahy, the office concluded that the proposal was unlikely to succeed on several counts and determined that it could violate our Berne Convention obligations.

At the request of Chairman Coble, the office presided over negotiations among the motion picture industry and the actors, screenwriters, and directors unions. The purpose of the negotiations was to develop a provision guaranteeing the continuing payment of residuals by imposing on transferees of rights in motion pictures certain existing obligations under collective bargaining agreements. This agreement was added to H.R. 2589, the copyright term extension bill, which passed the House on March 25, 1998.<sup>2</sup>

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<sup>1</sup> This bill was enacted into law on October 28, 1998, as Title V of the Digital Millennium Copyright Act, PL 105-304.

<sup>2</sup> Copyright term legislation was enacted on October 27, 1998, PL 105-298. The transfer provision concerning collective bargaining agreements was enacted into law on October 28, 1998, as part of Title IV of DMCA.

Following the introduction of legislation to implement two 1996 WIPO treaties, the office assisted both House Subcommittee and Senate Judiciary Committee members and staff in developing various amendments. One of the amendments added to the bill was a provision expanding the existing exemption relating to computer programs in section 117 of the copyright law to permit the making of an unauthorized copy of a computer program in the course of maintaining or repairing a computer. The exemption permits only a copy that is made automatically when a computer is activated and only if the computer lawfully contains an authorized copy of the program. This provision was negotiated under the auspices of the Copyright Office at the request of the House Subcommittee during the 104th Congress.<sup>3</sup>

At the request of Senators Orrin Hatch (R-Utah), Patrick Leahy, and John Ashcroft (R-Mo.), the office sponsored two days of negotiations on the issue of distance education and will subsequently conduct a study on how to promote this method of learning. The study with recommendations is to be completed six months after DMCA is enacted.<sup>4</sup>

The office assisted the House Subcommittee in enacting legislation to reverse the decision in *La Cienega Music Co. v. Z.Z. Top*, 44 F.3d 813 (1995), *cert. denied*, 516 U.S. 927, which would have jeopardized copyright protection for musical works recorded before 1978. The legislation, enacted on November 13, 1997 (PL 105-80), also clarified certain provisions in the Copyright Act and gave the office the authority to set fees, subject to congressional approval.

As part of the Technical Amendments Act passed in November, Congress revised the Copyright Office's fee structure and established criteria for adjusting the fees enumerated in section 708 of the copyright law. The revision authorized the Register to adjust fees to recover a greater percentage of office costs of providing services. Toward the end of fiscal 1997, the office began a process to determine the costs of registering claims, recording documents, and providing other fee-related services. Two consulting firms with expertise in cost accounting and the new Federal Managerial Cost Accounting Standards were hired. An office fee group was established to provide a report with recommendations on the fees to the Register.

<sup>3</sup> This exemption is Title III of DCMA, enacted into law on October 28, 1998.

<sup>4</sup> Section 101, DMCA.

On July 1, 1998, fees for "discretionary services," including special expedited handling of claims and full-term storage of deposits, were raised and new fees were established. New fees included a fee for first and second appeals of office refusals to register claims or record documents and a fee for processing claims in secure tests. In August, the office published a Notice of Proposed Fee Increase and announced a public hearing to be held on October 1, 1998. The fees covered by this rulemaking were registration fees, including basic, supplementary, and renewal; recordation of documents; additional certificates; issuing receipts for mandatory deposits; and conducting and reporting searches of office records. Two proposals were offered regarding the basic registration fee. The first alternative tracked fees recommended by the internal office fee group; the second alternative lowered the fees for individual authors and adjusted other fees to compensate for income lost through this accommodation. Users of the copyright system were afforded the opportunity to meet with the Register and to submit written comments before the proposals were issued.

The legislation provides for adjusting fees to cover costs incurred by the office for the service and may include an inflationary factor. The fees must also be fair and equitable and must give due consideration to the objectives of the copyright system. The office will consider all of the evidence, including public testimony. The recommended fee schedule accompanied by supporting and required documentation will be sent to Congress early in 1999 and will take effect unless Congress overturns the recommendations within 120 days.

### **Copyright Office Electronic Registration, Recordation, and Deposit System**

The office made significant progress on a major initiative to develop an electronic registration and deposit system known as CORDS. CORDS will facilitate the copyright registration and deposit process for on-line works, streamline those registration processes, improve efficiency and internal security, and provide the Library with copyrighted works in electronic form for its digital collections.

During the year, the Corporation for National Research Initiatives (CNRI) continued developing CORDS with support from the Copyright Office and the Advanced Research Projects Agency, which funds research to refine the architectural components that can be applied to any registry system. CNRI's

technical work focused on improving the existing CORDS model, making an operational system that can be maintained by the Library's Information Technology Services office and integrated into other office operations. Achievements include completing new CORDS client software with template capability, completing the CORDS-formatted registration certificate, producing software for staff use with an interface to existing cataloging systems, modifying the software to accommodate batch claims submissions and other types of subject-matter claims, upgrading staff workstations, and adapting the system to handle receipt of "mixed cords" claims (electronic claims with hard copy deposits).

Testing continued with three previous test partners, and test parameters were developed for accepting digital dissertations from the UMI Company. Testing began with claims for study guides received in electronic form from the University of Phoenix, e-journals from the American Geophysical Union and the American Mathematical Society, and standards from the American National Standards Institute.

### **Compulsory Licensing**

The Copyright Office administered a number of compulsory licenses, including those for retransmission of broadcast signals by cable systems and satellite carriers; public performances of sound recordings by digital audio transmissions; production and distribution of phonorecords of musical compositions, including digital phonorecord delivery; public performances of published and nondramatic musical works by jukeboxes; and use of published nondramatic musical works and published pictorial, graphic, and sculptural works by broadcasting entities. The office also administered the statutory obligation on the manufacture and importation of digital audio recording devices and media (tapes and discs).

Since 1993, when Congress created a system of ad hoc Copyright Arbitration Royalty Panels (CARPs), the office has been charged with reviewing panel decisions and recommending to the Librarian whether they should be accepted or rejected. The standard is whether the CARP's decision is arbitrary or contrary to law. This year, the Librarian's decision on the distribution of 1990-92 royalty funds collected under the cable compulsory license, 17 U.S.C. 111, was challenged in the United States Court of Appeals for the District of Columbia Circuit in *National Association of Broadcasters v. Librarian of Congress*,

146 F. 3d 907 (D.C. Cir. 1998). The appellate court affirmed the Librarian's decision and noted that decisions of the Librarian made under the CARP process will be given unusually wide deference and accepted by the court as long as the Librarian has offered a "factually plausible explanation" for the decision.

All but one of the final determinations made under the CARP system have been appealed. Those appealed include a distribution for the 1992-94 Musical Works Fund of the Digital Audio Home Recording Act (chapter 10 of the copyright code); an adjustment of the statutory rate for satellite carriers under section 119, which proved to be extremely controversial and led to efforts in both houses of Congress to stay the rate increase; and a determination of the statutory rate to be paid for public performance of digital transmissions of sound recordings.

Overall, the office's experience with the CARP system has proved costly and burdensome. Last fall, the House Subcommittee on Courts and Intellectual Property asked the office to make recommendations to reform or replace the CARP system. On February 23, the office submitted its report addressing the deficiencies in the current system and explored five options to improve or replace it. Those options included (1) improving the existing system by changing some of the qualifications of CARP panelists, extending statutory deadlines, and streamlining small claims procedures; (2) replacing the CARP system with administrative law judges (ALJs); (3) replacing CARP panels with non-ALJ presiding judges; (4) replacing the panels with a Copyright Adjudication Board within the Copyright Office; and (5) creating an independent regulatory agency. The office report recommended that Congress establish a Copyright Adjudication Board within the Copyright Office. This recommendation was incorporated into H.R. 3210, the Copyright Compulsory License Improvement Act. No action was taken on this bill during fiscal 1998.

### **International Activities**

The office continued to work closely with executive branch agencies on international copyright issues. Either the Register or the Associate Register for Policy and International Affairs participated as members of the U.S. delegations at WIPO meetings on audiovisual performers' rights, design protection, and technical cooperation for developing countries, and at World Trade Organization (WTO) meetings and consultations about implementing the Agreement



on Trade-Related Aspects of Intellectual Property Rights (TRIPs). Staff attorneys assisted the U.S. Trade Representative in regional and bilateral negotiations, WTO accessions, and reviews of other countries' laws. The Register, Associate Register for Policy and International Affairs, and various staff attorneys participated in U.S. Information Agency copyright programs in various countries.

The office participated in conferences and seminars sponsored by WIPO, the European Commission's Imprimatur project, and the International Federation of Library Associations. On June 22, the Register gave a speech titled "Copyright in a Global Networked Environment" at the International Telecommunications Society's annual meeting in Stockholm, Sweden. The following morning, she gave a radio interview on challenges of the Internet. In addition, on May 29, she addressed the International Law Association's sixty-eighth conference in Taipei, Taiwan, regarding the TRIPs agreement and the new WIPO treaties.

During May 4-7, the office planned a United States informational study tour for a six-member delegation from the Peoples Republic of China. On August 5, the office received the Minister of Legal Affairs from the Republic of Trinidad and Tobago to discuss establishing a copyright unit in her country.

**Security.** CRO worked closely with the Office of Security on the completion of the Library's Security Plan and arranged for congressional staff briefings and tours relative to this issue. During the year, CRO assisted the director of security in addressing numerous issues and incidents that generated congressional interest. The office also worked with the Library's oversight committees to explain the Library's security needs and actions.

Toward the end of the fiscal year, the Library developed a package of critical security needs for inclusion in an emergency supplemental appropriation. Consultations were held with the Architect of the Capitol and the Capitol Police Board. Preparations were made for hearings on security to be held before the Senate Committee on Rules and Administration on September 24 and October 1.<sup>7</sup>

**Copyright Issues.** The 105th Congress considered several major copyright bills, including proposals relating to the role of the executive branch in intellectual property policy. The Library provided information to congressional offices on the importance of preserving the Copyright Office's role and supported amendments to Title 17 that specifically outlined certain functions and duties of the office. At the end of the fiscal year, the House and Senate were each considering bills that would affect copyright policy.

**Congressional Accountability Act.** In fiscal 1998, the Library began to assess the impact of new federal workforce protection laws on its workforce and procedures. The Office of Compliance, created by Congress to enforce the Congressional Accountability Act, issued proposed regulations that would have gone beyond its authority under the Act and would have conflicted with procedures already available to Library employees seeking redress for their rights in the workplace.

The Library drafted a series of responsive comments objecting to the proposed regulations, consulted with other legislative branch agencies that were potentially affected, and worked directly with the Office of Compliance staff to clarify the Library's position. The Office of Compliance withdrew its

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<sup>7</sup> An additional \$16.9 million to enhance the security of Library staff, visitors, and facilities was included in the omnibus year-end spending bill that the president signed into law on October 21. These funds were part of a \$106.8 million package to improve the physical security of the Capitol complex, including the House and Senate office buildings.

**APPENDIX A: MAJOR EVENTS AT THE LIBRARY**  
(during fiscal 1998)

**1997**

**October 6** Dr. Billington unveils at a press conference preliminary plans for commemoration of Library's Bicentennial on April 24, 2000.

**October 7** A fundraising event is held to launch Library's Bicentennial in 2000. More than \$800,000 is raised. Guests include General Colin Powell, vice chairman of the event.

**October 7** President Clinton signs Legislative Branch Appropriations Bill (Public Law 105-55), which includes the Library's budget of \$376,719,000 for fiscal 1998.

**October 8** Producer and filmmaker Nathan Kroll introduces three evenings devoted to films about major performing artists, beginning with cellist Pablo Casals.

**October 9** An evening of Korean classical music hosted by the Asian Division and Korean Information Center of Washington.

**October 9** Poet Laureate Consultant in Poetry (1997-98) Robert Pinsky opens Library's fall literary season with lecture on "Digital Culture and the Individual Soul."

**October 10** Senator Max Cleland (D-Ga.) delivers keynote address for Disability Employment Awareness Month.

**October 15** Copyright Office launches *NewsNet*, a free electronic news service on copyright-related issues.

**October 15** Poetry and Literature Center presents Pulitzer Prize-winning poet W. S. Merwin reading from his work.

**October 15** Library celebrates one hundredth birthday of Music Division with "An Evening of Society Dances and Parlor Amusements from the 1890s," featuring Elizabeth Aldrich's Jonquil Street Foundation dancers and Library of Congress Centennial Cotillion Band playing vintage music from the collections.

**October 16** Dr. Billington releases first comprehensive five-volume study on present survival status of American television and independent video production.

**October 21** Twentieth anniversary of Center for the Book is celebrated.

**October 22** Elena Bonner, human rights activist and widow of Nobel Peace Prize laureate Andrei Sakharov, delivers lecture on the state of human rights in former Soviet Union.

**October 22** Film showing of *Breaking the Attitude Barrier: Learning to Value People with Disabilities* commemorates Disability Employment Awareness Month.

**October 23** Poetry at Noon series presents "Spirits beyond This Realm—Part 1" with discussion of translation of Dante's *Inferno* by Poet Laureate Consultant in Poetry Robert Pinsky.

**October 23** Poetry and Literature Center presents readings by Suzanne Qualls and Peter Sacks.

**14. COPYRIGHT REGISTRATIONS**

(number of registrations by subject matter, fiscal 1998)

<i>Category of Material</i>	<i>Published</i>	<i>Unpublished</i>	<i>Total</i>
Nondramatic literary works			
Monographs and computer-related works	134,989	54,382	189,371
Serials			
Serials (non-group)	61,783	—	61,783
Group daily newspapers	2,499	—	2,499
Group serials	8,320	—	8,320
TOTAL, literary works	207,591	54,382	261,973
Works of the performing arts, including musical works, dramatic works, choreography and pantomimes, and motion pictures and filmstrips	49,622	92,848	142,470
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 the applied arts	66,403	29,680	96,083
Sound recordings	14,590	17,092	31,682
TOTAL	338,206	194,002	532,208
Renewals	25,453	—	25,453
Mask work registrations	984	—	984
GRAND TOTAL, all registrations	—	—	558,645
Documents recorded	—	—	14,368

**15. COPYRIGHT BUSINESS SUMMARY**  
 (fees recorded, fiscal 1998)

<i>Receipts</i>	<i>Fees</i>
Applications for registration	<b>\$12,622,230</b>
Fees for mask works	<b>21,330</b>
Renewals	<b>565,494</b>
TOTAL	<u><b>13,209,054</b></u>
Fees for recordation of documents	<b>829,698</b>
Fees for certifications	<b>115,036</b>
Fees for searches	<b>190,950</b>
Fees for expedited services	<b>1,217,546</b>
Fees for other services	<b>140,713</b>
TOTAL	<u><b>2,493,943</b></u>
GRAND TOTAL	<u><b>\$15,702,997</b></u>
Fees Applied to the Appropriation, Fiscal 1998	<b>\$15,560,000</b>