

**Statement of
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**Before the
Subcommittee on the Legislative Branch
Committee on Appropriations
United States Senate
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Chairman Reed, Ranking Member Braun, and Members of the Subcommittee:

Thank you for the opportunity to submit the United States Copyright Office’s fiscal 2023 budget request.

The Copyright Office is tasked with 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. We accomplish this with a talented and diverse staff, all dedicated to copyright’s Constitutional mission of “promot[ing] the progress of science and useful arts.”¹

In January, the Office published a new strategic plan for 2022–2026, *Fostering Creativity and Enriching Culture*.² Our plan identifies four overarching goals: Copyright for All, Continuous Development, Impartial Expertise, and Enhanced Use of Data. These goals, aligned closely with those of the Library of Congress, are intended to make the copyright system more accessible, understandable, and up to date. All of our activities described below are directed toward advancing these goals.

KEY ACCOMPLISHMENTS OVER THE PAST YEAR

Since my testimony last year, the Copyright Office has achieved many noteworthy successes while handling continuing operational challenges, including those posed by limits on on-site operations as a result of the global pandemic. It is important to acknowledge the

¹ U.S. CONST. art. I, § 8, cl. 8.

² U.S. COPYRIGHT OFFICE STRATEGIC PLAN 2022–2026: FOSTERING CREATIVE & ENRICHING CULTURE (Jan. 2022), <https://copyright.gov/reports/strategic-plan/USCO-strategic2022-2026.pdf>.

talented staff who implement our vision of “[e]nriching the nation’s culture by empowering and connecting the global copyright community.” As of April 8, 2022, the Office had 452 staff on board, including the new Copyright Claims Board. Among full-time career employees, the Office has a minority representation of 52.1%, and women comprise 59.5%. For fiscal 2022, the Office anticipates completing approximately thirty hiring actions to cover backfills.

Adapting Operations to the Pandemic

The Office successfully transitioned 98% of the staff to full or partial telework in March 2020, and over the last year and a half staff have gradually come back to the office in accordance with the Library’s plan for restoring on-site operations. Now that the Library has fully returned to on-site operations, the Copyright Office has between 30 to 49% of staff in the office on any given day of the week, supplemented by expanded telework schedules. Further, the Office has now phased out the temporary timing adjustments my predecessor and I issued pursuant to the 2020 Coronavirus Aid, Relief, and Economic Security Act (CARES Act)³ and is diligently working to address the backlog of physical materials processing that developed while the Madison Building was closed.

Registration and Recordation

We continue to effectively administer the national registration and recordation systems. In fiscal 2021, the Office registered 403,771 claims to copyright involving millions of works. The Registration Program has continued to improve most processing times: the average overall processing time for examining all copyright claims stands at 3.6 months in the first half of fiscal 2022. For fully electronic claims that do not require correspondence, the average processing time is down from an average of 1.6 months to 1.1 months.⁴ The pandemic did temporarily impact processing times for electronic applications that required the submission of physical deposits, as well as paper applications, but these are also beginning to decrease (to an average of 10.8 months and 8.3 months, respectively). Now that Registration examiners are returning onsite regularly, we expect the processing times for claims with physical deposits to soon approach those for fully electronic claims.

³ U.S. Copyright Office, NewsNet, Copyright Office Ending CARES Act Timing Adjustments (Dec. 29, 2021), <https://www.copyright.gov/newsnet/2021/941.html>; U.S. Copyright Office, NewsNet, Copyright Office Extends Time for Section 710 Declarants to Submit Deposits (Feb. 3, 2022), <https://www.copyright.gov/newsnet/2022/945.html>.

⁴ Registration processing times are posted on our website at <https://copyright.gov/registration/docs/processing-times-faqs.pdf>. For the October 1, 2021 – March 31, 2022 timeframe, 75% of all registration claims were eService claims (online claims and electronic deposits); about 23% were deposit ticket claims (online claims with separately mailed physical deposit materials); and about 2% were mail claims (paper claim forms and physical deposits).

With respect to recordation, in fiscal 2021 the Office recorded 11,625 documents (both on paper and through the new electronic pilot) containing titles of 961,291 works.⁵ The recordation pilot, launched in April 2020, has significantly shortened processing times. The average time from submission to generation of the public record is approximately six weeks. Unfortunately, pandemic delays resulted in longer processing times for paper recordations.⁶ Overtime is now being used to reduce this backlog.

Law, Policy, Public Outreach, and Licensing

In the area of law and policy, the Office continued its longstanding role of providing expert advice, without any pandemic-related interruption. We commenced regulatory work to implement the Copyright Alternative in Small-Claims Enforcement Act (CASE Act) immediately after it was passed in December 2020 (see discussion below). In 2021, the Office issued policy studies on the market impact of termination of certain section 119 licenses, on unclaimed music royalties and best practices recommendations for the new Mechanical Licensing Collective (MLC), and on state sovereign immunity from infringement claims. We also provided letters to members of Congress on a number of issues (ranging from state legislation on licensing of e-books to public libraries to “do it yourself” music licensing). We completed the eighth triennial Section 1201 rulemaking proceeding under the Digital Millennium Copyright Act (DMCA) to establish temporary exemptions to the prohibition against circumvention of technological measures that control access to copyrighted works. As of January 2021, the Office had fully implemented all regulations to administer the 2018 Music Modernization Act (MMA),⁷ including the new blanket mechanical license as well as rules involving pre-1972 sound recordings. The Office will maintain a proper oversight role as directed by the statute and the legislative history, as well as engage in education and outreach activities. The Office also continued to provide legal advice and assistance across the government regarding complex areas of copyright law and policy, including Supreme Court and appellate litigation and interagency collaboration on international matters and trade.

⁵ There are three primary types of documents that may be submitted for recordation: transfers of copyright ownership, other documents pertaining to a copyright, and notices of termination. Our pilot is currently focused on only the first category (section 205 documents), but we are working on expanding it.

⁶ Recordation processing times are posted on our website at <https://copyright.gov/recordation/>. The Office of Copyright Records is currently processing March 2020 basic (section 205) recordation filings and June 2021 notices of termination. The average processing time for paper submissions in fiscal 2021 was approximately 15 months, and that was an increase of 3.5 months from the average fiscal 2020 processing times. Regardless of the processing time, the effective date of recordation is the date the Copyright Office receives the complete submission in acceptable form.

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

The Office has engaged in numerous outreach activities to provide clear and accurate information on copyright law. We regularly produce events to educate the public and stakeholders about copyright, including events to reach music and songwriter communities with information about the MMA. In fiscal 2021, staff fielded some 252,000 public inquiries and produced almost two dozen virtual events. Our Public Information Office and our reading room re-opened in July 2021 and currently provide in-person services by appointment. With respect to licensing matters, the Office continued our effective stewardship of over \$1.2 billion in statutory licensing revenues as of the end of fiscal 2021. For the fourth consecutive year, we received an unmodified or “clean” audit opinion of the statutory licensing fiduciary asset financial statements.

UPDATE ON SIGNIFICANT ONGOING INITIATIVES

The Office’s fiscal 2023 funding request seeks the resources necessary to implement our strategic goals to provide expert policy advice and enhance the use of data in our ongoing work. Below we highlight progress to date and ongoing work related to two particularly important initiatives.

Launching the Copyright Claims Board

The Office has been working intensively to set up the groundbreaking small claims tribunal called the Copyright Claims Board (CCB). I am happy to report that the CCB will be ready to open its doors very soon. On November 30, 2021, I notified Congress that I found good cause to extend the commencement of CCB operations past the initial statutory date of December 27, 2021, to allow the Office “to ensure that the regulatory framework, resources, and infrastructure needed to establish a well-functioning forum are fully tested and can operate smoothly.”⁸ The CCB will launch within weeks, before the end of the 180-day extension permitted by the statute.

On Tuesday, May 17, we published the last regulation needed to implement the CASE Act. We started with an omnibus notice of inquiry on all CASE Act topics, published in 2021. Over the last fifteen months, we have published fifteen Federal Register notices – one a month – to provide the regulatory framework necessary for the new CCB. Second, we have completed

⁸ U.S. Copyright Office, Letter to the President of the Senate (Nov. 30, 2021), <https://copyright.gov/laws/hearings/CCB-Letter-to-Congress-Senate-11-30-2021.pdf>; U.S. Copyright Office, Letter to the Speaker of the House (Nov. 30, 2021), <https://copyright.gov/laws/hearings/CCB-Letter-to-Congress-House-11-30-2021.pdf>.

all hiring for the CCB, including the three Copyright Claims Officers,⁹ attorneys, and support staff. Third, we have collaborated with other Library units to put in place a case management system, virtual hearing capabilities, office space, and other needs for the CCB to begin its operations. Finally, we have produced much public information about the CCB's operations. First, the Office developed a webpage that contains facts, FAQs, and other materials on the CCB.¹⁰ More recently, we launched a new website, ccb.gov, which contains more detailed information about the tribunal and links to additional resources such as legislative history and rulemaking activity. This site is already receiving opt-out requests from libraries and archives, pursuant to the statute. And it will also link to the eCCB, the portal that will be the electronic filing and case management system through which to file claims. Our efforts to inform and educate the public regarding the CCB will continue past its launch date to support the success of the new tribunal.

Office Modernization

Our modernization initiative continues to be a top priority. The Office has now completed the third year of the Congressionally appropriated five-year funding (fiscal 2019–24) for modernization of our IT systems. Under the agency's centralized IT structure, the Office continues to work closely with the Library of Congress's Office of the Chief Information Officer (OCIO) to provide the business information needed for the IT development work. The planned Enterprise Copyright System (ECS) currently includes workstreams on recordation, public records, registration, and licensing. The Library's OCIO is leading work on user experience design and platform services—that is, the design and architecture capabilities underpinning the ECS.

Recordation: The Office met our spring 2020 target to launch the public pilot of the new recordation system, enabling electronic recordation of documents related to copyright ownership under section 205 of title 17. Work is underway to build out features related to notices of termination, as well as to incorporate user feedback to make iterative improvements. I am pleased to report that we anticipate opening up the pilot fully to the public for section 205 recordations in the coming months.

Public Records: In late 2020, the Office released a pilot for the new Copyright Public Records System (CPRS), which provides an improved interface for our public records (which includes post-1978 registration and recordation records), along with advanced search

⁹ See U.S. Copyright Office, NewsNet, Copyright Office Announces Appointments of Copyright Claims Board Officers (Jul. 20, 2021), <https://www.copyright.gov/newsnet/2021/906.html>.

¹⁰ See U.S. Copyright Office, Copyright Small Claims and the Copyright Claims Board, <https://copyright.gov/about/small-claims/>.

functionality. This will eventually replace the existing Copyright Office Online Public Catalog. Given the success of this project, we anticipate making the CPRS the main public portal later this spring.

Registration: Registration is the largest and most complex module of ECS. Foundational design efforts were completed in April 2020. A clickable prototype for the standard application (the one used by most claimants) was successfully released for internal office evaluation at the end of fiscal 2020 and for limited moderated public testing in February 2021; a second public prototype was released in spring 2021. IT development on both the external (public) and internal (staff) components of the new registration application continues to progress. A reimagined standard application has undergone moderated user testing and is currently in development, and work is underway to design and test at least one of the group registration applications. Significant progress has also been made on the internal side of the system. There remains much to be done, and we hope to increase the resources toward this effort soon.

Licensing: In 2021, the Office started development of user experience design and initial automated workflows for licensing processes to replace the current outdated systems. We anticipate that the cost of licensing modernization can be accommodated within the licensing base budget. To minimize the costs for copyright owners, development will focus on migrating the statement of account examination processes to ECS and migrating all royalty accounting processes onto the Library's financial system to eliminate duplicate processes.

Historical Public Records: As part of the Copyright Office's commitment to the preservation of and access to its historical records, a comprehensive effort is underway to digitize print and microfilm records and make them available online. This includes the card catalog, the Catalog of Copyright Entries (CCEs), and the record books. Digitization is the first step, to be followed by the perfection of metadata to enhance searchability. The long-term goal is to have all of these items digitized and made available through the Copyright Public Records System. The Office already has digitized our physical card catalog; the Virtual Card Catalog (VCC) is online.¹¹ The CCEs also are available online.¹²

As to the Office's record books, which contain well over 26 million pages of records from between 1870 and 1977, considerable progress has been made this year to digitize them and

¹¹ See <https://copyright.gov/vcc/>. The VCC Proof of Concept represents card records from 1870–1977, displayed in JPEG images, from the U.S. Copyright Card Catalog collection. The images are presented in a similar filing order as found in the physical card catalog. Initial work is underway to capture metadata on these cards.

¹² Over a decade ago, the CCEs were digitized by a third party using optical character recognition. Another party is embarking on a project to build on the OCR data to improve the data set quality.

make them available to the public. The first 500 books were published on the Library’s website in early February 2022,¹³ and now over 1,500 are available in this online collection. Scanning is being done in reverse chronological order from 1977, and the scanned books will be posted as they become available.

Copyright Public Modernization Committee: In January 2021, the Library of Congress announced the creation of a Copyright Public Modernization Committee (CPMC) to enhance communication with external stakeholders about the technology-related aspects of the Office’s modernization initiative.¹⁴ The CPMC’s thirteen members include stakeholders from the publishing, music, and photography sectors, libraries and archives, and other fields.¹⁵ The first public meeting of the CPMC took place in July 2021, and the second in February 2022; more public meetings are planned to take place at least twice a year through 2024.

Warehouse Consolidation: Additionally, significant progress has been achieved in consolidating copyright deposit materials and other stored records from several geographically dispersed storage facilities into a single, modern facility. The collaborative warehouse construction project between the Library, the Copyright Office, and the Architect of the Capitol was completed ahead of schedule, and the Copyright Office moved into our new facility in Cabin Branch, Maryland, in November 2020. Since then, we have vacated two storage facilities and plan to complete the exit from the third and final site by early 2023. This will result in the full consolidation of copyright materials into one facility and will allow the Office to provide faster location services, better tracking, and improved security for its significant inventory of copyright deposits.

Other Ongoing Projects: The Office is in the process of procuring a software management system to optimize warehouse operations and functionality, ensuring timely and reliable services. In addition, working with the GSA Centers of Excellence, we have obtained a gap analysis and roadmap planning for a new high-performing, multi-channel contact center to improve our communications with the public.

¹³ See U.S. Copyright, NewsNet, Copyright Office Launches Digitized Copyright Historical Record Books Collection (Feb. 7, 2022), <https://www.copyright.gov/newsnet/2022/947.html>. The scans are posted at <https://www.loc.gov/collections/copyright-historical-record-books-1870-to-1977/about-this-collection/>.

¹⁴ Library of Congress, Announcement of Copyright Public Modernization Committee, 86 Fed. Reg. 8044 (Feb. 3, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-02-03/pdf/2021-02194.pdf>.

¹⁵ See U.S. Copyright Office, NewsNet, Library of Congress Announces Copyright Public Modernization Committee (Jun. 22, 2021), <https://www.copyright.gov/newsnet/2021/898.html>.

FUNDING AND FISCAL 2023 BUDGET REQUEST

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 operations and initiatives, 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 approximately half of this funding;
- (2) *Licensing Division Budget*, which is derived completely from collections of licensing royalties 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 (CRJ) Budget*. Although the CRJ program is not part of the Office, we provide it with budget formulation and execution support on behalf of the Library of Congress. Appropriated funding supports payroll, while non-pay expenses are supported by royalty collections and filing fees.

Financial support for the Office's modernization initiative, initially funded as part of the fiscal 2019 budget, continues for fiscal 2023. With respect to the fiscal 2021 budget, the Office and the CRJ have used that funding for staff hiring to support the heightened responsibilities imposed by the MMA. The Office requested and obtained \$3.2 million in additional fiscal 2022 funding for the CASE Act,¹⁶ to supplement our unfunded fiscal 2021 work, including hiring 8 FTEs.

For fiscal 2023, the Office requests an overall budget of \$100.7 million in funding and 478 FTEs, of which \$46.9 million would be funded through offsetting fees collected in fiscal 2023 and prior years. Our requests for each budget are as follows:

- **Basic Budget:** \$91.0 million and 445 FTEs, comprising \$39.7 million in offsetting fee collections (44%) and \$51.3 million (56%) in appropriated dollars. The request includes mandatory pay-related and price level increases of \$1.635 million, and one program increase of \$1.7 million for Copyright Office Fee and Cost Analysis, Economic Analysis, and Statistics Capabilities. The program increase will expand the Office's capabilities for economic research, fee and cost analysis, and statistics; it will provide for new positions

¹⁶ The fiscal 2022 budget for CASE Act implementation included \$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 (\$1.7 million for salary, benefits, and related costs for the 8 FTEs and \$500,000 for systems operation and maintenance, printing, and other services).

as well as software that will support skillsets that we currently do not have. Notably, this request is fully supported through an increase in offsetting collections authority and will not require an increase in appropriated dollars.

- ***Licensing Division Budget:*** \$6.6 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 \$0.225 million.
- ***Copyright Royalty Judges Budget:*** \$3.0 million and 7 FTEs, with \$0.1 million to support mandatory pay-related and price level increases. Of this total, royalties and participation fees offset \$0.574 million (for non-personnel-related expenses). The remainder, \$2.453 million in appropriated dollars, is to cover the personnel and other related expenses of the three judges and their staff.

In recent years, the Office has highlighted to the Subcommittee that our operations would benefit significantly from greater flexibility in the use of collected fees, specifically the authority to use existing fee balances to provide continued services to the public in the event of a lapse in appropriations. The Office looks forward to working with the Subcommittee to discuss paths forward to address this issue.

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The Copyright Office appreciates the Subcommittee's and Committee's continued support of our work to promote and improve the copyright system, including our ongoing modernization initiatives.