

# The Library of Congress

---

ADVISORY COMMITTEE ON COPYRIGHT REGISTRATION AND DEPOSIT

---

# ACCORD

---

REPORT OF THE CO-CHAIRS

---

ROBERT WEDGEWORTH

---

BARBARA RINGER

---



---

SEPTEMBER 1993

Library of Congress Cataloging-in-Publication Data

Library of Congress. Advisory Committee on Copyright Registration and Deposit.

ACCORD : report of the co-chairs / the Library of Congress, Advisory Committee on Copyright Registration and Deposit ; Robert Wedgeworth, Barbara Ringer [co-chairs].

p. cm.

"September 1993." .

----- Copy 3 Z663.8 .A63 1993

1. Library of Congress. Copyright Office. 2. United States. Copyright Royalty Tribunal. 3. Copyright--United States.

I. Wedgeworth, Robert. II. Ringer, Barbara Alice, 1925-  
III. Title.

KF3002.A823 1993

346.7304'82--dc20

[347.306482]

93-45043  
CIP

# Contents

Membership .....	v
Letters of Transmittal	
The Honorable William J. Hughes/October 1, 1993 .....	vii
The Honorable William J. Hughes/September 15, 1993 .....	xii
The Honorable Carlos J. Moorheard/September 15, 1993 .....	xiii
The Honorable Dennis DeConcini/September 15, 1993 .....	xiv
The Honorable Orrin G. Hatch/September 15, 1993 .....	xv
The Honorable Patrick J. Leahy/September 15, 1993 .....	xvi
Dr. James H. Billington/September 15, 1993 .....	xvii
ACCORD Report .....	1
Prefatory Note .....	3
Chapter 1 Introduction .....	5
Chapter 2 ACCORD's Methodology .....	9
Chapter 3 The Work of ACCORD—Issues, Arguments, Proposals .....	15
Chapter 4 Recommendations .....	27
Appendix .....	A/1
Agenda/June .....	A/3
Summary/June .....	A/5
Agenda/July .....	A/11
Summary/July .....	A/13
Agenda/August .....	A/19
Summary/August .....	A/21
Agenda/September .....	A/27
Summary/September .....	A/29
Index of Draft Working Papers .....	A/35
Letter to the Members of ACCORD .....	A/36
Draft Working Paper A .....	A/38
Draft Working Paper B .....	A/43
Draft Working Paper C .....	A/45
Draft Working Paper D .....	A/48
Index of Working Papers .....	A/51
Working Paper #1 .....	A/54
Working Paper #2 .....	A/62
Working Paper #2a .....	A/72
Working Paper #3 .....	A/74
Working Paper #4a .....	A/85

# Contents (CONTINUED)

Working Paper #4 .....	A/92
Working Paper #5 .....	A/94
Working Paper #5a .....	A/105
Working Paper #5 .....	A/223
Working Paper #6 .....	A/234
Working Paper #7 .....	A/246
Working Paper #8 .....	A/256
Working Paper #9 .....	A/259
Working Paper #10 .....	A/264
Working Paper #11 .....	A/276
Working Paper #11a .....	A/320
Working Paper #12 .....	A/342
Working Paper #13 .....	A/346
Working Paper #14 .....	A/349
Working Paper #15 .....	A/359
Working Paper #16 .....	A/365
Working Paper #16a .....	A/367
Working Paper #17 .....	A/368
Working Paper #18 .....	A/387
Working Paper #19 .....	A/395
Working Paper #20 .....	A/417

# Membership

## OF THE LIBRARY OF CONGRESS ADVISORY COMMITTEE ON COPYRIGHT REGISTRATION AND DEPOSIT (ACCORD)<sup>1</sup>

Barbara Ringer, Co-chair  
Former Register of Copyrights

Robert Wedgeworth, Co-chair  
Interim University Librarian, University of  
Illinois at Urbana-Champaign

Jon Baumgarten  
Proskauer Rose Goetz & Mendelsohn

Professor Hasia Diner  
University of Maryland

The Honorable Raya Dreben  
Massachusetts Appeals Court

Alan Fern  
Director, National Portrait Gallery

Professor Jane Ginsburg  
Morton L. Janklow Professor of Literary and  
Artistic Property Law,  
Columbia University, School of Law

Morton David Goldberg  
Schwab Goldberg Price & Dannay

Paul Goldstein  
Lillick Professor of Law, Stanford University

Professor Peter A. Jaszi  
Washington College of Law, The American  
University

I. Fred Koenigsberg  
White & Case

Arthur J. Levine  
Finnegan Henderson Farabow Garrett &  
Dunner

Robin Davis Miller  
Executive Director, The Authors Guild, Inc.

Robert L. Oakley  
Director of the Law Library and Professor of  
Law, Georgetown University Law Center

Charles D. Ossola  
Lowe Price LeBlanc & Becker

Maria Pallante  
Executive Director, National Writers Union

Professor Shira Perlmutter  
The Catholic University of America, Columbus  
School of Law

Stanley Rothenberg  
Moses & Singer

Emery Simon  
Executive Director, Alliance to Promote  
Software Innovation (APSI)

Bernard R. Sorkin  
Legal Department, Time-Warner Inc.

### Staff of ACCORD

Sandra Barnes  
Henry Cohen  
Charlotte Douglass  
Lewis Flacks (through June 1993)  
Gayle Harris  
Cynthia Joy  
Pat Raap  
Eric Schwartz, Staff Director  
Henrietta Terry

### Assistants to ACCORD

Howard Chang  
Kathy Donegan  
Marie Morris  
Jeanette Pierce  
Nanette L. Stasko  
Mark Traphagen

<sup>1</sup>Irwin Karp, Professor Toni Morrison, and Acting Dean Jean Preer were appointed to ACCORD, but resigned before our report was prepared.





THE LIBRARIAN OF CONGRESS

WASHINGTON, D.C. 20540-1000

October 1, 1993

**Dear Mr. Hughes:**

On May 4, 1993, I received a letter signed by you, Mr. Moorhead, Senator DeConcini, and Senator Hatch, in which you endorsed our effort to explore "ways to satisfy the Library's acquisition needs separately from the current method of incentives provided in Sections 411 and 412 of the Copyright Act," and our appointment of a committee consisting of outside individuals to study and advise on this question. You stated that, given "the time constraints, we believe the meetings should focus on the following question: 'If Sections 411 and 412 of the Copyright Act are repealed, how can the Library's acquisitions needs be met?'"

Following further discussions I appointed an Advisory Committee on Copyright Registration and Deposit (ACCORD) to advise me concerning the impact and implications of the Copyright Reform Act of 1993 (H.R. 897, S. 373). As you requested, the first phase of the committee's work was focused on possible methods of inducing copyright registration and deposit for the Library of Congress that would serve as alternatives to the incentives now offered by sections 411 and 412. On September 15, 1993, I forwarded to you the report of the co-chairs of the Committee on the first phase of ACCORD's work; now, I am pleased to submit to you my comments and recommendations based upon my review of that report and my consultations with colleagues here at the Library.

At the outset, I thank you for the opportunity the Copyright Reform Bill has given the Library and the Copyright Office to undertake a searching self-examination of existing procedures and practices, of the interrelationship between the Library and the Office and, most importantly, about the fundamental purposes and future roles of copyright in the electronic age.

This process of self-examination, which will continue far beyond Phase II of ACCORD's work, has highlighted anew the crucial importance of the Library and the copyright system to communications and information transfer in the next century. We must be able to adjust to the changes that come so rapidly in the information age, and we look forward to working with your committees in blazing a constructive path through the difficult challenges ahead.

A fundamental issue which must be addressed is the crucial centrality of the copyright system in sustaining the collections of the Library of Congress and its increasingly vital databases. Congress can take pride in having created the greatest library in the world, but it must realize that, to a very large extent, this greatness is based upon

the operation of the copyright system. In addition, the philosophy and provisions of American copyright law have undergone a fundamental transformation in recent years; with the evaporation of copyright formalities as conditions of statutory protection, the role of copyright registration has also changed. The Copyright Office's function of providing a great national database of information about copyrighted works has become all the more important. Now more than ever, we must maintain and strengthen the reliable, publicly-available record of copyrights. This is a formidable challenge, which we believe we will be able to meet with your assistance.

I believe that the proposals summarized in chapter 4 of the ACCORD report and the covering letter of the co-chairs, both dated September 15, 1993, comprise an excellent starting-point for leading the Library and its Copyright Office into the electronic age. With very few qualifications I endorse them and recommend that you give them full consideration in the legislative process. Some of the proposals in the report can be implemented administratively, through regulations or changes in practice; others will require statutory changes. I hope that we can work together in finding the right formula for this statutory/administrative mix, and I pledge my enthusiastic and open-minded support in accomplishing this goal.

Let me comment briefly on the specific recommendations:

- \* **Mandatory Deposit.**

The ACCORD report recommends a substantial expansion in the statutory provisions governing mandatory deposit for the Library of Congress which would supplement and complement the existing registration and deposit system. It is now clear to me that we must move in the direction of the "legal deposit" systems upon which the national library collections of most other countries are based, but this obviously cannot be done with the stroke of a pen. Since we already have an effective registration/deposit system supporting the Library's collections, we must move cautiously into what is essentially a new era in collections management for us. Legislation and regulations are difficult to change and there is a risk of disruption of the steady stream of acquisitions if great care, including constant monitoring, is not exercised during a period of transition. Substantial reductions in deposits for a year or more would be an irreparable loss which could--far more easily than a layman might realize--irreversibly change the nature of the Library of Congress.

I share the views expressed by my colleagues that the expansion in mandatory deposit must be carefully planned, must be phased in through pilot projects, and must be sufficiently funded. I also agree with concerns that the proposed system could break down if depositors are encouraged to negotiate in every case. Negotiations may be appropriate in cases where new classes of works are added to the mandatory deposit system or in situations in which compliance is a severe hardship. But the statute and regulations must prevent potential depositors from delaying or avoiding a legal and reasonable demand. Negotiations should be the exception, not the rule, and there should be clear deadlines to



















































































































































































































































































































































































































































































































































































































































































































































































































































































































































































