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RECORDATION REENGINEERING ROUNDTABLES

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FRIDAY  
MARCH 28, 2014

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The Roundtable met in the Jerome  
Greene Annex, 410 West 117th Street, New York  
City, New York, at 9:00 a.m., Robert Brauneis,  
Moderator, presiding.

PRESENT

ROBERT BRAUNEIS, United States Copyright  
Office  
CHRISTOS BADAVAS, Harry Fox Agency  
JONATHAN BENDER, SoundExchange, Inc.  
RICHARD BENGLOFF, American Association of  
Independent Music  
RHONDA BLAKEY, BMG Rights Management  
GEORGE M. BORKOWSKI, Recording Industry  
Association of America  
JOANNA CORWIN, United States Copyright Office  
BEAU DASHER, SAG-AFTRA  
BRIAN DURANT, Harry Fox Agency  
SUSAN E. DAVIS, National Writers Union  
RACHEL FERTIG, Association of American  
Publishers  
JUNE BESEK, Columbia University Law School  
JANE GINSBURG, Columbia University Law School  
JOHN GRBIC, United States Copyright Office  
ANDY HACKETT, National Corporate Research, Ltd  
ROY KAUFMAN, Copyright Clearance Center  
ZARIFA MADYUN, United States Copyright Office  
TRICIA McKIERNAN, Graphic Artists Guild, Inc.  
STEFAN MENTZER, American Intellectual Property  
Law Association  
VICTOR S. PERLMAN, American Society of Media  
Photographers  
BRAD PRENDERGAST, SoundExchange, Inc.  
HEATHER REID, Copyright Clearance Center  
CLAIRE ROBINSON, W.W. Norton  
MAURICE A. RUSSELL, Harry Fox Agency  
EDOUARD TREPPOZ, University of Lyon

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P-R-O-C-E-E-D-I-N-G-S

9:08 a.m.

MODERATOR BRAUNEIS: Let me just start by saying that, as a professor, I always notice when the front row is empty and the back benches are filled, but that doesn't make for the tightest and most intense kind of conversation. So, there are currently one, two, three, four, five, six, seven -- there are eight seats or really nine seats available at the table, and there are not even nine extra people here. So, I would encourage those of you who are sitting in the back to come forward. It doesn't matter if you were thinking you were going to be here as an observer and I'm not going to cold-call you.

(Laughter.)

This is not a class. But it really helps to have the conversation focused in the center of the room and not sort of dispersed to the edges. So, please come forward, sit at the

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1 table, and fill the seats -- or not.

2 (Laughter.)

3 Well, let me just start, then, by way  
4 of formal introduction. I am Bob Brauneis.  
5 I'm currently serving as the Abraham L.  
6 Kaminstein Scholar in Residence at the United  
7 States Copyright Office.

8 And I am also very pleased to be  
9 accompanied here by two of my colleagues at the  
10 Copyright Office. Zarifa Madyun is the head of  
11 the Recordation Section of the Copyright  
12 Office, and Joanna Corwin, to her right, is a  
13 Project Manager in the Copyright Technology  
14 Office.

15 And all three of us are delighted to  
16 be here, and we are looking forward to spending  
17 this time with you. We want to particularly  
18 thank Columbia Law School for providing us with  
19 this wonderful space.

20 And June Besek is here and all the  
21 administrative staff that is making sure that

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1 is recorded and videoed and we have got a screen,  
2 and everything is good in order. So, that is  
3 wonderful, and we want to thank them.

4 And I want to welcome you and thank  
5 you for coming and for spending some time that  
6 I know you could be doing other important things  
7 with, and in many cases for traveling distances  
8 to get here. We are really, really grateful for  
9 your participation and input, and we are  
10 committed to using that input to improve  
11 document recordation at the Copyright Office.

12 Let me set the stage and set the  
13 expectations for this meeting. I think I said  
14 it at UCLA a few days ago, that I think of this  
15 is as kind of lopsided dialog, which is to say  
16 we have some things to say to you and to set the  
17 stage for the dialog, to give you some factual  
18 background about where recordation is right now  
19 and some ideas that we have for changing that.  
20 And those are going to come at the beginning.  
21 And so, it may sound like we are lecturing to

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1 you, but the fact is that we are most interested  
2 in listening to you.

3 And so, for the rest of the day, it  
4 is going to be our ears open and I will  
5 occasionally perhaps ask additional clarifying  
6 questions, if I don't understand your concerns  
7 as clearly as I think I should. But listening,  
8 for us, is the largest order of the day.

9 I also want to say that we very much  
10 think of this meeting as one stage in a larger  
11 process. We started with a Notice of Inquiry  
12 in January. Many of you very generously  
13 contributed important comments to that Notice  
14 of Inquiry. We thank you for that.

15 We think of this as continuing after  
16 this meeting as well. For me, this is a chance  
17 to get to know many of you, and for Zarifa and  
18 Joanna as well.

19 So, please write, call, continue to  
20 communicate your concerns and your knowledge,  
21 and that is going to be very, very helpful to

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1 us.

2 Let me just do a quick run through  
3 the agenda, so that we understand how the  
4 meeting will proceed. We have packets with an  
5 agenda and some slide copies for each of you out  
6 there at the table, if you didn't get them.

7 We are going to start by going around  
8 the table and having us each introduce  
9 ourselves.

10 Then, we will have two background  
11 presentations. Zarifa Madyun will give a  
12 presentation on the current state of  
13 recordation at the Copyright Office, the  
14 current process. And I will give you some  
15 statistical background about recordation over  
16 the past 35 years.

17 And then, we will start turning to  
18 asking your input on a series of topics that  
19 roughly correspond to the topics listed in the  
20 Notice of Inquiry. So, we will first be  
21 discussing a proposed guided remitter

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1 responsibility model of electronic  
2 recordations and structured electronic  
3 documents. We will have a coffee break at some  
4 point mid-morning. And then, we will go into  
5 linking recordation and registration records.  
6 We will have a lunch break. And then, after  
7 lunch, we will be talking about standard  
8 identifiers, other standard identifiers, and  
9 additional incentives to record documents.

10 I should say that at both the UCLA  
11 and Stanford meetings, in fact, our discussion  
12 of electronic recordation models has brought us  
13 close to lunch, and we have talked about the  
14 other topics after lunch. And so, that may well  
15 happen here because there are many more  
16 subcategories underneath the electronic  
17 recordation model topic.

18 Finally, you will notice that we  
19 have recording equipment of various kinds here,  
20 I think of audio and audiovisual. And we have  
21 a court reporter who is going to transcribe the

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1        comments. So, I would just like you all to take  
2        notice of the fact that your participation in  
3        this meeting constitutes a release to use those  
4        comments and to publish them because the  
5        transcript will be a public document.

6                    Are there questions about the agenda  
7        or anything that I have said so far?

8                    (No response.)

9                    Okay. Well, if not, then I would  
10       like to proceed to having us each introduce  
11       ourselves around the room.

12                    As I said, I am Bob Brauneis. I am  
13       serving currently as the Kaminstein Scholar in  
14       Residence at the Copyright Office, but I am also  
15       a professor of law at George Washington  
16       University Law School. I have taught and wrote  
17       about copyright for more than a decade there.

18                    And I have a particular interest in  
19       copyright information about works and how the  
20       sort of ecosystem of copyright information  
21       works and how we can make that system work

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1 better. And so, this year I have a couple of  
2 projects that are in different ways looking at  
3 that, but this is at the center of those  
4 projects, this project to improve recordation.

5 And I will pass on to Zarifa.

6 MS. MADYUN: Good morning.

7 I'm Zarifa Madyun. I'm the Section  
8 Head of the Documents Recordation Section. I  
9 actually began my career at the Copyright Office  
10 in 2005 as a document specialist, and I have been  
11 the Section Head now for a year and a half.

12 MS. CORWIN: Joanna Corwin. I have  
13 been working in the Copyright Office since 2001.  
14 I spent a little over ten years in Registration  
15 and then I became a Project Manager. I worked  
16 on the Register's Special Project for Technical  
17 Upgrades, and I am happy to be part of this  
18 project.

19 MS. BLAKEY: My name is Rhonda  
20 Blakey. I'm with BMG Rights Management.

21 MR. PERLMAN: I'm Vic Perlman. I'm

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1 General Counsel and Managing Director of the  
2 American Society of Media Photographers.

3 MR. RUSSELL: Maurice Russell,  
4 Senior Vice President, Client Services, the  
5 Harry Fox Agency.

6 MR. BORKOWSKI: George Borkowski,  
7 Senior Vice President, Litigation and Legal  
8 Affairs, at the Recording Industry Association  
9 of America.

10 MR. BADAVAS: Christos Badavas,  
11 Deputy General Counsel, Legislative and Policy  
12 Concerns, with HFA.

13 MS. McKIERNAN: Tricia McKiernan,  
14 Executive Director for the Graphic Artists  
15 Guild.

16 MS. ROBINSON: Claire Robinson,  
17 Copyright Manager, W.W. Norton.

18 MS. REID: Heather Reid. I'm  
19 Senior Director of Data Services and Standards  
20 at the Copyright Clearance Center.

21 MS. FERTIG: Rachel Fertig with the

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1 Association of American Publishers.

2 MR. KAUFMAN: I thought I wasn't  
3 going to get called on.

4 (Laughter.)

5 Roy Kaufman, Managing Director of  
6 New Ventures at Copyright Clearance Center.

7 MR. BENGLOFF: Rich Bengloff from  
8 the American Association of Independent Music.  
9 We are the organization that represents  
10 independent music labels in the United States,  
11 which makes up, per Billboard, 34.6 percent of  
12 the music market.

13 MR. BENDER: I'm Jon Bender. I'm  
14 the Chief Operating Officer for Sound Exchange,  
15 a performance rights organization out of  
16 Washington.

17 MR. PRENDERGAST: I'm Brad  
18 Prendergast. I'm Senior Counsel at Sound  
19 Exchange.

20 MR. GRBIC: I'm John Grbic. I'm  
21 with the Copyright Office, an intern for

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1 Professor Brauneis.

2 MR. HACKETT: Good morning.

3 I'm Andy Hackett. I'm from  
4 National Corporate Research. We are the  
5 nationwide corporate services company that  
6 provides search and filing services, including  
7 at the United States Copyright Office.

8 MODERATOR BRAUNEIS: Great.  
9 Thanks.

10 And if any of you in the back want  
11 to introduce yourself, not that I would  
12 cold-call on you -- (laughter)

13 MS. BESEK: June Besek from the  
14 Columbia Law School.

15 MS. LOENGARD: Pippa Loengard,  
16 Columbia Law School.

17 MR. DURANT: Brian Durant. I  
18 manage the Data Management Team at the Harry Fox  
19 Agency.

20 MR. TREPPOZ: I'm Edouard Treppoz  
21 professor, University of Lyon, in France and

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1 Visiting Professor at Columbia.

2 MR. DASHER: Beau Dasher, Counsel  
3 at SAG-AFTRA.

4 MODERATOR BRAUNEIS: Great. Well,  
5 thank you very much. It is humbling to have so  
6 much expertise and experience represented in  
7 this room.

8 And I would next like to turn over  
9 the podium to Zarifa Madyun -- and the clicker  
10 (laughter) -- who will tell us a little bit about  
11 the current recordation system at the Copyright  
12 Office.

13 MS. MADYUN: Okay. So, I am just  
14 going to give you a brief overview of how  
15 currently the system works with regards to  
16 recording documents.

17 So, the Document Recordation  
18 Section is responsible for the examination and  
19 cataloguing of documents submitted for  
20 recordation, following the requirements  
21 established in the Copyright Act and in

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1 Copyright Office regulations. My section  
2 creates and issues official Certificates of  
3 Recordation for those documents that meet the  
4 recordation requirements.

5 As many of you know, currently, all  
6 documents are submitted in hard-copy paper  
7 form. Each document is assigned to a Document  
8 Specialist who begins by examining the  
9 document. The specialist checks whether four  
10 requirements are satisfied, and those  
11 requirements are: legibility, whether or not  
12 it can be read and easily scanned into our  
13 imaging system; completeness, whether the  
14 document contains all of the elements that it  
15 says it is supposed to contain; signature, one,  
16 that there is a signature, and if it is a  
17 photocopy signature, if there is some sort of  
18 certification that indicates that it is a true  
19 and accurate copy of the original. And then,  
20 of course, the fees, making sure that the proper  
21 filing fees are there.

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1           With regards to data entry, the  
2 Document Specialist enters information about  
3 the document into an electronic record that  
4 forms part of the Copyright Office Catalogue.  
5 And that information will include the date of  
6 recordation, and that is the date that the  
7 document is actually received in our office; the  
8 dates of execution and certification, and that  
9 is the information that is provided in the  
10 document itself; the parties that are involved  
11 in the transaction; the heading of the recorded  
12 document, whether it is a security agreement,  
13 an assignment, a short-form option; titles of  
14 the works listed, and then, registration  
15 numbers, if provided and applicable.

16           And I know you are probably looking  
17 and saying, okay, that is not a lot of  
18 information to enter; it should be a quick, fast  
19 process. Well, here is an example of just one  
20 of the basic documents that we receive in our  
21 office. The process actually requires close

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1 reading and interpretation of the document.

2 Here is just a simple, two-page  
3 assignment of copyright. Well, when a  
4 specialist gets this, they are trying to figure  
5 out what parties are involved in the  
6 transaction. If they were just to look at the  
7 signature line, they would say, "Okay, it's just  
8 Nicholas Spencer. I'll just add that  
9 information in the record and keep moving." But  
10 if they actually take the time to analyze this  
11 paragraph, they see that not only is Nicholas  
12 Spencer the assigner, he is also the Vice  
13 President of Epitek, who is also an assigner.  
14 So, if they didn't pay close attention, they  
15 would miss that very important information.

16 With regards to titles, again, in  
17 the first paragraph we see registration  
18 numbers. But if a specialist isn't looking  
19 carefully, they wouldn't know exactly what  
20 titles are associated with these registration  
21 numbers.

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1                   We see that it says that they are  
2 registration numbers for work product, but what  
3 those work products are, they would have to go  
4 in a little bit deeper and see that, okay, for  
5 the first registration number the title is  
6 "Epicontrol". And then, for the second  
7 registration number, we see "Pyrocontrol".  
8 But, then, again, further down there is another  
9 registration number that appears that is title  
10 "EpiFlow". And so, again, if the Recordation  
11 Specialist was just doing a cursory review, they  
12 may miss, also, this information and that might  
13 not enter into our record.

14                   The majority of documents received  
15 concern a single work. But between 2 to 5  
16 percent concern 100 works or more, and documents  
17 can concern over 50,000 works. We do receive  
18 documents that have large catalogues. I think,  
19 to date, maybe the largest we have received had  
20 over 70,000 works. And someone has to actually  
21 manually enter in all of those titles.

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1 Document Specialists count the work  
2 titles contained in the document to confirm that  
3 the document is complete and that the correct  
4 fee has been paid.

5 A separate catalogue record is  
6 created for each work in a multi-work document.

7 Recordation Specialists currently  
8 immediately enter work titles for documents  
9 that concern 100 works or less. So, as soon as  
10 they create that basic record, they are typing  
11 at least 100 titles.

12 If a document concerns over 100  
13 works, then the initial record is placed on  
14 hold, the document is numbered, it's imaged, and  
15 then, it is mailed back to the remitter along  
16 with a Certificate of Recordation.

17 A copy of the list of work titles is  
18 made and set aside. And then, specialists enter  
19 these titles at a later date.

20 With regards to our document  
21 numbering and scanning, currently, the

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1        recordation staff numbers each page of a  
2        document by manually attaching stickers. And  
3        if any of you have actually filed documents with  
4        our office and received those original back, you  
5        know exactly what I am talking about.

6                    Staff, then, scan the document and  
7        upload the digital scan file to the copyright  
8        imaging system. And right now, unfortunately,  
9        the copyright imaging system is available to the  
10       public onsite at the Copyright Office, but not  
11       on the internet. So, external users aren't able  
12       to actually access these images.

13                   The staff creates certificates and  
14       badges and matches them to their corresponding  
15       documents. And then, the Copyright Office  
16       returns the original document to the remitter  
17       accompanied by the Certificate of Recordation.

18                   With regards to staffing and  
19       workload -- and again, if some of you have filed  
20       documents with our office, you know that we do  
21       have a slight backlog -- but between 2008 and

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1 2012, we had four Document Specialists working  
2 and two Support Specialists. In 2013, we were  
3 actually able to acquire some new employees.  
4 So, now we are at nine Document Specialists and  
5 still two Support Specialists.

6 These specialists, on average, can  
7 do about 35 to 45 documents per week. I do have  
8 a few that could some days do about 60 a week,  
9 but that's just about average, 35 to 45  
10 documents per week.

11 So, with regards to labor estimates,  
12 how long it actually takes a specialist to go  
13 through a document, a simple document like the  
14 one I showed you earlier, just a two-page  
15 assignment of copyright, from beginning to end,  
16 meaning the time the Document Specialist gets  
17 it, they examine it, to the end process where  
18 the certificate is created and mailed back out,  
19 it takes about an hour.

20 For an average document with maybe  
21 a couple of parties, a couple of extra pages,

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1 it could take about two hours per document.  
2 And, of course, the more complex the documents  
3 are, times can vary depending on number of  
4 titles and number of pages. So, you can imagine  
5 a document that comes in with 70,000 titles, it  
6 is not going to take an hour to actually process  
7 all of that and get that certificate created and  
8 mailed back out.

9 So, the staffing and workload,  
10 again, for fiscal year 2013, we actually  
11 received 11,900 documents in the office. Out  
12 of those, we were able to process 7,879  
13 documents. And out of those, 566 documents  
14 contained over 100 titles, and some of those,  
15 again, could have contained thousands of  
16 titles.

17 And because of the amount of time  
18 that it actually takes to process some of these  
19 documents, fees have, of course, increased over  
20 time.

21 So, in 1978, the basic filing fee for

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1 a document was \$10, and then, it was 50 cents  
2 per additional title.

3 In 1990, the office raised its fees  
4 again, and it was \$20 for the basic filing fee,  
5 and then, \$10 per additional titles.

6 In 1999, we raised our fees again.  
7 So, the basic filing fee was \$50 plus \$20 per  
8 10 additional titles.

9 In 2002, of course, we raised our  
10 fees again. The basic filing fee was \$80 plus  
11 \$20 per additional 10 titles.

12 In 2006, we raised our fees again.  
13 The basic filing fee was \$95 plus \$25 per 10  
14 additional titles.

15 In 2009, where the fees are  
16 currently, we raised our basic filing fee to  
17 \$105, and then, \$30 per additional 10 titles.

18 May 1st -- and some of you may be well  
19 aware -- our fees are raising again. And for  
20 recordation, the basic filing fee will stay the  
21 same, but the per 10 additional titles is going

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1 to raise slightly with an additional \$5 added.

2 And so, that is the end of my  
3 presentation. Are there any questions about  
4 the information that you saw, anything that may  
5 not have been clear, or any additional  
6 information I could provide anyone?

7 MR. HACKETT: You mentioned in  
8 fiscal year 2013 11,900 documents received,  
9 7,879 catalogued. Were those almost 8,000 part  
10 of that 11,000 or were they from the previous  
11 year?

12 MS. MADYUN: I would say some of  
13 those may have been from the previous fiscal  
14 year, but I believe the majority of those were  
15 from that fiscal year.

16 MR. HACKETT: And then, the  
17 difference just --

18 MS. MADYUN: Carries over into this  
19 fiscal year, yes. Hopefully, my goal is by the  
20 end of the year to not have such a large  
21 turnaround time. And I am hoping that maybe we

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1 have the ability to hire some more staff. But  
2 the staff that I have right now, they are really  
3 good, and I think we can get that down  
4 significantly by the end of the year.

5 Any other questions?

6 MR. KAUFMAN: So, do you know how  
7 many works that was in that 7879?

8 MS. MADYUN: Well, Bob, actually,  
9 in his presentation, he has done, yes, he has  
10 done that. But I don't know exactly as far as  
11 that how many works that may have concerned.

12 MODERATOR BRAUNEIS: Yes, and I  
13 don't have information, which you will see, for  
14 fiscal year 2013, either, because the  
15 information is complete -- since we've got a  
16 backlog, incomplete since we've got a backlog.  
17 But I will show you the progress over the last  
18 35 years of the number of works as well as the  
19 number of documents.

20 MS. MADYUN: Jon, did you want --

21 MR. BENDER: Yes, that was my

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1 question. And I'm sure we will get into this,  
2 and it is probably a good reason for hearing from  
3 you. Do you feel like the process suppresses  
4 downward for the number of registrations you  
5 receive?

6 MODERATOR BRAUNEIS: Sorry, that  
7 the --

8 MR. BENDER: That the process  
9 itself suppresses the amount of registrations  
10 you receive?

11 MODERATOR BRAUNEIS: We will get  
12 into that for sure. And I will show you some  
13 correlations between cost data, increase in  
14 cost and possible decline in recordation. And  
15 I can't say that we can say definitively right  
16 now, but it does, of course, stand to reason  
17 that, if we substantially lowered the cost and  
18 increased the ease of recordation, that some  
19 documents would start getting recorded that are  
20 not currently getting recorded for sure.

21 MS. MADYUN: Any other questions?

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1 (No response.)

2 Okay.

3 MODERATOR BRAUNEIS: So, one of the  
4 things I have been doing this year is building  
5 a database that allows me to gather large-scale  
6 statistics about recordation and registrations  
7 and, then, do some analysis of those statistics.  
8 And I want to present you some of the first  
9 results of that database.

10 As I said earlier, I am going to  
11 cover not to the present day, but from 1978,  
12 which is the year in which the Copyright Office  
13 Catalogue became electronic, and so that we have  
14 got electronic records dating back to then  
15 through 2009, which is the last year that I think  
16 I can be pretty sure that the records are  
17 complete and not incomplete due to backlog and  
18 other reasons.

19 So, during that 31-year time period,  
20 there were a total of just over 450,000  
21 documents reported, and those represent about

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1 8 million identified works. There are, of  
2 course, a small percentage of documents that  
3 don't have any identified works. Some of them  
4 might record a will that just says, "I leave all  
5 of my copyrighted works," without identifying  
6 any particular work that is in them. But most  
7 documents do identify at least one work and some  
8 of them identify many, many works that they  
9 pertain to.

10 Lots of different types of documents  
11 are found in the Copyright Office Catalogue, and  
12 those include assignments and grants and  
13 releases of security interest most prominently,  
14 but also licenses of various kinds, options,  
15 notice of terminations of transfers, notice of  
16 intent to enforce under the Uruguay Round  
17 Agreements Act, and at least about 20 more types  
18 of documents, specialized documents, that we  
19 can pull out and identify.

20 All of those 450,000 documents that  
21 were recorded, we think we are reasonably able

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1 to classify about 85 percent of them, or about  
2 385,000 documents, representing about  
3 7,200,000 and something like 300,000 identified  
4 works, or 91 percent of the works, using  
5 information that is in the Copyright Office  
6 Catalogue. And that information is the title  
7 of the document that is entered by the  
8 recordation specialist into the Catalogue, as  
9 Zarifa mentioned.

10 So, we haven't gone back and read  
11 450,000 documents. And indeed, the current  
12 copyright imaging system, the digital system,  
13 has been in place since 1996. So, documents  
14 after that time are in the system. Before that  
15 and back to about 1960 or so, they are all on  
16 microfilm in various quality. So, it is  
17 difficult task to go back and actually read all  
18 of the documents.

19 All those classifiable documents,  
20 the two lines cited are assignments and  
21 financing documents representing grants and

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1 releases of security interest. The  
2 assignments are the largest number in terms of  
3 document. About 60 percent of the documents are  
4 assignments, representing about 44 percent of  
5 identified works. The documents that are  
6 grants and releases of security interests are  
7 a much smaller number of documents, only about  
8 17 percent of the documents, but the average  
9 size of those documents in terms of the number  
10 of works represented is much larger. And so,  
11 grants and releases of security interests  
12 actually currently represent a slightly larger  
13 number of works, slightly about 400 or 350  
14 thousand more works than assignments in the  
15 Catalogue.

16 So, here's a first look at the  
17 documents reported, that 450,000 number spread  
18 out over the 31 years between '78 and 2009. And  
19 so, we begin here with about 11,000 documents.  
20 We end with about 11,000 documents. We have  
21 somehow this big peak in the middle and, then,

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1 a decline.

2 And I am going to take a few cracks  
3 at sort of breaking that down and understanding  
4 what those trends mean. The first crack at  
5 breaking it down kind of slices off one peak and  
6 a little bump at the beginning. The big peak  
7 in the late 1990s is due to the two-year period  
8 during which copyright was restored in foreign  
9 works and we had Notice of an Intent to Enforce  
10 under the Uruguay Round Agreements Act. And so,  
11 if we take that peak off, then we are left with  
12 still this curve, but nothing quite so dramatic  
13 in the middle.

14 At the very beginning years of the  
15 Copyright Office Catalogue, the office was  
16 cataloguing something called Section 508  
17 Litigation Statements. Under Section 508 of  
18 the Copyright Act, litigants who bring  
19 infringement suits are required to notify the  
20 office of the filing of the complaint, and  
21 judgments entered in the litigation are also

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1 required to be filed with the Copyright Office.  
2 And for about three years, the Office was  
3 entering information about those filed  
4 statements in the Copyright Office Catalogue.

5 For my purposes, I really wish that  
6 the Office had continued to do so. It would be  
7 great to have 30 years' worth of registration  
8 information in the Catalogue, but I assume for  
9 resource reasons the Office made a decision back  
10 in the early 1980s to discontinue reporting  
11 those Litigation Statements. And so, we have  
12 got a situation where a little of the bump at  
13 the beginning is caused by a category of  
14 documents that is no longer part of the catalog.  
15 And if we take that off, then we are only starting  
16 with 10,400 reported documents in 1978.

17 So, if the number of documents looks  
18 the same at the beginning and the end, the number  
19 of works represented in those documents looks  
20 a little different, right? It looks like  
21 there's this sort of bumpy, but more or less

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1 continuous upward trend of the number of works  
2 represented in the filed documents. And so,  
3 right, we can extrapolate from that, obviously,  
4 that the average size of transaction that is  
5 underlying the documents reported is getting  
6 larger. And the peak year so far is in 2008,  
7 when we had 470,000 works represented in the  
8 documents that were recorded.

9 Here is a look at that same work  
10 curve. So, that green line you saw on the  
11 previous slide follows the tops of those bars,  
12 but it breaks it down by the size of document.  
13 So, the top blue parts of the column represent  
14 documents that contain 10,000 works or more.  
15 And then, the purple is documents that contain  
16 between 1,000 and 999,000 works. Then, we are  
17 down to 100 to 999, 2 to 99 in the red, and the  
18 single-work documents are at the very bottom.

19 So, we have had this kind of inverse  
20 relationship, right? Zarifa mentioned at the  
21 beginning that most documents contain less than

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1 100 works. And indeed, most documents contain  
2 or pertain to a single work. About 75 percent  
3 of all documents filed pertain to only a single  
4 work. Nonetheless, in terms of total figures,  
5 the very large documents account by far for the  
6 largest number of works. And some of the big  
7 peaks and oscillations that we see in the years  
8 are evidently due to a single or a very small  
9 number of transactions which were very large and  
10 which affect the overall figures.

11 But we can see that, even in the  
12 1,000 to 999,000, the 100 to 999 bands, that  
13 those have increased substantially over the  
14 last 35 years. And we had very few of those in  
15 the early 1980s, and they now represent a much  
16 larger proportion of the total works that are  
17 involved in recorded documents.

18 Here is taking out the two largest  
19 categories that I mentioned earlier and taking  
20 a look at them separately in terms of the number  
21 of documents filed. So, you can see that the

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1 financing documents pretty steadily gained in  
2 importance or in number of documents filed all  
3 the way up into the 2000s, over the last decade;  
4 whereas, the assignments sort of bopped around  
5 in the 8 to 10 thousand range but, then,  
6 experienced a decline in the early 2000s and are  
7 now hovering just below 6,000.

8 Just to give us some sense of what  
9 might be causing at least the increase on the  
10 financing document side, back in 1990, Judge  
11 Kozinski, sitting by designation in the Central  
12 District of California, decided in re:  
13 Peregrine Entertainment, in which the Court  
14 rules that security interests in works under  
15 copyright are perfected not by filing financing  
16 statements under the Uniform Commercial Code,  
17 but by recording those documents with the  
18 Copyright Office. And that seems pretty  
19 clearly to that, and really preexisting  
20 speculation about whether that is what should  
21 be done, contributes to the serious increase in

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1 the importance of financing documents in the  
2 Copyright Office Catalogue.

3 Then, a decade later, in 2002, the  
4 9th Circuit decides to clarify this and says,  
5 actually, you record the documents with the  
6 Copyright Office to perfect the security  
7 interest only if the underlying works are  
8 already registered. And if they are not  
9 registered works, then you file a financing  
10 statement under the Uniform Commercial Code. I  
11 am sure many of you are painfully familiar with  
12 that distinction.

13 And so, you know, does that  
14 flattening-out of that upward curve correspond  
15 to that or is there some other reason why we have  
16 got a flattening-out? We are not sure, but  
17 there is at least some kind of coincidence there  
18 at the very least.

19 So, if you took out financing  
20 documents and, then, just consider all other  
21 documents, we have got this phenomenon of this

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1 sort of 12 to 14 thousand range for many years ,  
2 but , then , a steady decline for a couple of years  
3 in the early 2000s , losing about a third of the  
4 documents that are recorded . And now , we have  
5 got kind of a new normal of about 8,000 .

6 I will come back to thinking about  
7 why that happened , but I will leave that as an  
8 open question now , and we can think about  
9 whether there is some explanation for that that  
10 we can give or not .

11 Going back for just a moment to the  
12 number of works represented , because remember  
13 that the green line I showed you earlier , in  
14 slides earlier , showed the sort of steady rise .  
15 If we broke that down into types , the major types  
16 of documents , what is accounting for that steady  
17 rise ? And it turns out that it is financing  
18 transactions , not assignments , that the number  
19 of works represented in assignments , recorded  
20 assignments , has gone down and is now sitting  
21 about where it was in the mid-1980s ; whereas ,

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1 the number of works represented in financing  
2 documents has dramatically increased and  
3 accounts for most of the increase that we see  
4 over time.

5 One of the additional details that  
6 I was curious about is whether we are getting  
7 some distortion because a financing transaction  
8 can generate two documents, right. It could  
9 generate, the same transaction could generate  
10 both a grant and a release. And so, we have  
11 double of the number of works that were actually  
12 involved in the transaction showing up in the  
13 Catalogue.

14 So, we strip out the documents that  
15 mentioned release to see how much of that  
16 doubling was going on. And there's some, but  
17 certainly not half. So, the pink line  
18 underneath represents grants only without  
19 releases. And some years, a few years, it  
20 accounts for a lot of the number, but, as I say,  
21 releases account for a large percentage of the

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1 number. But most years we are seeing maybe  
2 10-20 percent, some years less.

3 And so, it does seem that financing  
4 transactions really have become important in  
5 some cases in terms of works represented, the  
6 most important part of what is happening with  
7 the Recordation Catalogue. And that is  
8 something that I simply didn't understand  
9 before I started looking at these numbers, that  
10 recordation these days currently is as much  
11 about security interests in copyrighted works  
12 as it is about assignments, licenses,  
13 everything else that is going on with works.

14 Now that doesn't mean that that is  
15 the most important thing in the transactional  
16 world. That means that that is the most  
17 important thing that is getting into the  
18 Copyright Office Catalogue. So, we still have  
19 to ask, are there barriers to people recording,  
20 and if we lowered them, would we see the mix of  
21 documents change? But, as it stands, that is

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1 where it is.

2 So, let me, then, pause now and ask  
3 for questions after that data dump. Anything  
4 in this led you to be curious about, to reflect  
5 on, to comment on?

6 Yes?

7 MR. RUSSELL: Could you talk a  
8 little bit more about the incremental workload  
9 that you have when you have numerous works  
10 associated with a document as opposed to one or  
11 two?

12 MODERATOR BRAUNEIS: Yes. I mean,  
13 we can both talk about that, but, Zarifa, you  
14 can start talking about that.

15 MS. MADYUN: As far as?

16 MR. RUSSELL: So, let's say you  
17 have, you know, 100 as opposed to 1. What is  
18 the incremental workload if it is all tied to  
19 one document?

20 MS. MADYUN: Well, okay, so if it is  
21 just one, you know, the specialist is just

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1 entering that information and the record can go  
2 up just automatically.

3 When we deal with, let's say, maybe,  
4 for example, like a 10,000-title document, the  
5 specialist is taking the time to go through,  
6 count all those titles, making sure that they  
7 are all there; that if you say 10,000 is there,  
8 10,000 is there.

9 Unfortunately, right now, the way  
10 our system is set up, we can't upload all of those  
11 titles at once. So, a specialist has to  
12 actually segment portions of those titles and  
13 create basic records for those portions. And  
14 that can take a lot of time.

15 I could say like, for example, maybe  
16 a 5,000-title document could take a specialist  
17 in some cases a week to complete from beginning  
18 to end because they are segmenting all of that  
19 out, creating those individual works. And that  
20 is not even saying that the titles are being  
21 entered. That is just creating those basic

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1 records, doing the counting of the titles, and  
2 segmenting those works.

3 MODERATOR BRAUNEIS: Yes, you know,  
4 in terms of the actual, gee, how many minutes  
5 would it take per total extra, and so on, I think  
6 that the best we can do is point you back to the  
7 fees, because the fees are actually based on  
8 pretty detailed cost studies. I have sat down  
9 for hours working through with the woman who  
10 does the fee studies, understanding how she  
11 calculates the workload involved as a basis for  
12 setting the fees.

13 And so, I think it is a  
14 relatively-good estimate to say that, if it is  
15 \$105 for the basic document and, then, now as  
16 of May 1st, \$35 for each additional 10 titles,  
17 then each title is costing about \$3.50 worth of  
18 time to enter. And that is about as good as we  
19 have in terms of the labor involved in doing  
20 that.

21 Yes?

1           MR. HACKETT: You were describing  
2 the classification of documents and identifying  
3 the works involved, about 10 percent of the  
4 filings you don't identify the works, and that  
5 is, I guess, because the document just doesn't  
6 specify a work, is that right?

7           MODERATOR BRAUNEIS: Well, about 10  
8 percent of the documents we don't identify the  
9 type of document. I think that's what --

10          MR. HACKETT: I think it is 15, the  
11 type of documents. That was going to be my next  
12 question.

13          MODERATOR BRAUNEIS: Okay. Right.

14          MR. HACKETT: How are those  
15 recorded? How is that described in the  
16 Catalogue?

17          MODERATOR BRAUNEIS: Yes. So,  
18 where are you getting the 10 figure from? Let  
19 me just go back to --

20          MR. HACKETT: Well, you said it was  
21 90.88 percent had identified works.

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1                   MODERATOR BRAUNEIS: Right. Yes.  
2 Exactly.

3                   Well, when we classify -- let me go  
4 back to the 10 documents. So, we are  
5 classifying the type of document by looking at  
6 the heading on the document that has been  
7 entered into the Copyright Office Catalogue.  
8 And so, that heading usually says something  
9 like, "Mortgage of Copyright," "Grant of  
10 Security Interest in Copyright," "Assignment of  
11 Work in Copyright," "Licensed". And so, we do  
12 word searches -- and John, my intern, is  
13 intimately and faithfully familiar with those  
14 searches -- to classify the documents.

15                   Now about 15 percent of the  
16 documents don't have a title that helps us.  
17 Either they have no title at all or they had a  
18 title that was something like "Appendix A". And  
19 it was "Appendix A" that was entered into the  
20 Copyright Office Catalogue, and "Appendix A"  
21 doesn't help us to classify the type of

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1 document.

2 So, the 90-percent figure comes  
3 actually just from looking through this 85  
4 percent of the documents to all the works  
5 associated with those identifiable,  
6 classifiable documents.

7 And so, I have built this relational  
8 database in which all of the records that are  
9 about specific works that are tied back to a  
10 particular document, we have counted each of  
11 their -- we have just got a field that counts  
12 how many works are identified with each  
13 classifiable document. And it turns out that  
14 those 385,000 classifiable documents  
15 represents or are associated with records about  
16 7,200,00 works. Okay?

17 So, just to take an example, let's  
18 say one of these documents has a document number  
19 and that document number is associated with 250  
20 separate works records in which the title of  
21 each work associated with that document is put

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1 into a separate record, but that record carries  
2 the same document number. And so, we can relate  
3 it back to that document.

4 Yes?

5 MR. BENDER: So, those 7 million  
6 works may or may not be associated to a  
7 registered work?

8 MODERATOR BRAUNEIS: That's  
9 correct. That is absolutely correct. And it  
10 is jumping around a little bit, I will tell you  
11 that about, I think it is about 3.7 million of  
12 the 8 million works records have registration  
13 numbers associated with them.

14 MR. BENDER: Okay.

15 MODERATOR BRAUNEIS: So, about 46  
16 percent of the Catalogue the works records do  
17 have registration numbers. They aren't  
18 necessarily post-1978 registration numbers.  
19 Many of them are registration numbers that  
20 relate back to paper records, but they have some  
21 kind of registration or another.

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1 MR. BENDER: Linkage, yes.

2 MODERATOR BRAUNEIS: Yes.

3 Exactly.

4 Other questions?

5 (No response.)

6 Okay. So, you have heard the  
7 present. Let's start talking a little bit about  
8 what is possible in the future, and start  
9 getting your thoughts about that.

10 So, we want to talk about models of  
11 electronic recordation, moving away from the  
12 current paper-based system, but certainly not  
13 just duplicating the paper-based system in  
14 electronic form, but thinking about how to take  
15 advantage of that electronic form and to sort  
16 of readjust costs and benefits, to hopefully  
17 dramatically lower the cost of recording the  
18 document.

19 So, what we have proposed is this  
20 so-called guided remitter responsibility model  
21 on the very highest level. And I want to talk

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1 about what each of those terms mean, what does  
2 it mean to be guided and what does it mean to  
3 be remitter responsibility, and then, get your  
4 input on that.

5 So, what do we mean by guided? We  
6 mean that a document remitter is going to submit  
7 cataloguing information about a document  
8 through interaction with electronic forms or  
9 with electronic guidance that, hopefully, will  
10 serve to minimize mistakes.

11 And what kinds of guidance are we  
12 talking about? Some of these examples are going  
13 to come from our current electronic  
14 registration system. So, we start with a  
15 structured submission process in which the  
16 various stages of submission are clearly laid  
17 out and separated. We take advantage of such  
18 techniques as enumeration, where we have got  
19 dropdown boxes or radial buttons or other kinds  
20 of forms that will give a limited number of  
21 choices, rather than an open text field that

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1 leads to all sorts of possible  
2 miscategorizations and mistakes.

3 Here we see examples of dropdown  
4 boxes for a type of work and for a type of  
5 international standard number in the  
6 registration system.

7 Validation, so that any data that is  
8 inputted might be validated against preexisting  
9 indexes or catalogues of terms or calculations.

10 So, when I try to enter the year  
11 "19,785" as the year of completion of a work,  
12 I get back an error message and it tells me,  
13 "Here's the format that that needs to be in."  
14 It has to be greater than 1900 and it can't exceed  
15 whatever the current year is.

16 We could do that. We could do  
17 validation for various other kinds of data. We  
18 could do, for example, address and zip code  
19 validation. We could validation of  
20 registration numbers.

21 If we started doing really fancy

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1 things of connecting with other databases, we  
2 could do validation of other standard  
3 identifiers, and we could do validation that  
4 would ensure consistency of repeat remitter  
5 name and contact information.

6 Other standard techniques that you  
7 are all familiar with, because you have had to  
8 do this hundreds of times, you repeat the  
9 information. So, you re-enter information  
10 like your email address to minimize the chance  
11 that you have entered it wrongly.

12 We provide definitions and other  
13 possibility for help. So, if you are unsure  
14 what citizenship or domicile means or how they  
15 relate, you click on the Help button and get some  
16 additional information about that.

17 We have the capacity to save  
18 templates or repeat information. So that, once  
19 you have entered carefully your name and contact  
20 information, and maybe other repeated  
21 information, you don't have to re-enter it; you

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1 just come back to the saved information.

2 We use review screens at the end of  
3 the process right before submission. We  
4 present you with all the data you have submitted  
5 and say, "Take a look at it carefully before you  
6 press the Submit button."

7 And then, possibly -- we are not  
8 doing this currently with registration -- but  
9 we could send out a confirmation that includes  
10 a copy of all the data submitted. And indeed,  
11 we could have a delayed entry into the  
12 Catalogue, at your option, and provide you, if  
13 you want it, a couple of days to circulate the  
14 confirmation to other parties involved in the  
15 transaction before you actually press the  
16 Submit button and it is entered into the  
17 Catalogue, and to allow for some kind of limited  
18 time for closed submission correction before  
19 the data is published.

20 So, that is some of the examples of  
21 what kinds of guidance can be provided that were

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1 not possible in the old paper world.

2 What do we mean by remitter  
3 responsibility? Well, we mean three things,  
4 and these are sort of three important things  
5 that we are going to start asking you about, and  
6 whether you are sort of ready, willing, and able  
7 to do this, those of you who do remit documents,  
8 and what your concerns are about having the  
9 responsibility for remitting.

10 So, the first is just sort of a labor  
11 issue would be that the remitters of documents,  
12 rather than a Copyright Office staff member,  
13 will submit cataloguing information.

14 Secondly is a legal issue. If there  
15 is a discrepancy between the cataloguing  
16 information and the remitted document, are  
17 there some circumstances under which it would  
18 be the cataloguing information rather than the  
19 document itself of which the public has  
20 constructive notice?

21 So, to take a kind of drastic error

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1       example, suppose that a remitter mistakenly  
2       entered the wrong list of titles into the  
3       Copyright Office Catalogue. And so, the titles  
4       in the document and the Catalogue didn't match.  
5       What would happen in that case?

6                       Well, obviously, from the point of  
7       view of somebody who is trying to find what  
8       transactions have occurred with respect to  
9       particular works, if you tried to search for a  
10      work that is actually in the document, you would  
11      never find the document if the Catalogue is the  
12      only means of accessing the document. And we  
13      can talk later in this session about the  
14      possibility of full-text searches of documents  
15      as well.

16                      But this is just to sort of alert you  
17      to a possible legal liability or disability,  
18      that it is possible that you would give no  
19      constructive notice or sort of different  
20      constructive notice than would actually be  
21      provided by the document itself if it were

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1 mistakenly catalogued due to remitter error.

2           And then, finally, remitter  
3 responsibility may also mean that the Copyright  
4 Office is not examining the documents anymore.  
5 And so, we can talk about whether the office  
6 would continue with some examination or not, but  
7 any examination is going to mean more time, and  
8 more time is going to mean more money, and more  
9 money is going to mean higher fees for  
10 recordation.

11           And so, we mentioned completeness,  
12 legibility, and signature here. Of course,  
13 implicitly and currently, the document is also  
14 examined for the names of the parties and the  
15 title, since it is the specialist that is  
16 entering that information into the Catalogue.  
17 And in a fully-automated system, there would be  
18 no examination for completeness, legibility, or  
19 signature, either. And so, it would be up to  
20 the remitter to ensure that the document was  
21 legible, that it contained whatever appendices

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1 or all the pages were there; they weren't  
2 missing a page, that sort of thing, and so forth.

3 All right. So, we mentioned also in  
4 the Notice of Inquiry the concept of a  
5 structured electronic document. What is that  
6 and how does that possibly add additional modes  
7 of submission?

8 So, if we are talking about a  
9 document that is a native electronic document  
10 here, not scans of paper documents, it is  
11 possible for that document to contain its own  
12 indexing information. Though there are lots of  
13 different kinds of implementations of that  
14 concept, I am just going to present one of them  
15 to give you some sort of concrete example to  
16 imagine what it means for an electronic document  
17 to be self-indexing.

18 So, we can imagine a document or a  
19 short form that contains the basics about a  
20 transaction, but maybe not the financial  
21 details, that is drafted using a fillable PDF

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1 form that could at the end of the drafting  
2 process be locked and then, electronically  
3 signed. And what would come out at the end would  
4 look in this completely simple mockup something  
5 like this.

6 So, you would have a document that  
7 sort of could be read as a textual narrative,  
8 legal document, right, with sentences in it that  
9 is accomplishing the transaction, but parts of  
10 that document are either literally in the  
11 graphic sense or figuratively boxes that are  
12 being filled in with information like the names  
13 of the grantors and the grantees and the titles  
14 of the works, the type of a document, the  
15 registration numbers, the date of execution,  
16 and so forth.

17 And underneath this visible layer of  
18 the document you've got tagged cataloguing  
19 information that can be automatically received.  
20 So, the box that says "assignment" that might  
21 have been selected from a dropdown box at the

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1 top of the document becomes a piece of  
2 information that is tagged. And as that  
3 document is submitted, this information can be  
4 automatically adjusted into the system and can  
5 form the recordation part of the Copyright  
6 Catalogue.

7 Advantages of this mode of  
8 electronic recordation: it means that all the  
9 information is reviewed by the parties during  
10 the negotiation and drafting process. As that  
11 electronic document is circulated, everybody  
12 sees who is listed as party one and party two  
13 and what the titles are, and so forth.

14 It also means that there is no -- or  
15 at least a greatly-reduced -- possibility of  
16 discrepancies between the document and the  
17 submitted cataloguing information. Only in  
18 the case of technical difficulties with the  
19 tagging and electronic adjustment of that  
20 information would you have discrepancies with  
21 not having any manual re-entry of information.

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1           Disadvantages: well, certainly  
2           the chief disadvantage is that I think most  
3           people aren't using those kinds of documents  
4           these days. And the question is whether in the  
5           copyright industries it would be easy or  
6           difficult to introduce those kinds of  
7           documents.

8           I can tell you that in real property  
9           recording much of it is done these days using  
10          structured electronic documents, but the  
11          recording offices that have built these systems  
12          are recording millions of documents a year, not  
13          thousands. And the parties who are filing them  
14          are large, repeat players like title companies  
15          and lending banks who, since they are using the  
16          system very often, they can distribute the cost  
17          of developing standards and implementing  
18          technology over a much greater number of  
19          transactions than would be the case in the  
20          copyright.

21                 So, sorry for talking so much, but

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1 that is sort of the end of my presentation. In  
2 fact, I am going to blank this screen, so that  
3 I don't get it in my face.

4 And I would now like to turn the  
5 floor over and start the discussion going. Any  
6 questions?

7 Yes?

8 MR. BADAVAS: I'm sorry, but --

9 MODERATOR BRAUNEIS: Please.

10 MR. BADAVAS: -- before we start the  
11 discussion, in your analysis of cost or time  
12 spent on recording a record, did you identify  
13 a sweet spot in the number of works associated  
14 with a recorded document that would cut some  
15 substantial amount of time or money off of the  
16 process?

17 So, for example, if you were able to  
18 deal with every document that is recorded that  
19 had over 1,000 copyrighted works associated  
20 with it, how much money would that save the  
21 Office or how much time would that save the

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1 Office?

2 MODERATOR BRAUNEIS: Okay. So, in  
3 other words, if we were to segment the documents  
4 into the small ones, maybe we deal with a  
5 different process; the larger ones, we build  
6 something that we can deal with it more  
7 efficiently.

8 I think, I guess, again, going back  
9 to the cost studies is the best information that  
10 we have so far about that. So, you know, I guess  
11 I'm not sure what that would tell us.

12 The point at which the extra titles,  
13 sort of the labor involved in entering extra  
14 titles equals and then, starts to exceed the  
15 labor involved in cataloguing a document, no  
16 matter what number of titles it has, is at about  
17 the 30-to-40-title range, right? That is when  
18 it turns out that the cost of title entry is  
19 getting greater than the cost of creating the  
20 basic document.

21 I'm not sure what that says, though,

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1 about whether there is some sort of natural  
2 breakpoint at which you develop a different  
3 system for large documents than you would for  
4 small documents.

5 MR. BADAVAS: Only because if you  
6 could in an automated fashion in just titles  
7 with --

8 MODERATOR BRAUNEIS: Yes.

9 MR. BADAVAS: -- limited review or  
10 limited quality control --

11 MODERATOR BRAUNEIS: Right.

12 MR. BADAVAS: -- in large title  
13 documents, instead of costing \$35,000 to  
14 introduce 10,000 titles --

15 MODERATOR BRAUNEIS: Right.

16 MR. BADAVAS: -- it might cost  
17 \$200 --

18 MODERATOR BRAUNEIS: Right. That  
19 is absolutely for sure.

20 MR. BADAVAS: -- before you get into  
21 all the other stuff you are doing.

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1                   MODERATOR BRAUNEIS: Yes. No, I  
2 think that's right. That, then, affects a very  
3 small number of very large transactions, right.  
4 And that would help out very much with us with  
5 those transactions. It wouldn't do much about  
6 the smaller transactions in which we have got  
7 a limited number of titles.

8                   But, yes, I appreciate that comment.  
9 And we will talk about some interim steps which  
10 may involve some variation of that, of attacking  
11 the title problem separately from the base  
12 document problem.

13                   Other questions?

14                   (No response.)

15                   Well, let's start by working our way  
16 into this idea of the guided remitter  
17 responsibility model.

18                   The first question I ask in the sort  
19 of list of questions is: so, are document  
20 remitters willing to submit their own  
21 cataloguing information, assuming that there is

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1 some substantial reduction in fee associated  
2 with it? But are those of you who remit  
3 documents or who are responsible for hiring  
4 people to remit documents ready to take on that  
5 responsibility and input your own information  
6 into the Catalogue?

7 Yes, Richard.

8 MR. BENGLOFF: Well, the  
9 organizations we represent, small and  
10 medium-sized enterprises who our resource  
11 talents in terms of both staff and guidance, we  
12 surveyed over 20 of our members of all different  
13 sizes, from one employee to sixty employees, not  
14 administrative employees but total employees.

15 MODERATOR BRAUNEIS: Right.

16 MR. BENGLOFF: We don't have any  
17 members that have one hundred employees just to  
18 put in respect to "medium size."

19 They are not complying now with  
20 either the initial registration or the  
21 subsequent recordation process.

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1           Interestingly, there is a number of them who are  
2           recording the recordation as the initial  
3           registration, again, just because it is  
4           simpler.

5                         So, when we discuss it, they are very  
6           much in favor of a streamlined process where  
7           they can present the data. If it is going to  
8           be made available to the public, which they  
9           would like, they obviously don't want the  
10          financial terms disclosed. So, the initial  
11          application would be very important. They are  
12          a growing part of the segment and they are a group  
13          that needs their rights protected and  
14          referenced, which is not happening now.

15                        So, in general, we still have  
16          luddites. So, we still would like the manual  
17          process to be available as well.

18                        MODERATOR BRAUNEIS: Right.

19                        MR. BENGLOFF: But, for the most  
20          part, having a process used like this was very  
21          well-received by the people we surveyed.

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1                   MODERATOR BRAUNEIS: Right. Well,  
2 I appreciate that.

3                   And I should mention, because that  
4 has been an issue that has come up in earlier  
5 roundtables, that the paper process I have no  
6 doubt will continue to be available. I can't  
7 imagine that it will be discontinued for decades  
8 because I think there will be people who want  
9 to submit paper. And so, I don't think there  
10 is any imminent danger of discontinuing the  
11 paper alternative, but the paper alternative is  
12 going to carry a much bigger sticker price than  
13 the electronic.

14                  MR. HACKETT: Our clients are  
15 familiar with similar electronic filing systems  
16 through the Patent and Trademark Office, and are  
17 familiar and comfortable with that system. And  
18 I don't think it would be a concern, especially  
19 if there were a payoff of faster recordation.

20                  MODERATOR BRAUNEIS: Right.  
21 Faster and less expensive. Okay. Great.

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1 Yes, Rachel.

2 MS. FERTIG: We also did a survey  
3 with our members. And just so everyone knows,  
4 what we represent is trade, academic, and book  
5 and journal publishers. So, we have really have  
6 four different business models of publishing  
7 that this survey would have covered. And we  
8 have large multinational publishers and, also,  
9 about three-quarters of our members are small  
10 and medium-sized enterprises. So, it really  
11 spans the gamut, but overwhelmingly they were  
12 in favor of a guided remitter system for  
13 submitting recordation.

14 MODERATOR BRAUNEIS: Great.  
15 Thanks.

16 MS. REID: If I could just follow  
17 that up --

18 MODERATOR BRAUNEIS: Yes.

19 MS. REID: -- by saying that so many  
20 of those publishers participate in CCC's  
21 products and services, and we essentially have

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1 a guided remitter model in place today for that,  
2 where rights-holders can come and upload a set  
3 of titles or enter manually a set of titles. The  
4 vast majority of them are uploading files in a  
5 fairly-simple, structured format that we make  
6 available, although we can also accept data in  
7 a number of industry standard formats.

8 And then, there is a guided process  
9 there where they can indicate which products and  
10 services they are signing up for. And in our  
11 case -- this obviously wouldn't be the case with  
12 the Copyright Office -- but also enter fee and  
13 terms and conditions-type information to go  
14 along with that. And that has been very, very  
15 well received by our rights-holders.

16 MODERATOR BRAUNEIS: That's great.

17 And we would love to talk to you  
18 particularly about the standards for submitting  
19 titles. Because to the extent that remitters  
20 already have data in those formats because they  
21 are already using that with you --

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1 MS. REID: Yes.

2 MODERATOR BRAUNEIS: -- then we  
3 would love to have them not to have to switch  
4 formats, but to submit the same data to us --

5 MS. REID: Sure.

6 MODERATOR BRAUNEIS: -- as they are  
7 submitting to you.

8 And we will talk a little later about  
9 a pilot project that we have already started  
10 with accepting electronic titles, titles  
11 submitted in electronic form. We may continue  
12 to build that out before we even implement the  
13 entire electronic system, and having sort of  
14 common data formats would be very, very useful.

15 MS. REID: Yes.

16 MODERATOR BRAUNEIS: So, we will  
17 come back to that this morning and talk about  
18 that further.

19 Yes?

20 MR. RUSSELL: Yes, obviously, HFA  
21 works with the publishing community. And we

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1 actually have a guided remitter structure and  
2 tools, a tool that we call ESONG that allows  
3 smaller publishers and medium-sized publishers  
4 to submit song information to us. And it has  
5 been very successful.

6 MODERATOR BRAUNEIS: Okay. And the  
7 same thing about data standards --

8 MR. RUSSELL: Sure.

9 MODERATOR BRAUNEIS: -- we would  
10 love to talk about how to coordinate those.

11 Yes, I'm sorry, I need peripheral  
12 vision.

13 (Laughter.)

14 MS. BLAKEY: That'S okay.

15 MODERATOR BRAUNEIS: Rhonda?

16 MS. BLAKEY: We are definitely in  
17 favor of having a legal system that is going to  
18 add the cost of damages and exclusion, but to  
19 have some sort of meaningful receipt the titles  
20 have to be involved in the process.

21 MODERATOR BRAUNEIS: Okay. Great.

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1 Others?

2 (No response.)

3 The constructive notice issue. So,  
4 as I said, there is not only the labor involved  
5 with submitting the titles, but there is a  
6 question of what happens in, one hopes, those  
7 rare cases when remitters make mistakes in  
8 entering the information into the Catalogue.  
9 So that perhaps the document can't be found  
10 under the relevant party names or title names.

11 Obviously, one of the great  
12 incentives to record is that you provide  
13 constructive notice of the document for a  
14 variety of purposes. You perfect a security  
15 interest in the works. In the case of conflict  
16 between transfers, you may gain priority over  
17 even an earlier executed transfer if you have  
18 recorded. But if it turns out that the  
19 information is entered erroneously into the  
20 Catalogue, there will be a question about  
21 whether one can say that the document that is

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1 in the electronic document repository is  
2 actually giving constructive notice if no one  
3 can find it under the title of the works or the  
4 names of the parties.

5 So, I guess I want to ask, what kind  
6 of worries might there be about that legal  
7 issue? I should say that we have looked for case  
8 law on what happens when there are discrepancies  
9 between the Catalogue and the documents  
10 currently, and we can't find any. That issue  
11 appears not to have arisen. But it could and  
12 we have got to worry about it.

13 So, thoughts or comments or  
14 expressions of worry, innovative ideas,  
15 anything along those lines?

16 MR. KAUFMAN: Doesn't the fact that  
17 you found nothing tell you that, if you come up  
18 with a reasonable rule, it is really not going  
19 to matter that much?

20 You know, I mean, you always have a  
21 burden when you fill out something that you fill

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1 it out correctly. It would seem to me that the  
2 person filling it out, if they make the mistake,  
3 it is probably their -- you know, I would put  
4 the burden on them.

5 But, you know, I'm not aware of any  
6 cases. And if you have researched it and aren't  
7 aware of any cases, I wonder how much time you  
8 really should spend on that.

9 MODERATOR BRAUNEIS: Yes. One, it  
10 may happen rarely. But, of course, two, it has  
11 got to happen with something very valuable in  
12 order to show up in a decided opinion. But the  
13 parties aren't just settling it out early in the  
14 day.

15 MR. KAUFMAN: Yes.

16 MODERATOR BRAUNEIS: So, the fact  
17 that it doesn't show up in a reported opinion,  
18 it doesn't mean it doesn't happen. It means it  
19 hasn't happened with something worth six  
20 figures or more. So, we have to think about the  
21 possibility, and if there is any way of

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1 minimizing it, right?

2 I mean, I mentioned earlier the  
3 possibility of full-text searching of documents  
4 as a parallel method of accessing documents.  
5 Currently, the Copyright Imaging System is just  
6 flat images of the paper document. There has  
7 been no optical character recognition done.  
8 They are not text-searchable. Nothing like  
9 that available.

10 (Phone rings.)

11 And that would be a big mistake for  
12 me, not to have silenced my phone at the  
13 beginning of the session.

14 (Laughter.)

15 So, currently, it really is only the  
16 Catalogue that enables the finding or it is the  
17 only finding tool that is available for  
18 documents. It would be technically possible,  
19 of course, to do optical character recognition  
20 even of image documents. And if we establish  
21 standards for submitting native electronic

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1 documents that are not simply images, but that  
2 have text embedded in them, we could do  
3 full-text, we could possibly build full-text  
4 searching of those as well.

5 That doesn't provide the same kind  
6 of tagged information where, if you come across  
7 a word, you know the field it has been entered  
8 into and what it means in the context of the  
9 document, but I throw it out there in connection  
10 with this problem as, well, there may be  
11 different ways to get to those documents if we  
12 are worried about constructive notice.

13 Susan?

14 MS. DAVIS: I just had my hand -- I'm  
15 sorry.

16 (Laughter.)

17 MODERATOR BRAUNEIS: It's okay; we  
18 can stretch here, too.

19 Yes, Heather.

20 MS. REID: This doesn't speak to the  
21 legal issue, but one practical issue there that

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1 may help to reduce the error rate is if you can  
2 have some sort of back-end database that, if you  
3 are going the structured document route, when  
4 people are entering metadata, you are searching  
5 against and bringing back results that a human  
6 being can look at and say, "Hey, this is what  
7 we think you're recording. Is this correct?"  
8 That may help to reduce your error rates.

9           And to the extent that people are  
10 either uploading or inputting, hopefully,  
11 fairly-standardized metadata with standard  
12 numbers, that is actually -- I don't mean to  
13 minimize the effort involved there, but it is  
14 very doable to create a repository of the  
15 requisite graphic data there to search against.  
16 It probably won't be 100 percent complete, but  
17 it could cover a lot of the bases.

18           MODERATOR BRAUNEIS: Right. I want  
19 to add some clarification. First, I thought you  
20 were talking about a kind of review screen  
21 where, after somebody had input data, you

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1 would --

2 MS. REID: Yes.

3 MODERATOR BRAUNEIS: -- sort of  
4 visually show it up and say, "Here's what we  
5 think you inputted. Is that correct?" Right?  
6 Which is a standard part of many input  
7 processes.

8 MS. REID: This is a little step  
9 further, I think.

10 MODERATOR BRAUNEIS: Okay. So,  
11 what's the "goes further step"?

12 MS. REID: So, what I am suggesting  
13 is -- let's assume you are going that structured  
14 document model, right?

15 MODERATOR BRAUNEIS: Right.

16 MS. REID: People are inputting the  
17 data. Yes, it makes sense to present it back  
18 to them, then, and say, "Okay, this is what you  
19 just input."

20 What I am suggesting is, if, in  
21 addition, as part of that workflow, you are able

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1 to bump that data up against a bibliographic  
2 database repository in the document --

3 MODERATOR BRAUNEIS: Oh, yes, okay.  
4 Okay. Yes.

5 MS. REID: -- that is probably  
6 publicly-available information.

7 MODERATOR BRAUNEIS: Right.

8 MS. REID: Think, for example, of  
9 the Library of Congress.

10 MODERATOR BRAUNEIS: Right.

11 MS. REID: And obviously, I'm  
12 thinking text here. So, the non-text people in  
13 the room bear with me.

14 But, you know, if you can bump it up  
15 against that and come back with a standard  
16 Catalogue record and say, "Okay, this is what  
17 we think you're recording" --

18 MODERATOR BRAUNEIS: Right.

19 MS. REID: -- it is just an  
20 additional human verification step --

21 MODERATOR BRAUNEIS: Yes.

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1 MS. REID: -- that might prompt  
2 someone to say, "Oh, yeah. You know what?  
3 That's not actually the work I meant to record.  
4 I need to fix something."

5 MODERATOR BRAUNEIS: Yes. It is  
6 certainly technically possible. That would  
7 take one heck of a lot more, I think, programming  
8 and coordination to actually coordinate the  
9 Copyright Office document recordation system  
10 with the Library of Congress Catalogue and pull  
11 out records from the Catalogue.

12 But I appreciate the suggestion. I  
13 mean, certainly, in a world of abundant  
14 resources, definitely doable.

15 MS. REID: Yes. And again, I don't  
16 mean to minimize the effort involved there, but  
17 it is, again, just looking at the text end of  
18 the equation here, the good news there is that  
19 there are very well-structured, high-quality  
20 bibliographic databases that are publicly  
21 available, in many cases either these days for

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1 free under creative commons licenses or  
2 available for low cost, that could be used in  
3 those circumstances.

4 And we at CCC have taken advantage  
5 of that ourselves and acquired many of those  
6 databases to drive this kind of a quality of  
7 function for our similar automated recordation,  
8 if you will, process.

9 MODERATOR BRAUNEIS: Right. So,  
10 particularly for published textual works.

11 MS. REID: Yes. And again, I  
12 realize that leaves a whole lot of the domain,  
13 right --

14 MODERATOR BRAUNEIS: Right.

15 MS. REID: -- but just looking at  
16 that one piece, it is something to think about.

17 MODERATOR BRAUNEIS: Yes. Yes. I  
18 appreciate that.

19 Andy?

20 MR. HACKETT: Well, I realize this  
21 goes into I think the next section on linking

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1 recordation and registration records. But one  
2 way of reducing errors in the recordation  
3 process would be if, say, you enter a  
4 registration number and it links to the  
5 Catalogue, and the Catalogue title comes up.

6 I mean, the Trademark Office,  
7 Trademark Assignments has a similar system.  
8 You enter the registration number, and it pulls  
9 the trademark from the Trademark Index. So,  
10 that is one of the ways that we verify that we  
11 are entering the right numbers in. It pulls the  
12 title, it pulls the trademark from the  
13 Catalogue.

14 MODERATOR BRAUNEIS: Right. Okay.  
15 So, for registered works, to validate against  
16 the registration record.

17 MR. HACKETT: Right.

18 MODERATOR BRAUNEIS: No, I think  
19 that is an important and useful tool.

20 Yes, George.

21 MR. BORKOWSKI: When you are

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1 talking about constructive notice, though, I  
2 think we need to be careful in those instances  
3 in which there may be a discrepancy between the  
4 underlying document and the data that have been  
5 entered by the remitter. And maybe it doesn't  
6 come up very often, as you said, but the reality  
7 is I think it would be problematic to base  
8 constructive notice on the secondary source,  
9 the entered data, because that is, under this  
10 hypothetical, by definition erroneous. And  
11 so, I don't think you can take constructive  
12 notice of a document you know is erroneous or  
13 a document you know is erroneous.

14 MODERATOR BRAUNEIS: Right. So, it  
15 is not necessarily that you're holding the  
16 remitter to a phantom transaction that never  
17 occurred, but the actual transaction, which is  
18 represented in an unfindable document might not  
19 be giving constructive -- that somebody might  
20 not be getting constructive notice of that  
21 underlying transaction.

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1 I mean, we mentioned at Stanford  
2 there is no constructive notice at all at that  
3 point.

4 MR. BORKOWSKI: Right. I mean,  
5 that's one possibility, yes.

6 But the other thing is, right, if you  
7 can't find the document, it is hardly  
8 constructive, not actual notice.

9 MODERATOR BRAUNEIS: Right. Yes.

10 MR. BORKOWSKI: But, again, my  
11 document can't be ignored. Either you don't get  
12 presumption of constructive notice, if there is  
13 an error, but if you do, you certainly don't get  
14 it from the erroneous data that has been  
15 entered.

16 MODERATOR BRAUNEIS: Right. Yes.

17 Others?

18 MR. PRENDERGAST: Bob, just to  
19 clarify --

20 MODERATOR BRAUNEIS: Yes. I'm  
21 sorry. Yes.

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1                   MR.    PRENDERGAST:        You're not  
2 proposing a change to the current standard for  
3 what constitutes constructive notice in the  
4 Act?

5                   MODERATOR BRAUNEIS: No.

6                   MR.    PRENDERGAST:        Okay. Yes.

7                   MODERATOR   BRAUNEIS:        I'm just  
8 wondering about what happens. I am wondering  
9 about how this relates to, how this system would  
10 relate to the current standard, I guess. If the  
11 current standard is stated in abstract-enough  
12 terms, I think that there is some room for  
13 judicial interpretation of what constitutes an  
14 adequate search.

15                   Section 205 says something about  
16 identifiable according to its title or  
17 registration number. And so, what if you don't  
18 get that document under the title or  
19 registration number search because it wasn't  
20 correctly entered into the Catalogue?

21                   MR.    PRENDERGAST:        Yes, I think like

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1 the standard seems to be that you only get  
2 constructive notice of the facts that are in the  
3 recorded document, and it never says anything  
4 in the section, because the situation hasn't  
5 existed yet, where there might be constructive  
6 notice of the inputted data referring to that  
7 document. And so, I think what you are getting  
8 at is that there would be no constructive notice  
9 of anything.

10 MODERATOR BRAUNEIS: That might be  
11 the case.

12 MR. PRENDERGAST: And that seems  
13 fair.

14 MODERATOR BRAUNEIS: Yes. Okay.  
15 All right.

16 Upon the topic of inadvertent  
17 errors, there were a couple of suggestions in  
18 the comments to the Notice of Inquiry that there  
19 be an opportunity to later correct inadvertent  
20 errors at any time that they were discovered,  
21 not just in a short post-entry one or two days,

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1 but if it was discovered a month or a year later.

2 Currently, if an error, an  
3 inadvertent error, is discovered, there is some  
4 ability and there has been some occasion for the  
5 Office to go in and be able to correct the record  
6 simply by adjusting the electronic data. But  
7 that assumes actually, given the current  
8 process, that the error was made by a  
9 recordation specialist and not in the  
10 underlying document.

11 When we are working with the  
12 remitter responsibility model, now we have got  
13 an error that has been made by the remitter. And  
14 the question is, under what circumstances and  
15 what sort of mechanism would that error be able  
16 to be corrected? Or would at some point we need  
17 to have a new document recorded to correct the  
18 error?

19 So, any thoughts on error correction  
20 opportunities or mechanisms?

21 Yes, Jon.



1           MR. BENDER: It depends on the  
2 magnitude of the error, first of all. I mean,  
3 I think you are going to have different  
4 categories. I think there are clearly errors  
5 that can be readily fixed that are  
6 insubstantial.

7           Our model -- we receive a lot of  
8 data -- is, however, the corrections always  
9 need to come from the remitter. So, in this  
10 case, I would not want the Recordation Office  
11 to go in and make changes, right? So, if there  
12 is a mistake in the remitter responsibility  
13 model, it needs to come from the remitter.

14           And then, I think the second point,  
15 based on the magnitude of the error, certain  
16 kinds of changes to the data might require  
17 submission of a new document.

18           MODERATOR BRAUNEIS: Uh-hum.

19           MR. BENDER: So, I think there would  
20 be, you know, what that threshold would be I  
21 think would be part of what we would look at.

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1 MODERATOR BRAUNEIS: Uh-hum.

2 MR. BENDER: But there would be a  
3 threshold, I think, where you would want a new  
4 document.

5 MODERATOR BRAUNEIS: But if you  
6 have misidentified a work and you actually had  
7 a different work involved in the transaction,  
8 then, you entered in, then that might be an  
9 occasion for a new document because now we are  
10 talking about --

11 MR. BENDER: If it is a different  
12 work, but if I entered the identifier wrong, but  
13 the title of the work is correct --

14 MODERATOR BRAUNEIS: It's correct.  
15 And so, you've got partially-correct  
16 information.

17 MR. BENDER: That's right.

18 MODERATOR BRAUNEIS: All right.  
19 Okay.

20 Yes, Vic.

21 MR. PERLMAN: I think that there is

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1 value to having a complete archive of records.  
2 So that, if a correction were allowed, I would  
3 think we would want to have two documents, even  
4 if the two documents are this is what it was and  
5 this is what it is now.

6 MODERATOR BRAUNEIS: Uh-hum.  
7 Right. Well, one would accomplish that maybe  
8 short of two separate documents. It is to have  
9 a log, essentially, a log, a correction log  
10 where any record that has been corrected,  
11 there's a note that comes up that says, "This  
12 record has been corrected. Here's the log of  
13 what it looked like before the correction and  
14 what date the correction was made."

15 You know, those of you who are  
16 familiar with places like Wikipedia, you can go  
17 behind the term. When you do the entry, you can  
18 see the log of each day that somebody entered  
19 the current entry.

20 And I could imagine a system  
21 something like that, to make sure we understand

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1 what the record looked like and perhaps critical  
2 dates in the past when somebody was trying to  
3 find something and didn't. So, I think that  
4 makes sense.

5 MR. BENDER: I think that is a given.

6 MODERATOR BRAUNEIS: Yes. Right.

7 MR. BENDER: You have to do that  
8 anytime anybody makes a change.

9 MODERATOR BRAUNEIS: I will tell  
10 you that we do not currently have that, the  
11 ability, at the government office. When we go  
12 in to correct records, there is no log kept of  
13 the previous data. So, it is something that we  
14 have to be conscious of for sure.

15 I am going to come to construction  
16 of electronic documents in a minute, but let me,  
17 let's get where we talk about the issue of  
18 examination which would occur no matter what the  
19 method of data entry.

20 So, currently, we do have  
21 specialists who are looking over the documents

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1 and examining them for so-called completeness.  
2 And completeness doesn't mean that a specialist  
3 is reading the document very thoroughly and is  
4 catching if there is any grammatical error or  
5 missed term in the document. But it does mean  
6 that, if the document is labeled as an  
7 attachment or the document contains references  
8 to attachments, the specialist will make sure  
9 that those attachments are there.

10 And if the document is labeled an  
11 attachment, the specialist will go back, and if  
12 the remitter hasn't already said, "Please go  
13 ahead and record this, even though it's labeled  
14 an attachment," we will go back and ask for that,  
15 that specific request.

16 And there are examinations for  
17 legibility as well to make sure that this is a  
18 document that hasn't been photocopied so many  
19 times that some of the titles, for example, are  
20 beyond the point of being legible.

21 How important is it to have some kind

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1 of human review of each remitted document before  
2 it is accepted for recordation? Or can we move  
3 to a fully-automated system and spot-checks,  
4 but not a routine review, which would decrease  
5 the cost but would not provide that kind of  
6 review service to remitters?

7 MR. BENGLOFF: What's our way to  
8 find out?

9 MODERATOR BRAUNEIS: I am going to  
10 turn to Zarifa for initial answer to that  
11 question about finding error rates and finding  
12 errors in documents.

13 MS. MADYUN: I would say during our  
14 quality assurance maybe 2 to 5 percent. I mean,  
15 most of my staff, they are at about 90-percent  
16 accuracy rate. And so, if there are errors,  
17 sometimes they will come back -- actually, the  
18 remitters themselves, they are going into the  
19 Catalogue record. They may see a misspelling  
20 or something.

21 MODERATOR BRAUNEIS: So, that is

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1 data entry errors. What about how often do  
2 issues of legibility arise, for example, where  
3 the recordation specialist flips it and says,  
4 "Wow, this list of titles is so smudgy that I'm  
5 not sure what they actually are."?

6 MS. MADYUN: I would say each  
7 specialist gets about a bundle of ten documents.  
8 And out of that ten, probably three are going  
9 to have issues. They can be corrected, though.  
10 So, that may be missing an attachment. It's a  
11 photocopy signature and there's no  
12 certification that it is an accurate copy of the  
13 original, and there is an attachment missing.  
14 I would say about three out of the ten that they  
15 receive would have some type of issue.

16 MODERATOR BRAUNEIS: So, that is  
17 quite large.

18 MS. MADYUN: Yes.

19 MODERATOR BRAUNEIS: Now we will  
20 talk about signatures, I think, separately  
21 because we may well move to a system where -- I

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1 think we will in an electronic recordation  
2 system, move to a system where we are not  
3 requiring a signature. So, that is not going  
4 to be, that would not be a point of review.

5 But, as far as completeness is  
6 concerned, I guess now there are documents that  
7 come in that are either missing something or  
8 that are labeled as if they were not a complete  
9 document, and you have to confirm with the  
10 remitter that the remitter really wants just  
11 this Appendix A remitted, and not other parts  
12 of the document.

13 MS. MADYUN: Yes, and I would say the  
14 biggest is just with titles. Sometimes they are  
15 illegible or the remitter is not quite sure what  
16 constitutes a title. And the fact that we do  
17 count things like additional -- we do count  
18 additional titles like "aka," that the title is  
19 known as something else, formerly known as  
20 something else, now known as. A lot of  
21 remitters still don't know that. And so, when

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1 we are doing a title count, the filing fee that  
2 was provided is often short. And then, we have  
3 to call the remitter to get additional funds.

4 So, if I would say what the biggest  
5 issue would be, that would be the biggest.

6 MODERATOR BRAUNEIS: The title  
7 count?

8 MS. MADYUN: Yes, the title count,  
9 uh-hum.

10 MODERATOR BRAUNEIS: Right. So,  
11 hopefully, that would be resolved in an  
12 electronic system because you would be  
13 uploading or entering titles, and a computer  
14 could do the title count. And before you ever  
15 got to the fee-paying requirement, you would  
16 have a calculation of fees based upon the number  
17 of titles entered.

18 So, I don't know if that helps with  
19 your question about how often.

20 MR. BENGLOFF: I was surprised with  
21 the 30-percent correction, but, as you said, the

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1 electronic process will weed out some of that.  
2 As I said earlier, we don't want to attach the  
3 full documents. We think it should be available  
4 to be able to cross-reference properly the  
5 documents, or at least the titles, but we don't  
6 have to --

7 MODERATOR BRAUNEIS: Yes. Well, I  
8 mean, I should say right now that we know that  
9 the vast majority of documents recorded,  
10 submitted for recordation, are short forms of  
11 one kind or another. That is to say, they are  
12 usually extra forms, which is why they sometimes  
13 come in as Attachment A, because the short form  
14 was Attachment A to the full underlying  
15 document.

16 It is something we can talk about.  
17 Redaction, that is another issue where  
18 documents come in and they may be the full  
19 document but with lots of marker over parts of  
20 the document. And there's a question about when  
21 we can and will accept those. Actually, they

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1 cannot omit any of the essential terms of the  
2 deal like party names and title names.

3 And the Office currently has a rule  
4 based on a percentage that is not tied to the  
5 sort of type of information, which I think that  
6 the rule of thumb is that at least 80 percent  
7 of the document submitted has to be legible,  
8 that you can't have more than 20 percent of the  
9 document marked out.

10 That is not by statute. I am not  
11 even sure that is by regulation. That is by  
12 internal practice. I am not sure there is a  
13 reason to continue that as a sort of strict  
14 percentage rule. It seems to me that a rule that  
15 is tied more to what's there, but, again,  
16 without examination, if we are talking about  
17 going to a world in which we are not adding any  
18 human examination of the documents, then it is  
19 up to the remitter to ensure that, if you are  
20 redacting a document, make sure you mark out  
21 maybe the financial terms parts but you don't

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1 by mistake run over one of the party names while  
2 you are doing that redaction. Otherwise, we  
3 have got a document that is missing one of the  
4 essential terms of the deal.

5 MR. HACKETT: Well, I was just  
6 wondering, for the three out of ten that you find  
7 problems with, that is your staff that finds  
8 those?

9 MODERATOR BRAUNEIS: Yes.

10 MR. HACKETT: Because aren't some  
11 documents rejected at the Public Information  
12 Office, too, sort of before --

13 MS. MADYUN: Yes, before they even  
14 get to us, yes, some will be.

15 MR. HACKETT: Yes. So, it is an  
16 even higher percentage of problematic  
17 documents?

18 MS. MADYUN: Yes.

19 MR. BORKOWSKI: I mean, it might be  
20 worth considering -- and it would depend on the  
21 timing, because one of the reasons -- the time,

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1 I should say -- because one of the reasons you  
2 are trying to move towards electronic  
3 recordation is to save time and resources.

4 But it might be, if there are such  
5 problems with documents, it might be worthwhile  
6 to see whether there is at least some sort of  
7 validation of the filed document. It may be a  
8 Document Specialist just making sure that what  
9 is entered in the fields on the electronic  
10 document really does exist in the underlying  
11 document. And that, I think, would take a lot  
12 less time than the current process. It would  
13 be more time than the fully-automated,  
14 obviously.

15 MODERATOR BRAUNEIS: Yes.

16 MR. BORKOWSKI: But just letting  
17 the thing be fully automated, it strikes me  
18 there should be some kind of check, and more than  
19 just a spot-check because spot-checks never  
20 catch too much, because it doesn't necessarily  
21 tell you anything about other documents. It

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1 tells you about the one that you are  
2 spot-checking.

3 But I don't know if that would add  
4 so much additional time beyond the automated  
5 time to make --

6 MODERATOR BRAUNEIS: Well, I guess  
7 I kind of caution. I do think that the checking  
8 for names of parties and identification of works  
9 probably would involve the most time as compared  
10 to checking for things like legibility.

11 As you saw in that one example we  
12 showed, it actually takes close reading of the  
13 document to see that there's one signature line.  
14 That individual is signing both in his  
15 individual capacity and as an officer of the  
16 corporation. And not titles or registration  
17 numbers mentioned in a document may necessarily  
18 be the subject of the assignment.

19 The last title and registration  
20 number that you saw in one of the paragraphs of  
21 the document actually was just a warrantee that

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1 that was a separate work that wasn't involved  
2 in this transaction, right? So, the checking  
3 of the substance of the deal in a document which  
4 is -- these documents are not standard forms;  
5 many of them are one-off drafting  
6 exercises -- that actually may be the single  
7 most time-consuming kind of checking as opposed  
8 to checking things like legibility, where you  
9 don't have to really go into the substance of  
10 the transaction at all.

11 So, it would certainly be possible  
12 to set up a system in which we had Recordation  
13 Specialists essentially and a two-screen or a  
14 large screen having the document and the entered  
15 data side-by-side, and going back and forth  
16 between them and checking where this piece of  
17 the entered data fits into the document, and  
18 that it actually is the name of the grantor, the  
19 grantee, and so forth. But I think, actually,  
20 it turns out relatively time-consuming.

21 Yes?

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1 MS. MADYUN: I just want to add  
2 something about, also, some of the errors. What  
3 we are also seeing now is the filings of Notices  
4 of Termination. We are finding that we are  
5 having to correspond a lot more with remitters  
6 because it seems that there is still some  
7 confusion as to how all of that should take place  
8 and how those documents should be drafted.

9 So, we are spending a lot of time  
10 with those documents as well. So, if I would  
11 say, the error rate right now would be with  
12 titles because there are issues there, and then,  
13 that second category would just be with Notices  
14 of Termination. We are spending a lot of time  
15 working on those.

16 MODERATOR BRAUNEIS: So, another  
17 possibility is to break out some specialized  
18 financial documents and say, "You know what?  
19 We're actually going to charge a  
20 slightly-higher fee for filing Notice of  
21 Termination because we actually are going to

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1 review it, because we notice that there's a much  
2 higher error rate --

3 MS. MADYUN: Yes.

4 MODERATOR BRAUNEIS: -- in these  
5 particular kinds of documents than in  
6 run-of-the-mill assignments.

7 MS. MADYUN: Yes, and especially  
8 because, you know, you have to file those with  
9 the Office, where with the other documents, the  
10 regular 205 documents, you are not required to.

11 MODERATOR BRAUNEIS: Okay. Any  
12 other comments about this?

13 Yes, Rachel.

14 MS. FERTIG: I guess another way to  
15 approach trying to minimize the error rates that  
16 would be important to our members is doing a  
17 circular, an FAQ, some sort of education to help  
18 people on the front-end know what you're  
19 actually looking for.

20 So, if you see common mistakes and  
21 you can identify those and give people, you

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1 know, some step-by-step instructions --

2 MODERATOR BRAUNEIS: Notice.

3 MS. FERTIG: -- then maybe you would  
4 actually reduce that problem from the  
5 beginning.

6 MODERATOR BRAUNEIS: Yes, I think  
7 it would be great. And that is kind of another  
8 kind of guidance, is simply, as part of the input  
9 process, just show a screen that "Here's the  
10 most common mistakes," so that you alert the  
11 remitter that here's where you might have to or  
12 should pay special attention when you're  
13 entering data. I think that is a great idea.  
14 Thank you.

15 Other thoughts?

16 (No response.)

17 Okay. We need a coffee break. So,  
18 I am going to head us back here at about 11:05.

19 (Whereupon, the foregoing matter  
20 went off the record at 10:52 a.m. and went back  
21 on the record at 11:09 a.m.)

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1                   MODERATOR BRAUNEIS: Okay, our next  
2                   topic is listed as electronic signatures. And  
3                   that stands for a kind of broader inquiry of what  
4                   do we do to replace the ink signature in an  
5                   electronic recordation model, and what forms of  
6                   authentication and guarantees of integrity do  
7                   we adopt in an electronic recordation system?

8                   We can rely on images of hand  
9                   signatures. We can work with simply typed-in  
10                  names between slashes input in real time into  
11                  a web form. Or we could also accept more  
12                  technologically-sophisticated forms of digital  
13                  signatures which consist of essentially very  
14                  large numbers that may be a guarantee of  
15                  authenticity because they correspond to a  
16                  certificate that has been issued by an authority  
17                  that has identified an entity or an individual,  
18                  and may also work to guarantee the integrity of  
19                  a document because they contain calculated hash  
20                  values that would change if a document has been  
21                  altered.

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1           So, as we enter the electronic  
2 recordation system, what should we do with  
3 signatures? That is the kind of largest-scale  
4 issue here.

5           Comments or reflections? Are  
6 signatures an issue? Should we worry about  
7 them? If we do have standards, should we have  
8 the ability to accept certain kinds of  
9 signatures, whether or not we require them?

10           (No response.)

11           Well, not much of a problem.

12           (Laughter.)

13           All right. Well, we have some  
14 written comments on the issue, and we have had  
15 some comments at some of the other roundtables.

16           I guess, are you comfortable with  
17 the replacement of the actual ink signature  
18 requirement with something else which may just  
19 be an image or a typed name between slashes?  
20 Comfortable? Okay. Give some noddings of  
21 comfort then.

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1 MS. McKIERNAN: You jump through  
2 hoops. I mean, we do a document for the  
3 Department of Labor. And when they first did  
4 it electronically, the signature, you had to go  
5 get these crazy certificates from an outside  
6 company that had to be downloaded specifically  
7 to the computer of the person who was signing.  
8 And if it wasn't done correctly, the signature  
9 got all messed up, and it was crazy.

10 So, as long as it is simplified and  
11 it is clear --

12 MODERATOR BRAUNEIS: Okay. So, I  
13 mean, the purpose of such a requirement to go  
14 get a digital certificate obviously is to have  
15 a higher guarantee of authenticity that you can  
16 go back and say --

17 MS. McKIERNAN: Sure.

18 MODERATOR BRAUNEIS: -- "We are the  
19 people who actually signed this document."

20 And maybe the lesson is that, at  
21 least for the Department of Labor, if they have

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1 changed that requirement, that they found that  
2 it is actually not -- inauthentic documents  
3 being submitted by people who are trying to  
4 commit fraud there is not such a problem. And  
5 that would be great if that is not such a problem  
6 and we can keep it simple.

7 MS. McKIERNAN: Yes, because they  
8 did change it. They got rid of the certificates  
9 because it creates other problems.

10 MODERATOR BRAUNEIS: Okay. Yes.

11 MR. BENDER: So, question for the  
12 Recordation Office: do people have to be  
13 registered with you in order to submit  
14 documents?

15 MS. MADYUN: No.

16 MR. BENDER: Okay. So, anybody can  
17 just -- a document can just show up on your  
18 doorstep and you'll record it without any  
19 information about who the person is, who created  
20 the document?

21 MODERATOR BRAUNEIS: Currently,

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1 that is correct.

2 MS. MADYUN: Yes. As long as it  
3 pertains to copyright.

4 MR. BENDER: Okay. I mean, I would  
5 suggest in the electronic world you would want  
6 a registration of the submitter. So, you would  
7 want the person -- because we haven't really  
8 talked about data feeds yet, and I hope we are  
9 going to talk about a process where it is not  
10 just a guided form that you fill out or a scan,  
11 or whatever, but it is actual data feeds --

12 MODERATOR BRAUNEIS: Yes.

13 MR. BENDER: -- which won't have  
14 this whole electronic signature for each  
15 document because it will be a stream of multiple  
16 documents coming in a feed. What you would need  
17 in that situation is a registration process  
18 whereby the person who is providing the data  
19 feed would be registered with you, and you would  
20 have verification with them and you would have  
21 a validation procedure, again, for certain

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1 threshold activities where you would want to  
2 email confirmation on that.

3 MODERATOR BRAUNEIS: Right. So,  
4 yes, we could have a system where we create user  
5 accounts for every user of the system.  
6 Currently, we do -- many of you know -- for  
7 purposes of payment, some remitters do maintain  
8 deposit accounts with the Copyright Office.  
9 They actually have deposited money in advance  
10 against which recordation fees are debited.

11 And those folks who have deposit  
12 accounts certainly do have information that has  
13 been submitted to the office. The purpose of  
14 that is to facilitate payment, not for other  
15 purposes, but it certainly is also something to  
16 guarantee authenticity if you are acting with  
17 an existing deposit account.

18 One of the issues with creating user  
19 accounts might be -- we'll get to this I think  
20 a little later, but to keep it in the background  
21 of your mind -- whether user accounts could also

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1 be mechanisms for informing people of current  
2 contact data, so that you might change your user  
3 account and update your contact information,  
4 and older documents would be linked to that user  
5 account, so that you could get the current  
6 contact information. But, then, that goes also  
7 to the extent to which folks who put in  
8 information to their user account want that  
9 information, like their home address and  
10 telephone number, to be made public or not. So,  
11 we would have to coordinate that if we were  
12 making that information public.

13 Other comments?

14 Vic?

15 MR. PERLMAN: That kind of user  
16 account could also be used to solve the problem  
17 that was mentioned earlier where people have  
18 counted the numbers of titles incorrectly and  
19 have sent in the wrong payment. It will lead  
20 to an automatic payment account that could be  
21 done instantly without having to go back and

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1           forth between the remitter and the office.

2                       MODERATOR BRAUNEIS: Right. Okay.  
3           So, you pre-authorize the office to draw from  
4           an account, that could be done for sure.

5                       Material returned to remitter. So,  
6           currently, you heard, well, what does the  
7           remitter get back? A remitter gets back a paper  
8           certificate of recordation and, then, the  
9           original document which has been manually  
10          stickered with the document number and the page  
11          number of each page in the document. That is  
12          not what we would plan to return to remitters  
13          in an electronic system. Hopefully, we would  
14          be able to, in most cases, not use the postal  
15          system to be returning paper to you.

16                      But what do you want returned back  
17          in an electronic recordation system?

18                      (No response.)

19                      I will give you some options. Okay.  
20          Door No. 1 -- (laughter) -- you get back a copy  
21          of the document you submitted, but each page has

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1       been sort of electronically embossed with the  
2       document number, the recordation number, and  
3       the page number, as we just counted from forward  
4       to back the pages that were in the document. All  
5       right? So, that is certainly a possibility.

6                     Door No. 2, which is not exclusive,  
7       could be additive, we mentioned hash values  
8       earlier. We calculate a hash value for the  
9       electronic document. So, we calculate a value  
10      that is of smaller size than the entire  
11      document, but that would change if any change  
12      to the electronic document were made. So, we  
13      keep that. You get that as well. That ensures  
14      both of us that, if the document is ever altered,  
15      that we know it has been altered and it no longer  
16      matches the hash value. A little more  
17      technologically sophisticated, a different  
18      kind of guarantee of integrity of the document  
19      than the kind of stickers that we currently  
20      place on paper documents.

21                     Thoughts about that?

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1 MR. HACKETT: No. 1 is fine.

2 MODERATOR BRAUNEIS: You get back a  
3 document with on each page you get the document  
4 number plus page number electronically.

5 Richard?

6 MR. BENGLOFF: For me, I would like  
7 a notice that it was received and posted, and  
8 a link to where it was posted in it. It just  
9 makes it easier.

10 MODERATOR BRAUNEIS: Okay. So, in  
11 addition, right, in addition to a notice that  
12 it was received, here's where it was posted. Or  
13 I should say, in addition to maybe a copy of the  
14 document itself with the number on each page,  
15 the notice that we have gotten it, et cetera.

16 Now, currently, because of the time  
17 of processing, those two could be widely-spaced  
18 in time. You might get a confirmation now and  
19 you wouldn't get the paper document back for  
20 months or maybe even over a year.

21 We would hope that we would bring

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1 those closer together in time. It still might  
2 be the case, or is likely to be the case, that  
3 you get a confirmation email that your document  
4 was submitted immediately. And then, maybe at  
5 a second time either you get both, well we have  
6 recorded and here is a copy of the document back  
7 or we have recorded it; here is the recordation  
8 date, and you will get the copy of the document  
9 later.

10 I would hope that we could compress  
11 those second and third together, so we would be  
12 getting back everything at that same second  
13 time. But I understand that, at the very least,  
14 you want a confirmation that the document has  
15 been recorded; here is the recordation date and  
16 here is the document number; here is a link.

17 Other thoughts about what you get  
18 back?

19 (No response.)

20 Let's talk a little bit about this  
21 idea of structured electronic documents and,

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1       alternatively, as Jonathan mentioned, data  
2       streams. All right?

3               So, there is sort of a basic web  
4       model of data entry in which much of the  
5       information is being manually entered into web  
6       fields. It is likely that, at least when there  
7       are multi-work documents or multi-title  
8       documents, that we would provide the ability to  
9       upload a file containing the titles rather than  
10      have to enter each title and registration number  
11      and other identifier number manually or  
12      separately.

13              But there are other ways in which we  
14      could start to decrease the amount of manual  
15      entry and increase the amount of data that we  
16      are receiving electronically, and that as  
17      already existed in electronic form before the  
18      time of entry. And so, there is this notion of  
19      structured electronic documents where the  
20      document is sort of self-cataloguing.  
21      Self-cataloguing is one version of not having

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1 to do manual data entry.

2 Another version is accepting,  
3 having a data standard to accept data in some  
4 format, even if it is not in a fully-integrated  
5 structured electronic document.

6 What would remitters like to see?  
7 Do you think that folks in copyright industries  
8 are ready to start using structured electronic  
9 documents? Are you likely to still be  
10 submitting image scans of paper documents? Are  
11 you going to be submitting native electronic  
12 documents that are not image scans, but that  
13 would not contain tagged data? So, you would  
14 need to separately submit that tagged data.

15 That is a series of questions, but  
16 it is a question about what capability would  
17 best correspond to your needs in terms of having  
18 a system that accepts something more than  
19 manually-entered data from your end.

20 MS. REID: Well, I will go first.

21 As I mentioned before, we have this

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1 kind of model in place and have had for quite  
2 a few years with our participating  
3 rights-holders where they can submit electronic  
4 data to us for registration of their titles in  
5 our programs and services.

6 And they can either do that by  
7 submitting data in -- and this is one piece of  
8 advice I would give you -- in a very simple, just  
9 comma-delimited; it is a pretty dumb format at  
10 one end of the spectrum, all the way up to  
11 fairly-rich records of what they are  
12 registering with us that comes in in an  
13 industry-standard format. And we can accept  
14 any and all of those.

15 We get much of our data in those  
16 kinds of industry-standard formats because  
17 publishers are sending that data to other third  
18 parties, and we can just sort of piggyback on  
19 top of that. But we do also have a fair number  
20 of rights-holders who elect to go submit it in  
21 a simple, comma-delimited format model.

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1                   We process very, very few. When I  
2 started working at the Copyright Clearance  
3 Center nine years ago, the vast majority of our  
4 title registration process was manual. So, we  
5 were at that point getting paper catalogues from  
6 our rights-holders, and people on my team were  
7 keying them in, a very familiar process.

8                   (Laughter.)

9                   A lot of the workload, Zarifa, that  
10 you described resonates a lot with me. It  
11 sounds very familiar.

12                   We now do very, very little of that.  
13 Rights-holders are overwhelmingly using our  
14 rights-holders' portal to go there, indicate  
15 the action that they want to do, and upload a  
16 set of titles that corresponds to their  
17 registration, so to speak.

18                   So, I think the text publishing  
19 industry, I would say, is fairly well ready for  
20 that kind of model.

21                   Do you have anything to add to that?

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1 MS. FERTIG: No, I think that pretty  
2 much sums it up. There are industry-standard  
3 ways of submitting a lot of the title and  
4 standard identifier information. And it would  
5 be nice to have a consistent way to input that  
6 information with CCC or with the Copyright  
7 Office and not duplicate work for anybody.

8 MS. REID: Right.

9 MS. McKIERNAN: The visuals are not  
10 ready.

11 (Laughter.)

12 The PLUS System is working on, of  
13 course, standardized licensing terms and  
14 language. And actually, I don't even remember  
15 exactly where it is. I remember we have  
16 objectives in the process. But we don't have  
17 cataloguing entities like the text people do.  
18 So, we may be a different nut to crack.

19 MR. RUSSELL: Yes, I would say the  
20 same for music publishing. We don't have the  
21 structured electronic documents. I would say

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1 the highest level, we have large flat files,  
2 tab-delimited. Any documents are images.

3 MR. BORKOWSKI: That is the same in  
4 our industry, too. We really don't use  
5 structured electronic documents in any  
6 significant manner.

7 MS. McKIERNAN: And plus, the  
8 visuals, it would make sense to have an image  
9 attached, too.

10 MR. BENDER: I'm sorry, George, I  
11 missed that about the record industry. What is  
12 your take on the record industry?

13 MR. BORKOWSKI: That there isn't a  
14 lot of use of structured electronic documents,  
15 whether it be negotiating deals or otherwise.  
16 We really are not --

17 MR. BENDER: Oh, for contracts,  
18 yes, but --

19 MR. BORKOWSKI: Pardon me?

20 MR. BENDER: In the contracts area,  
21 I guess?

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1 MR. BORKOWSKI: Yes.

2 MR. BENDER: Okay.

3 MR. BORKOWSKI: Yes.

4 MR. BENDER: Because the metadata  
5 is highly-elevated, right, and  
6 highly-structured data. So, the exchange of  
7 recorded metadata, for example, between iTunes  
8 and records is fully automated. And there is  
9 actually a standards body which organizes the  
10 data standards that we all use. It's not  
11 contracts.

12 MR. BORKOWSKI: Right. That's what  
13 I was referring to.

14 MR. BENDER: Yes.

15 MODERATOR BRAUNEIS: So, it sounds  
16 like when we come back down to recording a  
17 document+ that is memorializing a transaction,  
18 the works involved and the titles and standard  
19 identifiers associated with those works, it  
20 sounds like we can work standards for submitting  
21 those electronically. The details about which

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1 parties are involved in this particular  
2 transaction and what type of transaction it is,  
3 that is likely not to be preexisting in some  
4 standard data format that would, then, just be  
5 sent in.

6 That is likely to have to be  
7 generated for this recording purpose, right?  
8 You've got the data out there about the titles  
9 of works for other purposes, quite irrespective  
10 of whether you are engaged in this particular  
11 transaction, but not who are the parties and  
12 what kind of transaction is this, and so forth.

13 MR. BENDER: Yes, the transaction,  
14 yes, for contracts or licenses, you know, when  
15 you are licensing, that is not -- for the  
16 lawyers in the room, yes.

17 MR. PRENDERGAST: But one thing to  
18 consider there is that, if you do have some sort  
19 of like user registration system in place, and  
20 maybe that part of the process becomes a little  
21 bit more streamlined as well.

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1                   MODERATOR BRAUNEIS: Right. Okay.  
2                   You know, I talked about saving templates as  
3                   part of the process, but there is a way in which  
4                   generating, having a user account and being able  
5                   to pre-populate data from your user account into  
6                   the recording process may be parallel or  
7                   different, a slightly different mechanism for  
8                   having a template in place to pre-fill-out some  
9                   parts of the document. Okay.

10                   Yes? Sorry.

11                   MS. FERTIG: I just wanted to  
12                   clarify. It is not that publishers are using  
13                   the structured electronic documents across the  
14                   board. So, I think we would still be in the  
15                   situation where our members would want to have  
16                   a scanned copy of their short-form assignment,  
17                   or whatever document, and then, also, be able  
18                   to use an ONIX feed or some other type of metadata  
19                   stream to upload the title and identifier  
20                   information. So, it would be two separate sort  
21                   of ways of getting that data into the Catalogue.

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1                   MODERATOR   BRAUNEIS:        Right.  
2                   Right.  So, tying that, again, to an online  
3                   title and identifier, we may be dealing with  
4                   differently than other details of the  
5                   transaction.

6                   MS. FERTIG:  Right.

7                   MODERATOR BRAUNEIS:  Yes, Susan.

8                   MS. DAVIS:  I would just like to  
9                   comment.  Many of our members are increasingly  
10                  doing self-publishing.  So, anything, any  
11                  changes or the way things are structured, we  
12                  just would hope that they would not limit what  
13                  individual writers or authors can do within the  
14                  system.  We want to make sure that there is easy  
15                  access and use.

16                  MODERATOR BRAUNEIS:  Okay.  So,  
17                  that it is accessible even by low-volume users.

18                  MS. DAVIS:  Right.

19                  MODERATOR BRAUNEIS:  And I think  
20                  that is important.

21                  Yes?

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1                   MR. BADAVAS: To piggyback on that  
2                   and what Maurice said, and my guess is he knows  
3                   this is the exact same thing, but our systems  
4                   are all structured to start with individual  
5                   self-published music, you know, self-published  
6                   songwriters who are themselves music  
7                   publishers, up to the four biggest music  
8                   publishers in the world.

9                   MODERATOR BRAUNEIS: Uh-hum.

10                  MR. BADAVAS: And that is why we  
11                  actually do have a system where you type in  
12                  following a form or a Wiki your information and  
13                  your song, and you can upload them one at a time.  
14                  And ASCAP and BMI do the same thing. Or you can  
15                  submit an Excel spreadsheet that is associated  
16                  with your account that you have that lists all  
17                  of the titles.

18                  And it is very simple. It is just,  
19                  you know, you have rows and you have columns  
20                  predefined, and you put in the information and  
21                  it comes in. It is quite useful. Many, many

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1 small and mid-sized publishers, particularly  
2 newer ones, are very familiar with how to use  
3 an Excel spreadsheet; it is not a big deal. We  
4 get a lot of information that way, up to large  
5 commercial entities that have, we call them CWR  
6 files, but, you know, have predefined data files  
7 that they shoot information around the world in.

8 We accept all of those. We call it  
9 a three-tiered approach to deal with our client  
10 base, which is varied. And I am not saying  
11 anyone should do all of them at once in any way,  
12 but I think anyone who is dealing with copyright  
13 information always has to think, at a minimum,  
14 in small, middle, big.

15 MODERATOR BRAUNEIS: Yes.

16 MR. BADAVAS: And those different  
17 types of users have different characteristics.  
18 Sometimes small and middle works for big. You  
19 know, you can do an awful lot with Excel files  
20 because they have many lines now, many rows.  
21 So, if you have a convoluted file, it can be put

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1 into an Excel file, or whatever.

2 And so, it is not necessarily  
3 important to go to the biggest first,  
4 particularly when you are talking about files  
5 and certain titles.

6 MODERATOR BRAUNEIS: Yes. Just to  
7 reiterate what was mentioned earlier, it would  
8 be great to get details from you, and even  
9 examples, if you have enough, what your Excel  
10 spreadsheet template looks like.

11 Obviously, we will have to deal with  
12 information coming in that is about textual  
13 works and that is about musical works and that's  
14 about visual works, and all sorts of works.  
15 Gee, to the extent that we could work off of  
16 existing templates and coordinate them, so that  
17 the first column is always the title and not  
18 sometimes the first column is the standard  
19 identifier and the second column is the title,  
20 you know, that would be great.

21 And so, I would appreciate

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1 getting -- now that we have identified the sort  
2 of submission or title information as a possible  
3 area for standardization and reduction of work,  
4 to the extent to which we can build on existing  
5 practices, it makes a lot of sense. It makes  
6 a lot of sense.

7           Okay. Availability of recorded  
8 documents on the internet. Zarifa you heard say  
9 earlier that we currently only make the images  
10 of the documents available to members of the  
11 public who physically come to the Copyright  
12 Office. That system is fully a web-based  
13 system. You access it with a browser when you  
14 come to the Copyright Office.

15           I don't think that there would be any  
16 technical difficulties with essentially  
17 flipping a switch, so that tomorrow that server  
18 would accept web queries from browsers that were  
19 all over the world, instead of located in the  
20 Copyright Office. We haven't done that yet.

21           But should we do that?

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1 MS. REID: I'm just curious, why  
2 not? Why isn't that database -- is it a policy  
3 issue that it is not on the internet?

4 MODERATOR BRAUNEIS: Well, I will  
5 say that, as there have begun to be discussions  
6 about doing that, either retroactively or at  
7 least prospectively, we have thought about  
8 issues like what information is in those  
9 documents and who might be concerned or wasn't  
10 expecting that information to be available  
11 around the world.

12 So, you might have recorded a  
13 document that has your home address and  
14 telephone number on it. And you were aware that  
15 it was only going to be available to people who  
16 would physically come to the Copyright Office,  
17 so you weren't worried about publicizing that  
18 to the world.

19 Or virtually all documents have  
20 image -- excuse me -- signature images on them.  
21 Should we be worried that, once that signature

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1 is made available to all the world, all around  
2 the world, not only might it be used to forge  
3 documents for recordation, but to the extent  
4 that those are signatures of individuals who are  
5 not only officials in corporations, and so on,  
6 but who also have private bank accounts, and so  
7 forth, then people would love to access those  
8 signatures and put them on completely unrelated  
9 documents that would end up making it look as  
10 though you just took out a loan from somebody,  
11 but the proceeds went to somebody else.

12 So, those are some of the concerns  
13 I think that have kept the Copyright Office from  
14 simply saying, "Yes, what the heck, let's just  
15 make it all available."

16 On the other hand, the benefits to  
17 both the remitters themselves of having those  
18 documents easily delivered when they have  
19 forgotten where their copy of it is, and the  
20 benefits of making some of those public are  
21 clearly there, too. So, that sort of opens the

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1 table for discussion of that process and  
2 how/when that should be done, or whether it  
3 should be done.

4 Yes?

5 MR. BADAVAS: Well, to start with,  
6 making them easily available to remitters, that  
7 can also be addressed by having  
8 password-protected accounts. So, it isn't  
9 necessarily true that you can't make them  
10 available to the people who might want to go back  
11 and review them and have to at the same time put  
12 them up to the public-at-large.

13 What Rich was concerned about  
14 before, I think, a hurdle to getting people to  
15 record documents is a concern that, even if I  
16 ignore the forgery and fraud aspect, the  
17 material confidential business terms of certain  
18 transactions would be included in those  
19 documents. Publishers do often use short  
20 forms, but I always worked on the record side  
21 of business a long time ago, and I don't remember

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1 seeing the short form for an assignment.

2 And then, often, large corporate  
3 transactions acquire copyrights, and you might  
4 not actually have an assignment, right? And you  
5 might want to run most of that through the  
6 database at the Copyright Office, but you  
7 probably don't want --

8 MODERATOR BRAUNEIS: The entire  
9 merger, right?

10 MR. BADAVAS: -- a corporate  
11 transaction put in.

12 Sorry if a smart lawyer is going to  
13 think to make a short form.

14 MR. BENGLOFF: If you are not going  
15 to make it public, why bother? Make it  
16 read-only, so they can't lift the signature.  
17 And I understand there will be hackers who will  
18 find a way around that, but to the best you can  
19 make it read-only.

20 I mean, the whole purpose of this is  
21 so you reference this recordation to the

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1 original, if there is an original registration.  
2 A lot of our members don't do original  
3 registrations. But if there is an original  
4 registration, you reference it, and vice versa.

5 And it is searchable. So, someone  
6 can go in and say, "Who owns XYZ's version of  
7 ABC today?", so the proper person is getting  
8 paid, which is always an issue for the community  
9 I represent.

10 If they buy a catalogue, they want  
11 to reference the original registration and say,  
12 "That person no longer owns it; we own it today,  
13 and we are the ones who should get paid" on a  
14 read-only basis. So, someone can just read the  
15 document, but not lift the signature or do  
16 something else.

17 And I don't think -- typically, it  
18 is not going to be the person who sends it in,  
19 and the contact isn't going to be the person of  
20 authority who has all the assets. It is  
21 probably going to be some lower-level person,

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1 or some of our labels are only one person, but  
2 we'll take our chances.

3 (Laughter.)

4 MODERATOR BRAUNEIS: Okay.

5 MR. BORKOWSKI: I also think  
6 it's -- oh, I'm sorry. I just was going to say,  
7 I think it is easy to obscure those signatures,  
8 though, probably. I mean, there are ways.

9 MODERATOR BRAUNEIS: So, in terms  
10 of the signature itself, we could  
11 technologically provide some system that we  
12 could blot it out or otherwise redact the  
13 signature.

14 Susan?

15 MS. DAVIS: One of the concerns that  
16 individual writers have is that often  
17 publishers go out of business, and the assets  
18 of that company are bought by another company  
19 or another company or another company. And at  
20 some point the rights have to revert to the  
21 author.

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1           So, authors who would not be a  
2 remitter would need to have access to the  
3 records if they know that sequence happens, so  
4 that they can go in and check the contract, if  
5 they have lost it -- I mean, there are all kinds  
6 of possibilities here -- to make sure that they  
7 can, then, assume that they have the rights to  
8 that work.

9           So, somehow that problem has to be  
10 built into the system, so that individual  
11 authors -- and I am assuming artists and  
12 musicians -- can also have access.

13           MODERATOR BRAUNEIS: So, a creator  
14 might not be either party to a downstream  
15 transaction, and yet, want access to that  
16 transaction.

17           MS. DAVIS: Right. Right. In  
18 order to reclaim the rights to their work.

19           MODERATOR BRAUNEIS: Right.

20           MS. DAVIS: And that speaks to the  
21 issue of so-called orphan works --

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1 MODERATOR BRAUNEIS: Yes.

2 MS. DAVIS: -- which have to be taken  
3 into account in any system because we want to  
4 make sure that the original creator's rights are  
5 validated and respected, and no one is allowed  
6 to assume their work is an orphan without some  
7 elaborate process, a search process. So, it all  
8 needs to be taken into account.

9 MR. BENGLOFF: We can go down a  
10 rabbit hole today if we get into that  
11 discussion.

12 (Laughter.)

13 I agree with Susan on works and  
14 derivative works in terms of being able to watch  
15 out for our community. We can get into the  
16 Whack-a-Mole process of the DMCA.

17 But all these things interrelate,  
18 obviously, to what your database is creating --

19 MODERATOR BRAUNEIS: Right.

20 MR. BENGLOFF: -- so we can protect  
21 ourselves.

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1 MODERATOR BRAUNEIS: Yes.

2 Roy?

3 MR. KAUFMAN: Yes. So, I was just  
4 going to reinforce what Susan said. Because,  
5 you know, having been on the other side, on the  
6 publisher's side of these, you know, if there  
7 is a system and it is somewhat closed, the author  
8 may very well have not been the original  
9 registrant. They would be listed as the author,  
10 but one publisher would have registered it.  
11 Chain of title may or may not have been recorded.  
12 I often just chose not to because I figured  
13 everyone knew we bought that company.

14 And I do think allowing certainly,  
15 if it is limited, it should include the author,  
16 so that the author can go in and claim their work  
17 and record and do terminations and transfers and  
18 everything else. That is pretty important.

19 MR. HACKETT: Well, I just would  
20 say, you know, as a service company, we  
21 appreciate that these documents are not readily

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1 available and that someone has to go into the  
2 Copyright Office to obtain them, because people  
3 may ask to go into the --

4 (Laughter.)

5 But that being said, you know, this  
6 is a public record, and I don't see it -- I mean,  
7 these concerns about bad guys doing things or  
8 information that shouldn't be included in these  
9 documents; it is a public record. Anybody can  
10 go into the Copyright Office and obtain these  
11 documents. So, I honestly can't see a reason  
12 for not making them available online, except my  
13 selfish financial interest.

14 (Laughter.)

15 MR. BADAVAS: Just to be clear, I  
16 wasn't suggesting that they not ultimately be  
17 made available, but at the moment there is a rule  
18 of practice in the Copyright Office related to  
19 the percentage that has to be legible. If it  
20 were clearly allowed for that  
21 confidential/financial information or

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1 confidential business information more  
2 generally, it would make people more  
3 comfortable with putting in certain types of  
4 documents in that affect copyrights that they  
5 might not otherwise be putting in.

6 MODERATOR BRAUNEIS: Uh-hum. No, I  
7 really have to appreciate that comment, that  
8 given the existing rule, that may be a reason  
9 to worry about that. Thanks.

10 Yes, Rachel, and then, Jonathan.

11 MS. FERTIG: Sure. I think at this  
12 time we would agree with -- I'm sorry -- the  
13 records --

14 MODERATOR BRAUNEIS: Christos.

15 MS. FERTIG: -- Christos, that our  
16 members would definitely like to have their full  
17 document that has been scanned available within  
18 their account. So that, if they can't locate  
19 their copy, they have a copy.

20 And they would also like to be able  
21 to print that off as an official version of that,

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1 say if they did lose their copy. But I think  
2 we would want to have clear guidelines on being  
3 able to redact information, like you said,  
4 before making those widely available publicly.

5 MODERATOR BRAUNEIS: Uh-hum.

6 Jonathan?

7 MR. BENDER: This may not be  
8 anticipated, although it is something we deal  
9 with all the time. It is overlapping claims.  
10 And, I mean, the Copyright Office wouldn't  
11 anticipate itself getting involved in any sort  
12 of overlapping claims process? I am hearing,  
13 you know, kind of a system whereby people can  
14 challenge the documents that are recorded.

15 MODERATOR BRAUNEIS: Right. Yes.

16 MR. BENDER: That is really outside  
17 of the scope of --

18 MODERATOR BRAUNEIS: I think it is  
19 unlikely. I think that the Office does this  
20 problem through court orders, and we have from  
21 time to time gotten court orders to cancel a

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1 recordation or cancel a registration because  
2 the court has determined that that was  
3 incorrectly or fraudulently registered or  
4 recorded.

5 But I don't think there is any  
6 contemplation, because that would require an  
7 enormous framework to develop, that we would  
8 somehow develop a dispute resolution process  
9 within the Copyright Office for determining,  
10 then, issues of misrecordation or  
11 misregistration. I think that, unless you all  
12 tell us that that is the No. 1 priority or  
13 something, I think we are likely to leave that  
14 to the courts and to respond to whatever the  
15 courts tell us to do.

16 MR. BENDER: Then, I would  
17 encourage you to --

18 MODERATOR BRAUNEIS: Yes. Okay.

19 The last two topics, notice of  
20 recordation to others. So, several of the  
21 comments to the Notice of Inquiry said, you

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1 know, it would be helpful if the Copyright  
2 Office notified the registered owner of a work  
3 whenever there were a document recorded against  
4 that work.

5 That does assume that we have a  
6 system in place that identifies electronically  
7 the registered owner of every work out there.  
8 We clearly don't. We absolutely don't for  
9 pre-1978 registrations.

10 And as we will discuss after lunch,  
11 we don't currently formally link registration  
12 and recorded documents records, either. So, we  
13 would have to start doing that before we could  
14 do that, even with respect to post-1978  
15 registrations.

16 Alternatively, and perhaps  
17 practically more easily, we could provide a  
18 system whereby anybody could come in and sign  
19 up for email notification of any document that  
20 was recorded against any particular work. And  
21 so, I am interested in knowing what kind of

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1 document notification would be ideal, and  
2 perhaps if there is a second-best solution, if  
3 the ideal situation can't be delivered due to  
4 information deficits.

5 MR. BORKOWSKI: Well, I will get it  
6 started then.

7 (Laughter.)

8 That's what I said the last two runs.

9 I think that the function of the  
10 Office is really to be the database of record  
11 for copyright transactions, and I think it needs  
12 to have the most robust systems that it can  
13 afford to have that makes it easier to search  
14 for documents, makes it easier to access them.

15 But I don't think it is the Office's  
16 duty or position to kind of push out information  
17 to people. I think that if you have a Catalogue,  
18 and a Catalogue that works, then if somebody is  
19 interested in searching for a particular work,  
20 then they can access that Catalogue and do that.  
21 But I don't think that the office should be in

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1 a position or allocate resources to just kind  
2 of sign up for, you know, "Let me know when  
3 something happens on this copyright  
4 registration. Let me know if something happens  
5 on this recordation." I just don't think that  
6 is the place of the office.

7 MODERATOR BRAUNEIS: Okay. Thank  
8 you.

9 So, by the way, we talked about some  
10 interim steps that the Office is taking and  
11 possibly that the Office could take. And I am  
12 actually going to turn the floor over to Zarifa  
13 for a minute to discuss steps that the Office  
14 has already taken or is imminently about to  
15 take.

16 MS. MADYUN: So, right now, we are  
17 implementing three interim steps, kind of to get  
18 the process moving a lot faster.

19 One Rhonda could tell you about,  
20 specifically because she actually was a part of  
21 the initial pilot program, where we are

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1 accepting flash drives of those documents that  
2 come in with extremely large titles. We take  
3 that information, cut and paste those titles,  
4 and then, upload them into the system.

5 It is still a manual process and it  
6 still takes time, but it definitely takes less  
7 time to do than actually sitting there keying  
8 in all that information.

9 It is not an official program. So,  
10 we haven't said anything out there. There is  
11 no notice to say, "Hey, bring your flash drives  
12 in." But, if remitters do have them, then we  
13 encourage them to submit them along with their  
14 documents, whether it is a flash drive or a CD.

15 We understand, also, that our  
16 processing times aren't conducive with the  
17 industry and the deals that are being done on  
18 a daily basis. And we have heard time and time  
19 again that, you know, "A deal is closing today  
20 and I don't have any confirmation that our  
21 document was received or recorded. We need

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1 something."

2 So, to kind of alleviate that  
3 problem for remitters, we are going to provide  
4 an email confirmation when your document is  
5 received in the Office, just to let you know,  
6 hey, we received it; here is what that document  
7 related to, so that you can have it in case that  
8 issue comes down the road.

9 And then, the third process that we  
10 are implementing to save time is we are  
11 implementing some of what we do in the current  
12 electronic system used for registration. That  
13 is only going to be internally.

14 So, instead of someone actually  
15 manually labeling each page of the document, the  
16 system that we have, it is allowing us now to  
17 do that electronically. And so, it will save  
18 a lot of time from the Document Specialist's  
19 perspective and, also, from our Support  
20 Specialists, who, then, will have to take that  
21 document and upload it and scan it into the

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1 system.

2 So, those are just three of the  
3 things, but if there are any other interim steps  
4 that you think we could take to make the process  
5 move faster, we are willing and open to hear  
6 those ideas.

7 (No response.)

8 No?

9 (Laughter.)

10 MR. BADAVAS: Well, I mean, if you  
11 are going to email a confirmation that you have  
12 received the document for recordation, in that  
13 you could provide a link to a location that they  
14 could upload the file that you are otherwise  
15 getting by flash drive or CD, and that is not  
16 a particularly challenging technological  
17 thing.

18 MS. MADYUN: Yes, we definitely can  
19 consider that. We do have an internal email  
20 address that we do when staff members within the  
21 Office are typing titles for us that they send

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1 it to. So, that could be something that could  
2 be used if we are sending out that confirmation,  
3 that email link where you could just send those  
4 digital files, if you have them. That actually  
5 is a good idea.

6 MODERATOR BRAUNEIS: We have had  
7 some security concerns about email attachments,  
8 as you might imagine. Not all email attachments  
9 that come in are, you know, friendly. And that  
10 has been one of the reasons why I think the Office  
11 has been reticent just to publicly announce,  
12 "Send us all your titles by email attachment."

13 MR. BADAVAS: Just to be clear, I  
14 wasn't actually suggesting an email attachment.

15 MODERATOR BRAUNEIS: Yes. You were  
16 suggesting a link to an uploading, a place for  
17 the uploading. That is a kind of alternative  
18 means where we could, then, scan the file before  
19 opening it and make sure we are not getting some  
20 virus on the machine.

21 Yes?

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1                   MR.     HACKETT:            The     email  
2                   confirmation of filings, that is something that  
3                   you are doing now?

4                   MS. MADYUN:   Well, when I get back,  
5                   we will start, yes.

6                                   (Laughter.)

7                   MODERATOR   BRAUNEIS:            Monday  
8                   morning.

9                   MS. MADYUN:   Yes.

10                                  (Laughter.)

11                   MR. HACKETT:   And will it be upon  
12                   receipt of the filing, a hand-delivered filing  
13                   as well? I mean, I know just from the process  
14                   that there is a several-month period between a  
15                   filing being dropped off at the Public  
16                   Information Office and reaching the Document  
17                   Section. Where in that process is this email  
18                   sent, going to be sent?

19                   MS. MADYUN:   This is going to be from  
20                   the process right before the filing fees are  
21                   drawn. So, as soon as those documents come into

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1       our Maintain Accounts Division, someone is  
2       going to be there to actually get that  
3       information from those documents and send that  
4       confirmation out.

5                   MR. HACKETT: So, it will be some  
6       period of time after the filing is physically  
7       delivered to the office?

8                   MS. MADYUN: It could be, but I think  
9       now, because of the fact that the filing fees  
10      are going to be increasing, that I don't think  
11      it is going to be that long of a period of time  
12      in between that, because they will try to  
13      process these a lot faster, so that they don't  
14      have to have a backlog of those documents coming  
15      in that came in after that May 1st fee increase.

16                   So, I wouldn't say months; maybe a  
17      few weeks, but it is better than, as you know,  
18      now where you don't get the confirmation at all  
19      or, if you do, you are calling in and having to  
20      have someone do that search for you.

21                   MR. HACKETT: Right. But I would

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1 just say, in those instances when immediate  
2 evidence of a filing is helpful, the Public  
3 Information Office will date-stamp a document  
4 that is submitted with the filing. That can be  
5 returned to the filer the day a filing is made.  
6 So, that is a nice interim step that is already  
7 in effect.

8 MS. MADYUN: Yes.

9 MR. HACKETT: Yes.

10 MODERATOR BRAUNEIS: Excellent.

11 Well, thank you all for a very  
12 productive morning session.

13 Time to adjourn for lunch. Since we  
14 have adjourned a little late, I propose we come  
15 back at one o'clock to continue in the  
16 afternoon.

17 In the meantime, enjoy your lunch.

18 Thank you.

19 (Whereupon, the foregoing matter  
20 went off the record at 11:59 a.m. and went back  
21 on the record at 1:11 p.m.)

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

1:11 p.m.

MODERATOR BRAUNEIS: Okay, in spite of the fact that not everyone has returned from lunch, we are going to start the afternoon session now, in the interest of also being able to end on time and, yet, have enough time for discussion of these important afternoon topics.

The next two discussion topics that

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1 we are going to group together look at document  
2 recordation from a different perspective. And  
3 narrowly speaking, they are both asking about  
4 types of information that document records  
5 should contain. Should they contain  
6 registration numbers, and should they contain  
7 other standard identifiers?

8 But, more broadly, they are both  
9 also asking about the role or the place of the  
10 Recordation Catalogue and the Copyright Office  
11 Catalogue within the larger ecosystem of  
12 information about copyrighted works.

13 So, asking about whether there  
14 should be registration numbers in document  
15 records is really a question that is asking  
16 about how the Document Record Catalogue should  
17 relate to information inside the Registration  
18 Catalogue. And asking about the use of standard  
19 identifiers is asking about the way that  
20 information in the entire Copyright Office  
21 Catalogue could or should relate to other

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1 databases that might be out there about  
2 copyrighted work. So, I very much want to get  
3 your reaction to some of those broader issues  
4 as well as the particular issues.

5 I do have just a couple of additional  
6 fact sets to show you that give a background for  
7 the discussion of registration numbers and  
8 standard identifiers. I want to show you what  
9 the current state of affairs is.

10 And I mentioned this this morning in  
11 response to a question, but recall that, between  
12 1978 and 2009, we have about 8 million works that  
13 are represented in recorded documents, and  
14 about 3.7 million of those have registration  
15 numbers in those records. So, that represents  
16 about 46 percent of the works represented in  
17 recorded documents are identified not only by  
18 the title of the work, but by a registration  
19 number.

20 That, of course, doesn't mean a  
21 post-1977 number which we could easily somehow

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1 electronically link to within the Catalogue.  
2 That includes lots of pre-1978 registrations  
3 that are only on paper. So, it doesn't mean that  
4 we could suddenly integrate 46 percent of those  
5 recorded document records with an existing  
6 electronic registration record, but it does  
7 mean that those numbers are very available.

8           How does that look over time and in  
9 percentages of documents broken out between the  
10 two largest types of documents represented in  
11 the recordation panel; namely, assignments and  
12 financing documents? You can see a bunch of  
13 oscillation, and especially in the early years.  
14 We think that represents, in part, single large  
15 transactions in which there either were or  
16 weren't registration numbers that kind of  
17 dominate the data.

18           It may also represent changes in  
19 practices in the 1980s with respect to whether  
20 and how registration numbers were transcribed  
21 with the electronic records. We have to do a

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1 little bit more research about that.

2 The other small sort of trend is here  
3 about 1994 or so in which you get the percentages  
4 of registration of works in financing through  
5 the registration numbers in financing documents  
6 increasing, crossing over, and then, from that  
7 point on, remaining above the percentage of  
8 works represented in assignments with  
9 registration numbers. So, financing documents  
10 are getting from 60 to 80 percent of their works  
11 in with registration numbers. The assignments  
12 are only getting between 20 and 50 percent.

13 And recall, as I mentioned in the  
14 morning, the two court decisions that might be  
15 influencing those trends in financing documents  
16 in 1990 in re: Peregrine Entertainment that says  
17 that, essentially, all works that have security  
18 interests perfected in them, the security  
19 interest grant should be recorded at the  
20 Copyright Office.

21 And then, you have got in 2002, the

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1 9th Circuit saying, absolutely no, only  
2 registered works should have security that is  
3 protected by Copyright Office recordation.  
4 And that's the point, or that is near the point  
5 at which you see a much higher percentage of  
6 financing documents are coming in with  
7 registration numbers included in the works.

8 Just to give you a sense about the  
9 lack of integration between the Registration  
10 and Recordation Catalogues that are part of the  
11 Copyright Office Catalogue, here is just an  
12 example that I pulled out, a novel called  
13 Damascus Gate by Robert Stone. If you searched  
14 for it now by registration number, you would  
15 only get the original registration. It would  
16 not pull up any of the documents that have been  
17 reported that pertain to that work. There are  
18 a series of such documents. Some of them did  
19 have registration numbers at the time they were  
20 reported in the document. So, we have got a  
21 registration number in the Catalogue for a grant

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1 of what looks like motion picture rights for  
2 Damascus Gate to Paramount Pictures. That  
3 would come up if you searched by title, although  
4 there is no guarantee that Damascus Gate is a  
5 unique title for this particular work.

6 There are other documents, though,  
7 that came in without registration numbers, and  
8 those are not available, then, in the Catalogue.  
9 So, the termination of the assignment that we  
10 just saw, which had a registration number,  
11 didn't have a registration number. So, it is  
12 not available. And then, there are additional  
13 grants of rights, it looks like, also, probably  
14 motion picture options that were recorded  
15 without registration numbers.

16 So, we have got these two halves of  
17 the Copyright Office Catalogue that aren't  
18 talking to each other much now, although  
19 certainly a title search would turn up those  
20 records. And we have got the potential for  
21 doing some further integration, but we don't

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1 have registration numbers, even for all of the  
2 registered works that are in the Recordation  
3 Catalogue.

4 Just a couple of facts about the use  
5 of other standard identifiers in the Copyright  
6 Office Catalogue. Records pertaining to  
7 recorded documents currently do not store any  
8 other standard identifier. So, we don't  
9 currently place standard identifier  
10 information in recorded documents records.

11 We do currently accept certain  
12 standard identifiers for registration records,  
13 three different types, actually, only three  
14 different types at the moment. But those, it  
15 turns out, are of relatively little use. So,  
16 out of 16.7 million registration records in the  
17 Catalogue, 565,000 of them, or a little over  
18 between 3 and 4 percent, contain ISBNs, and  
19 that's just standard book numbers. This, I  
20 think, is a percentage that is a statement that  
21 should be a little bit down. About 400,000

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1 contain International Standard Serial Numbers.  
2 So, this is for serial publications. And then,  
3 3/100ths of a percent, 5,510, registration  
4 records contain International Standard  
5 Reporting Codes. We aren't at this point in a  
6 position to accept International Standard  
7 Musical Work Codes or any other standard  
8 identifier in the Registration Catalogue.

9 So, that is some sort of the factual  
10 background. And I would like to open the floor  
11 up for some discussion about the use of, I guess,  
12 first, just the use of registration numbers and  
13 other standard identifiers in the Recordation  
14 Catalogue. Would that be useful? How would  
15 that be useful, and the like?

16 Suggestions? Comments?

17 MS. REID: Yes, I think it would be  
18 useful.

19 (Laughter.)

20 MODERATOR BRAUNEIS: Okay. Others  
21 could say, "Yes, "Me, too."

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1 MS. DAVIS: Me, too.

2 (Laughter.)

3 MODERATOR BRAUNEIS: Three, okay,  
4 onboard. Four?

5 I guess, just to provide a little  
6 more background with that, which is to say, you  
7 know, before we build something, I guess it  
8 would be useful to, when you are making a budget  
9 request, to say, "It would be useful for the  
10 following reasons."

11 And if you can envision uses that  
12 would be made of that information or typical  
13 scenarios in which it would be helpful to have  
14 registration numbers or other standard  
15 identifiers included in the Recorded Documents  
16 Catalogue, that would be helpful to have on  
17 record.

18 Susan?

19 MS. DAVIS: I gave that example  
20 before. This would be about a publisher who  
21 goes out of business. The assets of the firm

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1 are sold to another publisher. At the same  
2 time, I am assuming that the ISBN would continue  
3 along with that. So, it would be helpful for  
4 a writer to be able to track down where his or  
5 her work is in the process using an ISBN number.

6 MODERATOR BRAUNEIS: Okay. Yes.  
7 And, I mean, I actually haven't done a search  
8 in the Catalogue to see whether Damascus Gate  
9 turns out to be a unique title that no one else  
10 has ever used for a work or not, but there are  
11 many titles that are not unique. And so, a  
12 search would have to be at least more involved  
13 to try to pin it down to a particular work;  
14 whereas, a standard unique identifier would  
15 make it a lot easier. That's for sure.

16 MS. GINSBURG: I just want to ask a  
17 really boneheaded question.

18 MODERATOR BRAUNEIS: Yes.

19 MS. GINSBURG: Why wouldn't we want  
20 these standard identifiers in the records?

21 MODERATOR BRAUNEIS: Yes, I'm not

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1 sure that there is any -- yes?

2 MR. BENGLOFF: As I said in my  
3 earlier remarks, there is, of course, anything.  
4 Okay?

5 MODERATOR BRAUNEIS: Right.

6 MR. BENGLOFF: In the music  
7 industry I don't know if the number is small  
8 because there are not that many music filings  
9 or that there's a lot of music filings without  
10 the ISRC code.

11 But it is one of the pop-up screens.  
12 It asks for -- you know, when you're doing it,  
13 it is an easy process to enter. But if you have  
14 to hire someone to put all that data in, then,  
15 of course, the benefit is narrow and we are not  
16 interested. In other words, we are asking use,  
17 with both personnel as well as financial  
18 resource limitations. That would be the only  
19 reason.

20 MODERATOR BRAUNEIS: So, you're  
21 saying, if we had the capacity to accept these

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1 standard identifiers, those fields might go  
2 unpopulated in many cases because of the cost  
3 of entering that data, even if it was available?

4 MR. BENGLOFF: Right, unless you  
5 can create some sort of interface that is easy  
6 enough that can be populated from a system that  
7 already exists. That's the only reason you  
8 wouldn't do it, is because you say, "Hey, I have  
9 to hire someone. I have to spend money."

10 MODERATOR BRAUNEIS: Right. I  
11 mean, we talked a little bit this morning about  
12 how some organizations already use Excel  
13 spreadsheets.

14 MR. BENGLOFF: That's what I'm  
15 saying, an interface. That's my point.

16 MODERATOR BRAUNEIS: And one could  
17 imagine you've got one column for the title and  
18 one column for the various standard  
19 identifiers.

20 It is a question of sort of practice  
21 in industries whether that information is

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1 already maintained in electronic form, and  
2 therefore, simply needs to be transferred into  
3 the right format to be provided to us, or whether  
4 it is not maintained in electronic form. So,  
5 you need to hire somebody to key-in manually  
6 each title.

7 MR. BENGLOFF: So, you're saying in  
8 an electronic filing that is standard use  
9 established, so there is an easy interface where  
10 you say: check, check, check, check, check?

11 MODERATOR BRAUNEIS: Right.

12 MR. BENGLOFF: It's 180 titles.  
13 Hit a button. So, it's not mandatory. I think  
14 you want to support it for sure, but I think  
15 you're saying it can't be mandatory.

16 MODERATOR BRAUNEIS: So, build the  
17 capacity, but don't require it?

18 MR. BENGLOFF: You can design it so  
19 that it is friendly to the creative community.

20 MR. BORKOWSKI: Rich also knows  
21 that there is an issue in the music industry,

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1 in particular, with the ISRC codes because there  
2 are versions of whatever work is registered,  
3 depending on whether it could be, you know, a  
4 clean version, a radio edit, or something of  
5 that nature.

6 So, frequently, with respect to one  
7 best edition of the work, there could be several  
8 ISRC numbers associated with somewhat different  
9 versions of that work. And so, those often are  
10 all kept in the same place, and it is kind of  
11 hard to be able to populate, let's say, one  
12 recordation or one registration with all of  
13 those ISRC numbers.

14 So encourage, but not make mandatory  
15 I think is a good idea.

16 MODERATOR BRAUNEIS: Okay. Yes, go  
17 ahead.

18 MR. BADAVAS: I think there is an  
19 additional concern that is related to  
20 transactional cost, which is we have publishing  
21 clients who buy large catalogues of songs. And

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1 the due diligence that copyright lawyers are  
2 paid a lot of money to do is done on the highest  
3 amount of titles. And they determine the amount  
4 of due diligence that they do based on the value  
5 of the purchase and the cost of doing it, right?

6 I'll make up numbers. But it could  
7 be 200 titles out of 10,000 because those are  
8 the ones that earn 85 percent of the market, or  
9 something like that. And the rest of the  
10 catalogue which they are buying, it might be  
11 songs from 1935 to 1967. And the information  
12 might be sitting in manila folders in boxes in  
13 a warehouse at Iron Mountain, because that is  
14 where the warehouse is.

15 (Laughter.)

16 And, you know, offsite pretty far,  
17 and are you really going to (a) pay to pull the  
18 box back; (b) pay a lawyer or a paralegal to go  
19 through the paper, which we all know is an  
20 expensive process, and then, get it keyed-up  
21 into the document that needs to be reported or

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1 keyed into the electronic file that will be  
2 provided to the office? For those types of  
3 transactions, you would be adding significantly  
4 to the transactional cost of purchasing the  
5 catalogue. And that's the type of venture  
6 capital money that funds the creation of --

7 MODERATOR BRAUNEIS: Okay. So, I'm  
8 hearing we don't want it required because  
9 sometimes the cost/benefit isn't there. But  
10 there is also sort of a technical issue of there  
11 is not always going to be a one-to-one  
12 relationship between work in the registration  
13 sense, in the registration number sense, and  
14 International Standard Recording Code or some  
15 other standard identifier that might identify  
16 a group of closely-related versions of that  
17 work.

18 And part of that would simply be a  
19 technical issue of allowing the entry of more  
20 than one standard work identifier per  
21 recordation number, if you want to do that,

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1 especially if that's one -- and it turns out that  
2 is one of the high-yield works.

3 MR. BADAVAS: And it is useful to  
4 have standard identifiers even if they don't  
5 accept it. It is an issue of can we actually  
6 reasonably afford to provide it in the first  
7 instance. In some cases, yes; in some cases,  
8 no.

9 MODERATOR BRAUNEIS: Jane? And  
10 then, Susan. Or Susan. Then, Jane.

11 MS. DAVIS: Would it be possible to  
12 require it for textual work, written work, and  
13 not for other genres, for lack of another term?

14 MODERATOR BRAUNEIS: Technically,  
15 sure.

16 MS. DAVIS: I mean, you could set up  
17 the --

18 MODERATOR BRAUNEIS: I guess, then,  
19 what would be the rationale for distinguishing  
20 between requiring a standard identifier for  
21 textual works but not for musical works, sound

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1 recordings, audiovisual --

2 MS. DAVIS: Well, because of the  
3 exceptions that other people have raised within  
4 other industries. But requiring it for textual  
5 work would help writers, would help authors  
6 immeasurably. So, that is the only reason why  
7 I am raising it.

8 MODERATOR BRAUNEIS: Okay. Jane?  
9 And then, Rachel.

10 MS. GINSBURG: That relates to a  
11 question I had: there are three different  
12 categories here. The easy one concerns future  
13 registrations and recordations. Is there any  
14 good reason not to include in the registration  
15 records a fill-in-the-blank for a standard  
16 identifier if there is a standard identifier?

17 The second category concerns works  
18 that have already been created and registered.  
19 As to those, how many of them have standard  
20 identifiers? I take it that in the book context  
21 it is already widespread, not necessarily in

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1 others. But as to those sectors for which  
2 standard identifiers are already in use, is it  
3 feasible to add that information retroactively  
4 to the records?

5 The third category would be those  
6 works for which there is no standard identifier,  
7 the ones in the "manila folders." Those are the  
8 ones that now seem to be the most intractable.

9 But I don't see a reason yet why  
10 going forward one couldn't request, indeed  
11 require, standard identifier information. And  
12 as to that intermediate category, to try to  
13 ascertain if there is a way to input information  
14 that already exists.

15 MODERATOR BRAUNEIS: Yes. And  
16 currently, I think the only sort of small  
17 mechanisms for doing that in that intermediate  
18 category would be to file a supplementary  
19 registration. That seems like something of a  
20 cumbersome vehicle to add a particular standard  
21 identifier. But I think that if somebody did

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1 want to do that right now without any changes,  
2 I think you would be filing supplemental  
3 registrations that would add information.

4 MS. FERTIG: Can I let Heather go  
5 first, and then, I will follow up?

6 (Laughter.)

7 MS. REID: I think that some sort of  
8 a tiered approach like that is probably the way  
9 to go. Because I think you do want to require  
10 them as much as possible. But, also, on the  
11 registration side, you are registering some  
12 works that are unpublished, right? At the point  
13 of registration, they were unpublished. So,  
14 they may not at that point in time have an ISBN,  
15 for example, for a book.

16 So, I think we need to leave open the  
17 window of possibility that someone can actually  
18 go through that process with like having a  
19 standard number.

20 But I do need to go back to your  
21 original question. I think that some of the

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1 benefits of having standard numbers to the  
2 greatest extent possible is that, ideally, you  
3 want the system that you build here to be one  
4 that machines interact with as well as humans,  
5 right? That is the way that information systems  
6 are going, have gone in the world. And standard  
7 numbers are going to facilitate that in a way  
8 that free text just isn't.

9           So, the extent to which you can push  
10 things in this direction, the more you are going  
11 to be able to exploit the system that you build  
12 and have other systems be able to interact with  
13 it, which, in turn, leads to efficiencies,  
14 right? So, I think that is the primary reason  
15 that I could think of why you really want to try  
16 and get them there in as many cases as you can.

17           MODERATOR BRAUNEIS: Uh-hum.

18           MS. REID: The other thing is that  
19 I think -- and this kind of relates back to a  
20 point I made this morning -- I think it will  
21 assist in sort of quality control, to the extent

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1 that you want to keep this database, for  
2 example, linking back to your registrations or  
3 linking to other systems.

4 I acknowledge the costs involved in  
5 this, but I still think building your system  
6 based on currently-existing data that you can  
7 get and license or connect to in a programmatic  
8 way is going to give you the greatest sort of  
9 footprint to make sure the quality is there in  
10 the records that you are recording, and a  
11 standard number is going to facilitate that.

12 MODERATOR BRAUNEIS: If I could  
13 just ask a follow-up question on the question  
14 of machine readability of records, I understand  
15 that that is the way the data is moving  
16 generally. And so, there may be unforeseeable  
17 uses of that data right now, but they are  
18 probably going to involve machine or computer  
19 interactions, and not human reading.

20 But, again, when we are thinking  
21 about justifying budget requests, it would be

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1 helpful to have some foreseeable and  
2 immediately-beneficial uses to point to, rather  
3 than just say, "You know, you should develop  
4 this because sometime in the future we know  
5 everybody is heading in the direction of  
6 computers."

7 MS. REID: Right.

8 MODERATOR BRAUNEIS: So, to the  
9 extent that you could talk a little bit about  
10 those, that would also flesh-out some comments  
11 that have been made in the written comments  
12 about you should facilitate interoperability  
13 and linkage, and those terms cover a multitude  
14 of possible concrete models. So, if there is  
15 any concrete, immediately-beneficial uses of  
16 having it be in that form, it would be great to  
17 get those on the record.

18 MR. BENGLOFF: Yes, we like the idea  
19 of the ISRC code. The thing that I am trying  
20 to do here is to make it simple. Someone can  
21 get carried away and have 80 fields of data or

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1 you can have eight fields of data. We vote for  
2 eight fields of data. It is probably enough.

3 That can build some sort of  
4 interface, so everyone is used to this template  
5 as opposed to the flat that you just showed  
6 there. And people, again, will attempt to do  
7 that.

8 We are not going to register  
9 everything, you know, because we only register  
10 the higher-velocity items typically to keep  
11 down our costs. That is our issue with like  
12 having to register for statutory damages, which  
13 I'm sure everyone in the music industry is  
14 against that, that it be a requirement to get  
15 statutory damages. Everyone in the room is  
16 against that. It seems like the Register is  
17 also, having read her speech.

18 But we want to register. We want to  
19 correspond. We think the data is good. It is  
20 just how it is designed. People get carried  
21 away sometimes, and they design something that

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1 is too complex that is not usable by the creative  
2 community.

3 And we don't want it to be used as  
4 a tool. In our industry -- I don't know about  
5 the other industries -- YouTube has become an  
6 example of over-claiming. You can't get into  
7 claim conflicts, but everybody is claiming  
8 everyone's stuff on YouTube nowadays. It is not  
9 misinterpretation of rights. There are  
10 people -- you know, the whole mass digitization  
11 doesn't just apply to Amazon and to Google. It  
12 applies to individuals who are going out there.

13 I am saying there's a lot of complex  
14 issues going on within the marketplace right  
15 now.

16 MODERATOR BRAUNEIS: Thanks.

17 Rachel?

18 MS. FERTIG: So, a couple of points.  
19 I think Jane's suggestion for sort of a  
20 three-tiered approach, what you can do going  
21 forward, and recognizing the challenges that

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1 are posed by those that don't have ISBNs or they  
2 are old and it would take too much investment  
3 in order to provide that information, or it  
4 doesn't make sense -- I think that publishers  
5 already are providing their ISBN in the title  
6 information template that we talked about  
7 submitting to the Copyright Clearance Center  
8 earlier this morning. And so, that could be  
9 something that publishers would be able to  
10 implement easily. If the Copyright Office does  
11 use that same template, then that information  
12 is already there to be used and could easily work  
13 itself into the recordation process.

14 I don't know at this point whether  
15 the publishing industry would be happy to be the  
16 guinea pig for making that required and watching  
17 how it works, to see if everybody else wants to  
18 join us. But I think that we are in favor of  
19 incentives to create more pressure to move the  
20 system into including more standard identifiers  
21 because we do see that that is a benefit.

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1           And concretely to Susan's point, if  
2           somebody can put in an ISBN number and more  
3           easily find a record of what happened to that  
4           publisher and that work, then that does help  
5           solve the orphan works problem going forward and  
6           avoid that.

7           So, there are concrete benefits for  
8           including the standard identifier as yet  
9           another way to simply look on the back of a book  
10          and be able to have a quick way to find a record,  
11          the chain of title for that document.

12          MS. McKIERNAN: That is the key  
13          phrase, creating a chain of title.

14          MS. FERTIG: Right.

15          MODERATOR BRAUNEIS: Uh-hum.

16          Other comments specifically on  
17          registration records and identifiers?

18          (No response.)

19          Let me open this up to include  
20          standard party identifiers as well as standard  
21          work identifiers. I am sure many of you know

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1 that there has been work done on creating  
2 International Standard Name Identifiers, and a  
3 subset of those are Open Research Contributor  
4 IDs, or ORCID's. The musical work industry uses  
5 interested party identifiers. Those also lead  
6 to more machine readability and unique  
7 identification of parties.

8 Are people using those now? Should  
9 we be accommodating or requiring those in the  
10 context of recorded documents? Should we say  
11 that, when parties record a document, they  
12 should obtain one of these identifiers and  
13 include it in the document recordation record?

14 MR. BENDER: I think it is the same  
15 point. I think you need to make it available  
16 because it helps with accurate identification.

17 We have, with registrations, we have  
18 80,000 artists' name in our database, and we  
19 have multiples of John Smith. You literally  
20 have names that are so similar that, without an  
21 identifier, you literally can't separate them.

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1 So, having a performer identification is  
2 crucial for us.

3 Similarly, on the label side, you  
4 know, we have some over 30,000 labels and the  
5 variations on Sun Records. So, you get into a  
6 lot of ambiguity with just text-string names.

7 So, I would say, absolutely, you  
8 need to be able to accommodate it and support  
9 it. I don't think you can require it because  
10 it is not universally adopted.

11 MODERATOR BRAUNEIS: And have you  
12 developed your own identifiers or are you making  
13 use of an existing name identifier?

14 MR. BENDER: Where available, we  
15 use as much as possible -- there's the  
16 International Performer Database Number.  
17 There is a European ISO standard for artists'  
18 name. We are pushing for a similar code for  
19 labels. But, again, not every artist has  
20 registered with ISNI.

21 To answer your question, yes, if

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1 they don't have one, we have an internal number  
2 just for our own purposes that we assign.

3 MS. REID: Do you accept the ISNI if  
4 they have one?

5 MR. BENDER: Yes.

6 MS. REID: Do you run into that  
7 frequently or infrequently?

8 MR. BENDER: Run into?

9 MS. REID: That artists do have  
10 ISNIs assigned? Is that a frequent occurrence?

11 MR. BENDER: Frequent, no, I  
12 wouldn't say frequent. We have the  
13 International Performer Number, the IPN, more  
14 frequently.

15 MS. REID: Uh-hum.

16 MR. RUSSELL: And also, for music  
17 publishers, the IPI number is not something that  
18 they would necessarily have. In many cases, I  
19 think it is worth collecting, if it is  
20 available. I think it adds value to the  
21 database. But I think it is kind of a marginal

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1 thing.

2 MODERATOR BRAUNEIS: Okay.

3 Thanks.

4 Any other comments on party  
5 identifiers?

6 MS. REID: I think this is a tricky  
7 area just because it is, compared to some other  
8 standard identifiers, the area of author  
9 standard identifiers is in its infancy.

10 MODERATOR BRAUNEIS: Uh-hum.

11 MS. REID: You know, when you think  
12 of ISBN, it was introduced in the mid-seventies,  
13 and ISNI and ORCID are the last couple of years.  
14 So, it is just not as mature as other  
15 identifiers, but they're --

16 MODERATOR BRAUNEIS: Yes, although  
17 they are maturing quickly.

18 MS. REID: Maturing quickly, yes.

19 MODERATOR BRAUNEIS: I believe  
20 there are over a half million ORCIDs that have  
21 been issued.

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1 MS. REID: Yes. Uh-hum.

2 MODERATOR BRAUNEIS: And I know  
3 that one of my publishers required me to get one,  
4 you know, when I submitted a work. He said, "Get  
5 a number. You need it."

6 MS. REID: Yes, it is definitely,  
7 it's on a hockey stick in terms of adoption. And  
8 ISNIs, too. I think I read somewhere there's  
9 like 10 million ISNIs, I think, that have been  
10 assigned at this point.

11 So, yes, I would agree that  
12 accepting them would be a very good thing to do.

13 MODERATOR BRAUNEIS: I mentioned a  
14 little bit the sort of general question of  
15 interoperability and linkage between the  
16 Copyright Office Catalogue and other copyright  
17 databases. And I would like to discuss a little  
18 bit sort of models for what that would look like.  
19 What kind of interoperability and linkage seems  
20 to be possibly beneficial, beneficial enough  
21 that we would actually get a stab at

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1 implementing it?

2 Thoughts about --

3 MS. GINSBURG:

4 We talked earlier concerning the  
5 ISBN number or its equivalent for other sectors.  
6 Ideally, once you input the ISBN or equivalent  
7 identifier, the search results would tell you  
8 if there is a copyright registration, if  
9 transfers have been recorded.

10 MODERATOR BRAUNEIS: Okay. So,  
11 that is certainly sort of an enhanced search  
12 function, that if we have that data in our  
13 database, then somebody can use the ISBN to  
14 search for something.

15 Sometimes when I hear the phrase  
16 used "interoperability and linkage," it sounds  
17 sort of more formal, and that there should  
18 actually be a way that either one could be  
19 directed from Copyright Office records through  
20 a link directly into another database or that,  
21 to take another model, the copyright

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1 information should be made available with an  
2 application programming interface, so that  
3 other data aggregators could aggregate data  
4 from the Copyright Office Catalogue, which they  
5 could query automatically, and maybe various  
6 other catalogues that have data query  
7 possibility, to present it in a single,  
8 accumulated set of returns for a search.

9 And so, I am just curious if any of  
10 you have thought about those models and the  
11 possibilities that would be opened up by  
12 engineering things in that way.

13 MR. RUSSELL: In music publishing,  
14 one of the issues that we have with licensing  
15 when you are dealing with Notices of Intent,  
16 when you can't find a publisher to serve the  
17 Notice of Intent on for the compulsory, your  
18 last resort is to file it with the Copyright  
19 Office, but you have to do a search of the  
20 Copyright Office's records.

21 And often, we are dealing with very,

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1 very high volumes of new releases on digital  
2 services. So, it is not really practical to do  
3 those on a one-off basis. So, an API would be  
4 extremely helpful.

5 MODERATOR BRAUNEIS: Okay. So, an  
6 API for your search purposes connected with  
7 Notices of Intent.

8 Other thoughts? Vic?

9 MR. PERLMAN: Yes, it is the same  
10 thing in the photo space, particularly if you  
11 could integrate seamlessly with a registry like  
12 the PLUS registry that Tricia was mentioning  
13 earlier.

14 MODERATOR BRAUNEIS: Okay. So,  
15 here there is a case where there is a developing  
16 privately-operated registry for photographs.

17 MS. McKIERNAN: No, it's for  
18 images.

19 MODERATOR BRAUNEIS: Excuse me?

20 MS. McKIERNAN: It's images. It's  
21 inclusive.

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1                   MODERATOR BRAUNEIS: I'm sorry.  
2 Images, right. So, it is more inclusive than  
3 photographs, right.

4                   And so, you are suggesting somehow  
5 integration of that with the Copyright Office  
6 database. And I am wondering if there is any  
7 more concreteness to the way you are imagining  
8 integration between those two, what sort of  
9 model of data linkage you would envision.

10                  MR. PERLMAN: You need somebody  
11 with a much higher tech level pay grade than me.

12                  (Laughter.)

13                  MS. McKIERNAN: Yes. Jeff is the  
14 perfect person. So, I mean, he can explain it  
15 to you. But it is kind of a cool system.

16                  MODERATOR BRAUNEIS: Formulating  
17 metadata standards. Obviously, there have  
18 been, and there is continuing to be, many  
19 initiatives for developing metadata standards.  
20 Is there a role for the Copyright Office to play  
21 in those formulations or in promoting

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1 particular standards, once they have been  
2 adopted in other forums, fora?

3 MS. REID: I would think it would be  
4 useful for the Copyright Office for its own  
5 purposes to be participating in those standards  
6 development efforts and to be aware of them.

7 I'm not sure that -- I mean, there  
8 are obviously many drivers of those standards  
9 today. Some of them are coming out of the  
10 library side of the equation. Some of them are  
11 starting to come out of the publisher's side of  
12 the equation. Some of it is driven by the retail  
13 book trade. So, there is a variety of players  
14 there, and I would definitely think that the  
15 Copyright Office would benefit from having a  
16 seat at the table.

17 MR. RUSSELL: And I think just by  
18 simply accepting the standards you are  
19 supporting them in a lot of ways, but I think  
20 in driving the development of the standards it  
21 might distract from all of the other things that

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1       you are trying to do.

2                   MODERATOR BRAUNEIS: Uh-hum.

3                   MR. BORKOWSKI: I mean, these  
4 standards are being developed in various  
5 industries already. So, I think the idea, the  
6 notion that you would be aware of the  
7 development, except the ones that have come to  
8 the fore, I doubt that it would be very useful.  
9 But I do agree that your resources would better  
10 be spent not in driving the bus, but actually  
11 just riding along on it.

12                   MR. BADAVAS: These standards get  
13 developed when the economic encouragements  
14 cause all of the businesses that need to  
15 transact with digital information to develop  
16 them and adopt them. And even when  
17 organizations within an industry start a push  
18 to develop standards, they often aren't  
19 adopted. And so, if the economics around it  
20 aren't good, you can be pushing forever, but it  
21 isn't going to happen. Conversely, if

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1 something is suddenly needed very quickly, and  
2 a process like this is what is required in order  
3 to get it adopted, I'm not sure that that is going  
4 to be quick enough.

5 MODERATOR BRAUNEIS: The last two  
6 questions under the metadata standards  
7 discussion are: is there a specialized role for  
8 the Copyright Office Catalogue to play that is  
9 different from the roles that  
10 privately-maintained databases play? And does  
11 the Copyright Office have a core field of  
12 expertise that should guide its role in  
13 collecting and providing copyright information  
14 about works?

15 So, this suggests, okay, the  
16 Copyright Office Catalogue is a source of  
17 information about copyright in works. There  
18 are other sources of information out there.  
19 Does this sort of information that the Copyright  
20 Office is busy collecting, maintaining, and  
21 promulgating, does that information pool have

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1 a particular role to play that we can define in  
2 a way that guides us in spending our resources,  
3 so that we are not duplicating the effect, the  
4 efforts of others, but that we are providing  
5 some key information that others aren't  
6 providing, right?

7 Yes, Susan.

8 MS. DAVIS: I think the operative  
9 term here is "neutrality". Because it is a  
10 government function, a government office, it  
11 doesn't have any of the bias of possible private  
12 databases. So, I think it is absolutely  
13 essential, the role that the Copyright Office  
14 has to play in this as a neutral entity.

15 MODERATOR BRAUNEIS: Yes?

16 MS. GINSBURG: Once upon a time,  
17 there was CORDS --

18 MODERATOR BRAUNEIS: CORDS, yes.

19 MS. GINSBURG: That was a great  
20 idea. It never got any funding to go anywhere,  
21 but it was generated out of the Copyright

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1 Office. And the idea would have been that the  
2 registration records also would have provided  
3 information about licensing. So, that once you  
4 ascertained who had the rights, you could then  
5 push buttons or make requests in order to, then,  
6 clear rights.

7 It was anticipated that for some  
8 works or grants of licenses the system would be  
9 totally automated, that there would be kind of  
10 a menu of rights and prices for rights. And  
11 then, for other works or rights, you might have  
12 to negotiate directly with the rights-holder.  
13 But the possibility of automated licensing  
14 would have simplified rights clearance.

15 Perhaps that kind of information  
16 could still be linked, either through Copyright  
17 Office records linked to other databases or  
18 through the copyright records themselves  
19 providing that information.

20 It struck me as a good idea 20 years  
21 ago, and it is still a good idea.

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1 MODERATOR BRAUNEIS: Jonathan?

2 Thanks.

3 MR. BENDER: Yes, let me, setting  
4 the standards, I mean, after years of struggling  
5 with this, actually, the adoption of data  
6 exchange standards in the music industry is  
7 really maturing much more rapidly because of the  
8 proven benefits to the whole ecosystem.

9 So, the Digital Data Exchange, DDEX,  
10 is the organization. Now the industry  
11 participates and they set these standards, and  
12 they create message standards for all different  
13 types of interactions. So, there is a  
14 particular message suite for communicating to  
15 a retailer your new recording. "Here's my new  
16 release." There is a message standard for  
17 publishers to communicate to rights-owners.  
18 And so, there is a whole suite of message types  
19 that DDEX creates.

20 It would seem to me that an obvious  
21 message type would be a message type to register

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1 your registration process, and possibly, also,  
2 the recordation process.

3 And in that case, this industry  
4 group works within working groups, where  
5 literally it is interested parties coming  
6 together, and they have forums, and online  
7 forums, where they work through and hash out  
8 what the standard is.

9 So, having a seat or having an  
10 interest and visibility to that I think would  
11 be a useful role.

12 MODERATOR BRAUNEIS: Okay. So, the  
13 possibility of adding registration messages and  
14 recordation messages which would be accepted by  
15 the Copyright Office would be an interesting  
16 expansion of the current DDEX standards.

17 Other thoughts?

18 MS. REID: Yes, I think that whole  
19 function that Jane was referring to there -- and  
20 this kind of ties back to your question before,  
21 "So, what are the actual examples of linking and

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1 APIs that could actually put some meat on the  
2 bones or on the desirability of that?"

3 MODERATOR BRAUNEIS: Right, right.

4 MS. REID: I mean, this may sound  
5 trite, but it seems like what the Copyright  
6 Office should focus on in terms of your area of  
7 expertise is the copyright information, right?  
8 So, you know, being heavily involved in  
9 developing rich bibliographic metadata  
10 standards, probably not so much. Being  
11 involved in knowing what's going on, yes, but  
12 there are other people for whom that is their  
13 core area of expertise.

14 But that idea of adding to current  
15 and existing standards messages or messaging  
16 capability to do the copyright-related  
17 functions I think makes a lot of sense.

18 And I think, then, being able to -- I  
19 mean, I think one of the grand challenges here  
20 is being able to facilitate the sort of  
21 commercial exploitation of works that are under

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1 copyright, right, and being able to have systems  
2 interact with the systems that the Copyright  
3 Office has to facilitate that I think is really  
4 an area to focus on.

5 So, it is not just maintaining that  
6 data for the beauty of it, right? It is to  
7 enable people to find out what is, in fact,  
8 copyrighted, and, then, pointing people to  
9 licensing services that are already available,  
10 many of whom are represented around this room,  
11 and again, having that standardized metadata,  
12 the standard numbers, is what is going to make  
13 that possible. And ultimately, that would, I  
14 think, facilitate that economic exploitation of  
15 those works.

16 Does that make sense?

17 MODERATOR BRAUNEIS: Yes, it does.  
18 It does. I mean, you know --

19 MS. REID: It is still not concrete  
20 enough?

21 (Laughter.)

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1                   MODERATOR BRAUNEIS: Well, I think  
2 I do want to provide a concrete example to sort  
3 of imagine this in more concrete terms. So, if  
4 one could imagine a system in which the Office  
5 allowed certain registered users to add a  
6 linkout from a registration record to a  
7 licensing database, we could say, "Well,  
8 Copyright Clearance Center, we've got these  
9 16.7 million registration records." We create  
10 a new field in each one of them. It says, you  
11 know, link in terms of URL out to licensing data  
12 and licensing capabilities. And then, certain  
13 registered users would be able to simply  
14 populate that field.

15                   And so, when you go into a  
16 registration record, in addition to the lines  
17 that we saw up on the screen earlier, there would  
18 be another line that would look like a  
19 hyperlink. And you could click on it through  
20 to the Copyright Clearance Center.

21                   So, is that the kind of capability

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1 that you're talking about?

2 MS. REID: Yes, I think that and,  
3 also, the other way around, right? For us or  
4 other agencies around this table here to be able  
5 to link into what you have to determine also.  
6 So, if someone comes to us and says, "I want to  
7 license this work," and we don't have  
8 rights-holder information about that work  
9 currently in our system, it would be great for  
10 us to be able to go to the Copyright Office,  
11 search your databases, and find out, oh, here  
12 is a recordation record where these works were  
13 sold to so-and-so, because it would start us off  
14 down a path by being able to identify that  
15 rights-holder and, ultimately, enable the  
16 transaction for the user there.

17 MODERATOR BRAUNEIS: Okay.

18 MS. REID: So, I think being able to  
19 do both sides of the equation there would, from  
20 my perspective, be ideal. I don't know what  
21 other people around the table think.

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1                   MR. BADAVAS: And there might be one  
2 other tertiary application that is more like  
3 Professor Ginsburg is referring to, which is,  
4 if you had an open API where you could  
5 communicate directly with the Copyright Office  
6 database, and you were collecting unique  
7 identifiers that are used in different  
8 industries and, then, adopted, the marketplace  
9 that she describes already exists in many  
10 instances.

11                   And all people would have to do  
12 is -- let's assume someone comes to the  
13 Copyright Office database to look, as opposed  
14 to the ASCAP or BMI, for a music performance  
15 license, right? They could have an app that  
16 immediately links in, and you could have an API  
17 that allowed them to tunnel-in very quickly and  
18 push to the licensing applications that they  
19 have, right?

20                   MS. REID: Yes.

21                   MR. BADAVAS: And it could be linked

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1 in a very concrete, technical way, as opposed  
2 to I'm looking at the record and I'm clicking  
3 on a URL that I'm linking back to.

4 MODERATOR BRAUNEIS: Right. Who's  
5 developing the app that's --

6 MR. BADAVAS: Not you.

7 (Laughter.)

8 MODERATOR BRAUNEIS: I know. I  
9 understand that. Yes. Well, no, and it  
10 enables more rapid development and all that good  
11 stuff.

12 But in your model it might be a  
13 third-party developer who is neither the PRO nor  
14 the Copyright Office that has just decided to  
15 develop this app that rids on top of that data?

16 MR. BADAVAS: Yes. And then, you  
17 could, if you want to be a little more academic  
18 about it, I would see a professor developing  
19 some apps or getting some grad students to  
20 figure out how to deal with that, to research  
21 what they have to do, and things like that.

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1                   So, the repurposing of the database  
2                   in ways that we don't know is valuable, but there  
3                   is also --

4                   MS. REID: Yes.

5                   MR. BADAVAS: -- undoubtedly people  
6                   who transact on copyrights who would eventually  
7                   not get to the data unless it is structured  
8                   properly.

9                   MODERATOR BRAUNEIS: Yes.

10                  MR. BADAVAS: This is about  
11                  communicating. But if it is structured  
12                  properly --

13                  MODERATOR BRAUNEIS: Yes.

14                  MR. BADAVAS: -- it could link the  
15                  services they provide already and are expert in  
16                  to the core ownership information that you have.

17                  MR. BENGLOFF: I think the point  
18                  Susan made earlier which would be included in  
19                  ours, that we are very concerned about, is that  
20                  the Copyright Office is very involved in both  
21                  the design of the system as well as the quality

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1 control over the database that the system is run  
2 for. Otherwise, we have a long history of  
3 constituents that A2IM, the organization I work  
4 for, represents where our members ask for  
5 certain things. Our requests go down the list  
6 behind the publishers or the larger creators.  
7 And since our concerns are not considered in  
8 either of those areas, it doesn't meet  
9 definitions that we need to have done. And only  
10 a Switzerland-type-based organization like the  
11 Copyright Office can ensure that some of the  
12 pockets are taken out of that. And clearly,  
13 things that we would like to work on could get  
14 sorted out as part of that process.

15 That's my new friend.

16 (Laughter.)

17 MODERATOR BRAUNEIS: Yes, Andy.  
18 Sorry.

19 MR. HACKETT: I'm sorry if I missed  
20 the discussion of this earlier, but your first  
21 question under linking recordation and

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1 registration records --

2 MODERATOR BRAUNEIS: Uh-hum.

3 MR. HACKETT: -- I just want to be  
4 on the record as saying it would be very helpful  
5 if just within the Copyright Office's own  
6 records, registrations and ownership documents  
7 were linked. And I think it would actually go  
8 to some of the concerns that have been mentioned  
9 here. It would make it a lot easier to do a chain  
10 of title or a due diligence search, that you  
11 wouldn't have to search by name or by title. If  
12 you had the registration number and could see  
13 all of the assignments related to it, that would  
14 be a real timesaver.

15 I mean, we see it with various  
16 indexes. Like for UCCs, for example, different  
17 jurisdictions don't link the original  
18 assignment with a release or something like  
19 that, and it makes searching a lot harder. To  
20 have them linked in the Copyright Office  
21 database would be a big timesaver and make

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1 searching a lot more accurate and easier.

2 MODERATOR BRAUNEIS: Okay. Thank  
3 you. Thanks.

4 Other comments?

5 (No response.)

6 Okay. Well, if not, I would like to  
7 turn to our last topic of conversation, which  
8 is additional incentives to record documents.  
9 As usual, I have a couple of introductory slides  
10 to introduce this conversation.

11 You know, one of the first questions  
12 is, are there large numbers of significant  
13 copyright transactions that are not being  
14 recorded? Because, of course, any discussion  
15 of additional incentives assumes that there  
16 are, and that there needs to be some combination  
17 of incentives to bring that number up.

18 And so, what evidence do we have  
19 about whether there are or aren't large numbers  
20 of significant transactions that are not being  
21 recorded? We have some anecdotal evidence.

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1 Richard said earlier that, not for economic  
2 reasons, but because the cost is too high, that  
3 some of your members do not record transactions  
4 or some of the transactions they don't get into.

5 Let's see here if I can get this back  
6 on.

7 Just to put a slide back that I had  
8 on earlier, you know, we see that the number of  
9 documents, financing documents, that have been  
10 recorded has gone up. Now that might just  
11 reflect an increase in underlying activity.  
12 Maybe copyrighted works are being used more as  
13 collateral for loans than they were in the  
14 1970s.

15 But it also may reflect the  
16 possibility that there were judicially-invoked  
17 or created incentives to record those  
18 transactions when the 2nd District of  
19 California said that's how you perfect your  
20 security interests, and if you don't record  
21 them, then if the debtor goes into bankruptcy,

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1 you're out of luck with regard to recovering  
2 against those works.

3 Recall that we had something of an  
4 additional incentive to record documents until  
5 1989. Until the Berne Convention  
6 Implementation Act, there was a requirement  
7 that not only did the work in question that was  
8 the subject of an infringement lawsuit need to  
9 be registered before the lawsuit would be  
10 brought, but the conveyance, if any, if a  
11 plaintiff were not the initial copyright owner,  
12 the conveyance to the plaintiff needed to be  
13 recorded before filing that infringement  
14 lawsuit.

15 Of course, it is hard to say  
16 definitively whether dropping that requirement  
17 had any effect or not on the number of  
18 recordations. It doesn't look, I mean, given  
19 the sort of gross data that we have about the  
20 number of assignments recorded, the big drop  
21 occurs 11 years later. And so, it is hard to

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1 see that that would have been the cause of this  
2 big drop.

3 Obviously, one could posit that the  
4 curve would have been a little higher starting  
5 here, given underlying economic conditions or  
6 other factors that are playing out in those  
7 numbers, if the requirement had been kept.

8 On the other hand, it might easily  
9 be the case that works that are the subject of  
10 infringement lawsuits are typically quite  
11 valuable works. If they are not valuable,  
12 nobody is going to file a lawsuit in federal  
13 court about them.

14 And that, with regard to those  
15 works, the recordkeeping for most of it is  
16 already pretty well established. And so, that  
17 particular incentive didn't do much to change  
18 underlying behavior because, in fact, it is the  
19 underlying behavior that drove it.

20 Here's just another slide that  
21 juxtaposes the figure about the number of

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1 reported documents, taking out financing  
2 documents, which you might say have a separate  
3 incentive because any transaction in which you  
4 are loaning a significant amount of money, and  
5 the bank is demanding that the security interest  
6 be perfected by recording, it is not highly  
7 sensitive to change in recordation fees.

8 So, taking those out of the  
9 equation, and also taking the Notice of Intent  
10 to Enforce out of the equation, with the very  
11 specialized and the 508 statements that I  
12 mentioned at the very beginning of the session,  
13 because those weren't catalogued after 1981  
14 anyway. So that juxtaposes the curve, taking  
15 out those other documents -- the remaining  
16 documents -- against the changes in recording  
17 fees, the basic recording fees, and the green  
18 lines represent the nominal fee that is actually  
19 charged. The scale on the lefthand side there  
20 is 100 times less than the scale on the righthand  
21 side. It is documents in the thousands and

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1 recording fees in the tens or twenties.

2 The red bars represent a fee in  
3 constant 1978 dollars using the Consumer Price  
4 Index. And you can see that even in constant  
5 1978 dollars you have doubled the recordation  
6 fee in the early 2000s. And by the mid-2000s,  
7 it had tripled.

8 And that at least raises the  
9 question of whether a loss of about one-third  
10 of the number of recorded documents is  
11 correlated with a doubling, and then tripling,  
12 of the recordation fee, and whether we got a good  
13 chunk of that back if we were to reduce the fee.  
14 We don't know.

15 You know, we haven't attempted to  
16 consider many, many other factors that might be  
17 influencing the level of recordation like  
18 macroeconomic factors. Is this also the burst  
19 of the dot-com bubble? Is something else going  
20 on?

21 But it is at least tantalizing to

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1 think that there is some cost impact being  
2 reflected here in the number of recorded  
3 documents, and that lowering the cost would be  
4 in itself a kind of incentive.

5 So, we are going to start talking  
6 about some more serious legal incentives. So,  
7 disabilities that may be imposed on those who  
8 didn't record or additional remedies afforded  
9 to those who do record.

10 Before we get to that, I would just  
11 like to ask whether you think there are other  
12 factors, other kinds of services the Office  
13 might provide or changes in the way that  
14 recording is done that would act as incentives.

15 One of the comments said, for  
16 example, if we could gain access to the imaged  
17 documents and sort of start using it as our own  
18 cloud drive for the documents we recorded, we  
19 would be more likely to record documents. And  
20 so, that is kind of one example of another  
21 service that we might provide that would act as

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1 an incentive to record.

2 Other services, adjustments? Yes?

3 MS. GINSBURG: What about  
4 standardization of the information that is  
5 recorded? That is, my own experience searching  
6 recordation records is not encouraging: that  
7 you don't always find out what works actually  
8 have been recorded, because sometimes there has  
9 been a transfer of a whole lot of works. The  
10 contract of transfer is recorded, redacted, and  
11 the works are on Schedule A, and Schedule A  
12 wasn't recorded.

13 So, what self-propelling incentive  
14 does recordation offer -- I mean, if recordation  
15 isn't actually going to provide the information  
16 about the works for which transfers were made,  
17 that is not a big incentive.

18 MODERATOR BRAUNEIS: Right.  
19 Certainly, yes, having the works identified in  
20 a recorded transfer would be a good thing. Of  
21 course, there is an existing incentive in theory

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1 to do that. The Copyright Act says that, you  
2 know, constructive notice will only be provided  
3 if the document in question can be searched -- I  
4 mean, if the works are identified by title or  
5 registration number. So, that is something of  
6 an incentive to do that. But there may be  
7 additional incentives needed.

8 Now in some cases the Office does  
9 record documents that mention no works at all  
10 because, for example, they are blanket divisors  
11 in a will. So, you record a will, and the  
12 divisor says, "I hereby bequeath all of my  
13 copyrighted works to my" whomever. And that  
14 will is then recorded. It doesn't contain any  
15 information about exactly what works that  
16 author or otherwise owner owned at the time of  
17 death. And so, there you have it. You know,  
18 that's that. That was what was there to be  
19 recorded. And I don't know whether we could or  
20 should require in that circumstance -- like we  
21 won't record that will until you find out

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1 exactly which works were owned by the decedent  
2 at the time of death.

3 So, there are two different  
4 circumstances there. One is where there was a  
5 transaction. It did involve particular works,  
6 but they weren't specified in the document.

7 MS. GINSBURG: Or weren't  
8 significantly, especially with the visible  
9 copyright. The work might be listed, but the  
10 rights might not be. The rights might not be  
11 identified with sufficient specificity.

12 So, it could be that for one work you  
13 have multiple copyright owners under the 1976  
14 Act, but that if the recordation doesn't tell  
15 you which of the exclusive rights held or  
16 narrowly-defined were transferred, then you  
17 don't have a decent title search.

18 MODERATOR BRAUNEIS: Yes, I think  
19 that's right. A document that is not specific  
20 in that regard, again, may not be held to give  
21 constructive notice of that, of whatever those

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1 exclusive rights were. And so, that may be  
2 something of an incentive to include  
3 information about what sorts of rights were  
4 granted.

5 But what other incentives can you  
6 imagine for including that particular kind of  
7 information? You know, the recordation staff  
8 now does examine for completeness of the  
9 document. And what that means sometimes  
10 touches on the problem you are talking about  
11 because, if the document mentions a schedule of  
12 titles is in Appendix A, and Appendix A isn't  
13 there, then the Recordation Specialist can send  
14 the document back and say, "This document isn't  
15 complete."

16 But there are other circumstances in  
17 which, certainly, if there was a particular type  
18 of exclusive right that was the subject of the  
19 transaction, but the document just said  
20 "assigned" and didn't more concretely specify  
21 what exclusive right was at issue, then the

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1 constructive notice would be of a complete and  
2 total assignment, not of some more specialized  
3 transaction.

4 I assume that would be to the  
5 detriment of the grantor who has just announced  
6 to the world that he or she relinquished all  
7 rights in the work, and that might be a reason  
8 for the grantor to want that document to more  
9 concretely specify what is being transferred.

10 But, of course, there are certainly  
11 cases in which it would be better to have more  
12 information than the recorded documents give us  
13 about the underlying transaction that is  
14 occurring.

15 Other comments about other kinds of  
16 incentives? Vic?

17 MR. PERLMAN: Unfortunately, yes, I  
18 have a question. I want to make sure that the  
19 vocabularies are all the same.

20 Where we talk about transactions  
21 here and documents that reflect the

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1 transactions, we are talking about transactions  
2 dealing with the notion of copyright or  
3 exclusive rights only, and nothing involving  
4 routine licenses or of non-exclusive rights.  
5 Is that correct?

6 MODERATOR BRAUNEIS: Well, it is  
7 certainly correct that there are different  
8 rules about priority in the Copyright Act  
9 concerning non-exclusive license, and the  
10 failure to record a non-exclusive license  
11 currently has a very different impact than the  
12 failure to record an exclusive license or an  
13 assignment; that's true.

14 It is also true as a factual matter  
15 that a very small percentage of recorded  
16 documents are non-exclusive licenses that most  
17 people do not bother to record non-exclusive  
18 licenses. And so, the Copyright Office  
19 Catalogue is almost exclusively a repository of  
20 documents that are about exclusive rights in one  
21 way or another, whether it is assignments in

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1 full, security interests, options, and the  
2 like.

3 MR. PERLMAN: Okay. So, an  
4 incentive is one side of a coin, an incentive  
5 for doing something. The other side is a  
6 penalty for not doing it.

7 At least in the photo space, nobody  
8 records the infinite number of routine daily  
9 non-exclusive license transactions that go on.  
10 So that, if there were any kind of incentive for  
11 recording those, there isn't an incentive high  
12 enough to give photographers the time and  
13 resources to record them. Therefore, they are  
14 being penalized for not following the  
15 recordation system. And we would obviously be  
16 strongly opposed to that.

17 MODERATOR BRAUNEIS: Yes. I  
18 understand that concern about non-exclusive  
19 licenses for sure.

20 Other questions or comments?

21 (No response.)

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1 All right. So now, I think sort  
2 of --

3 MS. GINSBURG: Are we going to talk  
4 about incentives?

5 MODERATOR BRAUNEIS: Yes.

6 MR. BENDER: Okay.

7 MODERATOR BRAUNEIS: Yes, we are.  
8 We are going to start talking about incentives  
9 in earnest now.

10 Because I guess now I want to talk  
11 about incentives that would create some new  
12 legal benefit or legal disability that turns on  
13 recordation, right? And I will lay out some of  
14 them, and then, a kind of a variety of proposals  
15 that have been discussed and mentioned. I won't  
16 talk about all of them. I will give you a kind  
17 of illustrative sample of proposals. And then,  
18 you can discuss those proposals.

19 So, you know, the first one is simply  
20 to reinstate in some version or expand on the  
21 pre-Berne Convention Implementation Act

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1 requirement of recording earlier transfers if  
2 possible. So, here we might say, well, if you  
3 are an applicant for registration, and you  
4 aren't the initial owner, currently, what we do  
5 is we require the applicant who is not the  
6 original or initial owner to provide what is  
7 called a transfer statement. And it comes from  
8 a section of the Copyright Act that details the  
9 contents of a registration application that  
10 says the owner shall provide a brief statement  
11 about how it came to own the work in question.

12 That brief statement turns out to be  
13 pretty formulaic, and it has been simplified  
14 into a dropdown box in the electronic  
15 registration system where you choose by written  
16 agreement I got this, by inheritance I got this,  
17 by intestate succession, or other.

18 That doesn't give us a lot of  
19 information because that is, in very broad  
20 categories, information about how the  
21 registrant who wasn't the initial owner came to

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1 own a copyright in the work. We could, however,  
2 require, at the time of registration, the  
3 recordation of earlier transfers.

4 Just to give you a little factual  
5 background on how many transfer statements  
6 appear in the Copyright Office Catalogue  
7 currently, 60.7 million registrations. Of  
8 that, 500,000 contain such transfer statements.  
9 That is about 3 percent, not a large percentage.  
10 I don't know whether that means that 97 percent  
11 of registrants are initial owners of copyright  
12 in the works they are registering or whether it  
13 means they didn't correctly fill out the  
14 transfer statement. But that is the figure we  
15 have on what is in the Catalogue.

16 And, of course, if it turns out that  
17 97 percent of registrants are the initial  
18 owners, then a requirement to record transfers  
19 would have some effect, but it wouldn't have a  
20 dramatic effect on the number of recordations.

21 Other kinds of possible proposals:



1 I believe I was definitely corrected in this  
2 particular formulation of the requirement under  
3 the pre-Berne Convention Implementation Act.  
4 The requirement was not that every transfer in  
5 the chain of title be recorded before filing an  
6 infringement lawsuit, but it was that the  
7 immediately-preceding transfer to the current  
8 copyright owner be recorded. We could  
9 reinstitute that requirement.

10 As I said, we don't see an  
11 immediately-dramatic influence on the number of  
12 recordations after that requirement was  
13 dropped, but it doesn't mean that it wouldn't  
14 have some effect on recordations.

15 MS. GINSBURG: Bob, I'm sorry to  
16 interrupt, but --

17 MODERATOR BRAUNEIS: Yes?

18 MS. GINSBURG: -- I think the  
19 current Form TX requires explanation of how the  
20 registrant acquired the rights, if the  
21 registrant is not the author --

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1                   MODERATOR BRAUNEIS: Yes.

2                   MS. GINSBURG: -- in addition, to  
3 give some examples, by written contract,  
4 transfer of all rights by author, assignment by  
5 will. The registration form then says do not  
6 attach transfer documents or other attachments  
7 or riders. And that seems to me to be  
8 counterproductive.

9                   I know that one overriding concern  
10 is that it is, to say the least surprising and  
11 disappointing that registration is not already  
12 seamless with recordation.

13                   MODERATOR BRAUNEIS: Uh-hum.

14                   MS. GINSBURG: An entry on the  
15 registration form that says "Do NOT attach  
16 evidence of the transfer of rights" defeats the  
17 rights-clearing purpose of registration and  
18 recordation. Even if only 3 percent of the  
19 registrants are not the initial authors or  
20 rights-owners, it is a bad idea to discourage  
21 people from attaching the information that

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1 documents how they got the rights.

2 MODERATOR BRAUNEIS: I certainly  
3 understand that perspective. I could imagine  
4 somebody at the Copyright Office who is in  
5 charge of budgeting for the recordation of those  
6 attached documents to say something like,  
7 "Hmmm, if those folks who are attaching those  
8 documents aren't paying a recordation fee, and,  
9 in fact, if the registration fee is quite  
10 substantially lower than the recordation fee,  
11 which it is, then to provide sort of for free  
12 recordation of all documents that are attached  
13 to registration applications, though it would  
14 greatly further the purpose of building a robust  
15 source of information of copyrighted works, we  
16 need to figure out maybe how to fund that."

17 So, you know, there's the kind of  
18 budget person whispering in my ear. Probably  
19 the reason why somebody was thinking to put  
20 that, you know, warning in there, that seemingly  
21 counterproductive warning, was that now we have

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1 possession of a document that the only proper  
2 way to treat it would be to examine and catalogue  
3 it and treat it as if somebody recording it. But  
4 they didn't really state their intent to want  
5 to record the document. It is just sitting  
6 there.

7 Now there are ways we could do that.  
8 We could say, "Please attach the document, and  
9 now you pay an additional fee to record it."  
10 That would now more than double the cost of  
11 registering a work in which you weren't the  
12 initial owner. But it is possible.

13 MR. BENDER: Well, I mean, a two-for  
14 sounds like a good idea. And you said you were  
15 looking for concrete proposals. If you are  
16 seeking a budget allocation, this seems like a  
17 concrete and easily-implementable proposal  
18 with an actual price tag that you can put in your  
19 budget.

20 MODERATOR BRAUNEIS: Yes. No, I  
21 appreciate that. It is an interesting idea.

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1 Yes?

2 MS. ROBINSON: But it would really  
3 affect textbook publishers much greater than  
4 any other area because almost all textbooks are  
5 owned by the publisher.

6 MODERATOR BRAUNEIS: So, are you  
7 saying you register copyright in one textbook,  
8 and now, all of a sudden, you have dozens of  
9 transfers of illustrators --

10 MS. ROBINSON: Yes.

11 MODERATOR BRAUNEIS: -- and  
12 contributors and text, and et cetera --

13 MS. ROBINSON: Right.

14 MODERATOR BRAUNEIS: -- to attach  
15 and record, and the like? Not one, but many,  
16 many, many?

17 MS. ROBINSON: Right. And almost  
18 all textbooks are owned by the publisher. They  
19 are copyrighted.

20 MODERATOR BRAUNEIS: Okay. So,  
21 yes.

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1 MS. ROBINSON: So, that would be,  
2 you know, quite a burden, I think, on  
3 publishers.

4 MS. GINSBURG: The fact of  
5 recordation or the price of recordation?

6 MS. ROBINSON: Right. The price  
7 and the -- yes.

8 MODERATOR BRAUNEIS: So both?

9 MS. ROBINSON: Both.

10 MODERATOR BRAUNEIS: Both the  
11 burden, you say, of collecting all of those  
12 transfers of all the components of a textbook  
13 and, then, the price of a fee for recording all  
14 the documents that are associated with those  
15 transfers?

16 MS. GINSBURG: But in the  
17 registration record you still say that you  
18 acquired the copyrights by transfer.

19 MS. ROBINSON: Yes, which we have.  
20 And you would still have to, if you ever had  
21 litigation, you would have to prove that you had

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1 the transfers.

2 MS. ROBINSON: Right, but you  
3 wouldn't have to do it to every book. It would  
4 only be those that are being infringed upon.

5 MODERATOR BRAUNEIS: So, a  
6 relatively-small subset --

7 MS. GINSBURG: Right.

8 MODERATOR BRAUNEIS: -- in the case  
9 of infringements?

10 Okay. So, just to continue with a  
11 kind of a menu of possibilities, currently, as  
12 you know, and as Richard mentioned, the  
13 Copyright Act conditions the receipt of  
14 statutory damages and attorneys' fees on the  
15 registration of the infringed work before  
16 commencement of infringement. We could extend  
17 that, those additional remedial benefits, to  
18 the extent it is only if the transfers to the  
19 current copyright owner were recorded before  
20 commencement of infringement. And so, we could  
21 further incentivize recordation in that manner.

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1           Another perspective on additional  
2 incentives would be to allow judges who are  
3 considering the forms of relief, and, in  
4 particular, injunctive relief, to consider  
5 so-called diligent recordation as a factor in  
6 granting injunctive relief. So, judges  
7 currently and traditionally will consider  
8 equitable factors in determining whether to  
9 grant injunctive relief, and this could be a  
10 particular specifically referred factor in that  
11 calculation.

12           And then, lastly, we could require  
13 recordation of transfers of copyright  
14 ownership, just as Section 204 of the Copyright  
15 Act now requires a writing signed by the  
16 grantor. And judicial gloss on 204 treats an  
17 oral grant of exclusive rights as a  
18 non-exclusive license. We could treat an  
19 unrecorded grant of exclusive rights as a  
20 non-exclusive license and, thereby, create an  
21 incentive to record all transfers of exclusive

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1 rights.

2           And this goes back to Vic's concern,  
3 too, right? If we broke it along these lines,  
4 a transfer of copyright ownership is defined as  
5 a transfer of exclusive rights, not as  
6 non-exclusive rights. The particular proposal  
7 wouldn't affect non-exclusive rights, but it  
8 would give a very significant additional  
9 incentive to record transfers of exclusive  
10 rights in copyrightable works.

11           So, there are, then, various  
12 variations on each of these proposals proposed.  
13 I don't claim to have exclusive catalogue or  
14 extensive catalogue of those, but that gives you  
15 an idea of some of the proposals that are out  
16 there.

17           So, the floor is open for discussion  
18 of such proposals.

19           MR. BADAVAS: I know an incentive of  
20 the RNT representative that would encourage  
21 them to break every recorded transfer that they

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1 ever had with an automatic willful damages in  
2 a lawsuit if the transfer is recorded.

3 MODERATOR BRAUNEIS: I'm sorry,  
4 automatic what?

5 MR. BADAVAS: Willful.

6 MODERATOR BRAUNEIS: Willful? Ah,  
7 I see.

8 (Laughter.)

9 So, right. Okay. So, you want to  
10 adjust in a different manner, increase remedies  
11 beyond now those that are now afforded rather  
12 than decrease?

13 MR. BADAVAS: That's what I've been  
14 saying, yes.

15 (Laughter.)

16 MODERATOR BRAUNEIS: All right.

17 Rachel?

18 MS. FERTIG: I think the documents  
19 you just suggested, instead of going back to  
20 require recordation in order to get a specific  
21 benefit, if you are going to make recordation

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1 possible online, instead of a paper process now,  
2 which is very cumbersome for the rights-holders  
3 and for the Copyright Office, if you are going  
4 to switch to a guided remitter responsibility  
5 system where the rights-holder is going to take  
6 on the work, and so, hopefully, get a reduction  
7 in cost, if you are going to have an easier system  
8 that costs less, and you are going to have  
9 procedures to verify the information to ensure  
10 that you are creating a valuable database, then  
11 you are going to have, hopefully, natural  
12 incentives for people to want to use the  
13 database and put their information in it.

14           And if you allow open APIs, so that  
15 third parties can create and use your valuable  
16 database for more useful products in the market,  
17 then I think you should start with creating the  
18 good nuclear core of a valuable database. And  
19 by lowering the challenges to get into that  
20 database, see if that is enough to encourage  
21 people to start registering. Before you start

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1 doing specific, you know, if you record this,  
2 we'll give you this specific benefit, let's just  
3 see how the huge change from going from paper  
4 to electronic is going to affect recordation in  
5 the first instance. And then, if people still  
6 aren't using the system, maybe then try other  
7 approaches.

8 MODERATOR BRAUNEIS: George?

9 MR. BORKOWSKI: Yes, I  
10 wholeheartedly agree with that approach. I  
11 think that is a true incentive, what we are  
12 talking about. It is not a penalty. It is not  
13 a situation where the unwary or others can be  
14 deprived of very valuable rights that are  
15 necessary to combat piracy, which is rampant on  
16 the internet in my industry and many other  
17 industries.

18 I'm on record already, both in  
19 writing on behalf of the RIAA and in statements  
20 I made at two roundtables, opposing all of  
21 those. And I am not going to repeat them here.

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1 But I just want to make sure that I am not waiving  
2 them by not saying --

3 (Laughter.)

4 MR. BENGLOFF: You have brought a  
5 lot of things up today that are very  
6 encouraging. I can say community-based  
7 discussions I had with about 20 of our labels,  
8 some with three employees, some with sixty, just  
9 by putting in this electronic remitter  
10 responsibility, it is going to get a much higher  
11 level of compliance.

12 There's a lot of good things that we  
13 have discussed today. It is actually a very  
14 impressive presentation. And, Jon knows, I  
15 normally don't say that.

16 (Laughter.)

17 But this is like the stick. I rarely  
18 agree with George's constituents, either.

19 (Laughter.)

20 But I totally agree with  
21 everything --

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1                   MODERATOR BRAUNEIS:       "Kumbaya"  
2       here.

3                   (Laughter.)

4                   MR. BENGLOFF: I essentially agree  
5       with everything you had to say. This will  
6       really hurt the process if some of these -- they  
7       are not really incentives; they're sticks, are  
8       hurting to the process.

9                   And there is so much good that is  
10       being proposed today that will bring those  
11       results here that are important.

12                  MS. GINSBURG:       Yes, as the  
13       proponent of a "stick," I in fact fully agree  
14       with Rachel that there is zero point in  
15       punishing people for not complying with a system  
16       that doesn't work.

17                  (Laughter.)

18                  So, I think while those "sticks" are  
19       interesting things to contemplate, they don't  
20       make sense without a working system. On the  
21       first two of the three sticks, the first two are

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1 clearly incompatible with the Berne  
2 Convention --

3 MODERATOR BRAUNEIS: Incompatible,  
4 not compatible?

5 MS. GINSBURG: Right. If you  
6 imposed this requirement, it would have to be  
7 two-tiered in order to exempt foreign copyright  
8 holders, and there are disadvantages to  
9 two-tiered in any event.

10 MODERATOR BRAUNEIS: You mean  
11 two-tiered with respect to U.S. and non-U.S. --

12 MS. GINSBURG: Non-U.S. works.

13 MODERATOR BRAUNEIS: -- works?  
14 Okay.

15 MS. GINSBURG: That's right. You  
16 could not deny injunctive relief to a foreign  
17 work that hadn't been recorded, and you could  
18 not condition -- well, I know that right now we  
19 do condition statutory damages and attorneys'  
20 fees on registration, including for foreign  
21 works. I'm not sure that's compatible as to

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1 foreign works.

2 But I think the more important point  
3 is, rather than refining the "sticks," let's  
4 focus on the carrots.

5 MODERATOR BRAUNEIS: Other  
6 comments? Suggestions?

7 MS. McKIERNAN: I think Rachel did  
8 a fabulous job with this.

9 (Laughter.)

10 MODERATOR BRAUNEIS: Okay. Tricia  
11 is on record as supporting Rachel?

12 MS. McKIERNAN: Yes.

13 MODERATOR BRAUNEIS: Okay. Well,  
14 we are about 19 minutes away from the official  
15 end time. But it is always great to find that  
16 you have 19 minutes extra in your day.

17 (Laughter.)

18 So, Susan?

19 Or maybe 18 minutes.

20 (Laughter.)

21 MS. DAVIS: I can't promise how long

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1 or short I am going to speak.

2 Just two other points. Ideally, in  
3 this realm, it would be great if there were an  
4 assumption that all rights reside with the  
5 copyright-holder unless a recorder registers  
6 otherwise.

7 MODERATOR BRAUNEIS: All rights  
8 reside with the --

9 MS. DAVIS: I mean, we are talking,  
10 you know, ideal.

11 And another thing would be an  
12 absence of a record should not automatically  
13 make a work deemed orphan.

14 MODERATOR BRAUNEIS: Okay. Well,  
15 let me just go back to the first presumption for  
16 a minute. That sounds to me like it might be  
17 very similar, in other words, to the -- I don't  
18 know about the presumption business because, of  
19 course, presumptions, usually, you talk about  
20 them as being rebuttable. And you say, in the  
21 absence of recordation, there would be a

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1 presumption that, let's say, an initial owner  
2 of copyright continues to own all rights in the  
3 absence of a recorded document saying  
4 otherwise.

5 If that presumption could be  
6 rebutted by presenting a signed, written  
7 document that was evidence of that transaction,  
8 then that would be less of an adjustment in law  
9 than we just put up on the screen.

10 It would be interesting just to  
11 introduce an incentive in terms of a rebuttable  
12 presumption rather than in terms of a rule that  
13 says that we simply won't recognize transfers  
14 that are not recorded. So, if that is what you  
15 mean to propose, that is an interesting sort of  
16 additional variation on incentives to record.

17 And then, the second was about  
18 orphan works.

19 MS. DAVIS: That the absence of a  
20 record should not automatically mean that a work  
21 is considered orphan.

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1                   MODERATOR BRAUNEIS: I see. Okay.  
2                   Yes. Well, currently, I would say that that is  
3                   the law, because we don't actually have any  
4                   particular category of orphan works.  
5                   Legislation has been introduced that would say  
6                   that, if you do a diligent search, that you are  
7                   in a different position with relation to using  
8                   the work than you would have been. If you do  
9                   a diligent search, if you do it, fine; you can't  
10                  find the owner. So, that sounds like a  
11                  statement of current law. But if it means to  
12                  be something else, then we would have to get more  
13                  specific.

14                  MR. BENGLOFF: That filing is not  
15                  due for another two weeks.

16                  (Laughter.)

17                  MODERATOR BRAUNEIS: Okay. Right.  
18                  So, that is a different NOI.

19                  (Laughter.)

20                  Well, again, on behalf of the  
21                  Copyright Office, we would like to thank you all

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1 for coming. This has been a really productive  
2 morning and afternoon session.

3 And I want to thank Columbia Law  
4 School for hosting this and providing, brought  
5 us this beautiful room.

6 And Jane Ginsburg, who is the  
7 representative for Columbia Law School right  
8 here, and, June Besek, thank you so much for  
9 coordinating this.

10 And the staff who are here  
11 videorecording and transcribing and making sure  
12 that this all works. We have got AV equipment,  
13 and so on.

14 Thank you all.

15 As I said earlier, I hope this is a  
16 continuing conversation. I hope this is a  
17 chance for me to be introduced to some of you  
18 and to continue to get to know you better and  
19 your concerns better.

20 And thanks very much. I think that  
21 concludes the --

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1 MS. DAVIS: What happens next?  
2 What is the next stage here?

3 MODERATOR BRAUNEIS: My mandate is  
4 to produce a report for the Register by July.  
5 And so, there will be something formally by  
6 then.

7 In the meantime, I hope to be  
8 communicating with many of you. And so, you  
9 know, when Heather mentions that there's  
10 standards or there's formats we use to  
11 facilitate the transmission of title  
12 information, I want to talk.

13 MS. REID: You're going to be  
14 knocking on my door.

15 (Laughter.)

16 MODERATOR BRAUNEIS: I probably  
17 won't physically be knocking at your door  
18 because I am not coming up to Massachusetts.  
19 But, yes, electronically I will be knocking on  
20 your door, and, hopefully, knocking on many of  
21 your doors.

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1  
2  
3  
4

So, all right, thanks very much.

(Whereupon, at 2:47 p.m., the  
meeting was adjourned.)