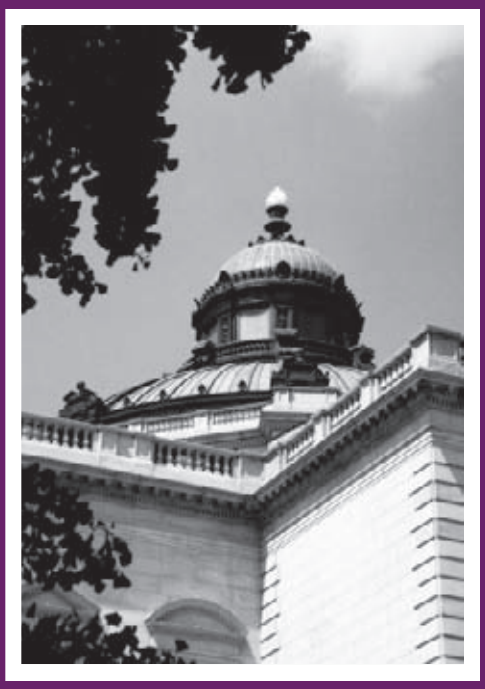
Annual Report of the Register of Copyrights

FISCAL YEAR ENDING SEPTEMBER 30, 2006



United States Copyright Office

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A message from the Register

Register of Copyrights
Marybeth Peters

I am pleased to present the Annual Report of the Copyright Office for Fiscal Year 2006. This report highlights the Office's activities and accomplishments related to its administration of the copyright law, services to the public, regulatory activity, domestic and international policy work, and the Office's multi-year reengineering effort.

The overarching goal of the Copyright Office Reengineering Program is to improve the quality and timeliness of the Office's services to the public. Initiated in 2000, this ambitious effort encompasses a complete reengineering of our business processes; the design, development, and implementation of an enterprise-wide information technology system that supports electronic registrations; and a substantial staff reorganization that aligns work units and divisions with the newly streamlined and automated processes and systems. Fiscal Year 2006 marked the final full year prior to completion of reengineering, and a number of important milestones were reached on the information technology, organizational, and facilities fronts. Each positive development in the reengineering program was the result of a tremendous amount of hard work and collaboration on the part of Copyright Office staff.

As usual, the Office engaged in numerous policy and legal activities. Of particular note, the Office submitted a Report on Orphan Works to the Senate Judiciary Committee on January 31, 2006. The report addressed the issue of "orphan works"—copyrighted works whose owners may be impossible to identify and locate—and followed an exhaustive study conducted by Copyright Office staff that elicited an extraordinary amount of interest and response from various groups and members of the public. Among other things, the report recommended changes to the copyright law designed to clarify what constitutes a sufficiently diligent search for ownership of a copyrighted work. I expect issues related to orphan works to remain of high interest to both owners and users of copyrighted works next year.

Copyright Office staff were very active on other fronts as well. On March 1, 2006, the Office submitted a fee study to Congress that provided an analysis of the costs it incurs in providing services, as well as other pertinent information, including a new schedule of fees. On August 1, 2006, the Office received its first referral of a novel question of law from the Copyright Royalty Judges; the question was whether ringtones made available for use on a cellular telephone or similar device are subject to the statutory license for the making and distribution of phonorecords of musical compositions. In accordance with requirements of the Digital Millennium Copyright Act, the Office also began developing recommendations for the Librarian of Congress on the classes of works that will be subject to exemptions for the next three years from the copyright law's prohibition against circumvention of technology that effectively controls access to a copyrighted work.

I acknowledge and appreciate the dedication and commitment to public service of Copyright Office staff, without whose continual efforts the accomplishments noted in this report would not have been possible, and I look forward in excitement and anticipation to the transition into a wholly new way of doing business at the Copyright Office in the coming year.

Marybeth Peters

Marybeth Peters
Register of Copyrights

Copyright in the public eye

The Librarian of Congress views treasures that Jefferson Patterson Junior Fellows Summer Interns discovered among materials deposited for copyright registration.

Orphan Works

Orphan works are copyright-protected works whose owner cannot be identified or located. When the user is unable to find the owner of an orphan work, even after a reasonably diligent effort to identify or locate the owner, the user remains uncertain about whether or under what conditions the owner would permit use. This situation prevents a possible productive and beneficial use of the work merely because the user cannot locate the owner.

In January 2006, the Office submitted to Congress its report and recommendations on orphan works. The Office concluded that the orphan works problem is real. It also concluded that the copyright law does not address many orphan works situations, and therefore legislation is necessary to provide a meaningful solution to the problem. The report recommended that Congress amend the copyright law's remedies section to cover the threshold requirements of a reasonably diligent search for the copyright owner and the limitation of remedies that would be available if the user proves that he conducted a reasonably diligent search but could not find the copyright owner. In its report, the Office recommended specific legislative language.

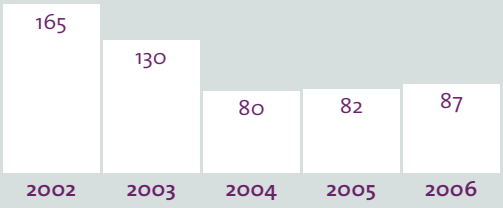
The Office recognizes that its recommended legislative solution does not address how to make ownership information more current and accessible, and it continues to consider ways in which the copyright system can be improved to provide more accurate and up-to-date ownership information in order to minimize the number of works where users cannot locate the owner.

The Copyright Office administers the provisions of the copyright law (title 17 of the *United States Code*) for the benefit of owners and users of copyrighted works, mask works, and vessel hull designs. Copyright Office regulations resulting from copyright law administration are in chapter 37 of the *Code of Federal Regulations*.

Timeliness of Services

An effective national copyright system requires timely service. The Copyright Office has maintained its improved delivery times for products and services. At the end of fiscal 2006, the average processing times were 87 days to process a copyright claim, slightly better than the target of 90 days; and 33 days to record a document, significantly better than the target of 50 days. The Office is providing certificates and online public records with dramatically better speed than at the beginning of the decade, better serving both the copyright owners and those who want to make lawful use of copyrighted works.

Year-End Average Registration Processing Time
(in days; 2002–2003 estimated)



Copyright law administration

Copyright specialists test routine selection processes traditionally performed by selection officers in Library Services.

Registration

Copyrighted Works

During fiscal 2006, the Copyright Office received 594,125 claims to copyright covering more than a million works and registered 520,906 claims. The Office examines copyright claims to determine whether the deposited work contains copyrightable content and whether there has been compliance with U.S. copyright law and Office regulations. The Office continued to complete registrations in less than half the time that it took in 2001.

Preregistration

The Family Entertainment and Copyright Act (FECA) of 2005, Pub. L. No. 109-9, amended the U.S. copyright law by the addition of a new section establishing preregistration. Preregistration, as distinct from registration, is available only for types of unpublished works that are subject to copyright protection and that the Register of Copyrights finds to have a history of infringement prior to commercial distribution. Unlike registration, preregistration requires only an application with a brief description of the work, some other basic information, and a fee. Preregistration is not a substitute for registration; after publication, a follow-up registration is required.

On November 15, 2005, the Office implemented preregistration—a new service available only online and the first use of eCO (electronic Copyright Office, the Office's new information technology system) to process regular work. There were 309 preregistrations during fiscal 2006. Much of the work done on the preregistration system will apply directly to the development of the eCO system for an electronic registration pilot in fiscal 2007. The Office also successfully implemented payment of preregistration fees via credit card using the U.S. Treasury's *Pay.gov* portal and will extend online payment to all fee services in late fiscal 2007.

Creation of the Registration Record

The copyright law requires the Register of Copyrights to create, maintain, and index records of all deposits, registrations, recordations, and other copyright-related matters and to make these records available to the public.

Records of copyright registrations provide important information about ownership of copyrighted works, helping users to make lawful use of such works and providing information for researchers about the history of American creativity. The Cataloging Division created records for 493,903 registrations in fiscal 2006, including 20,434 registrations submitted through the current electronic system, CORDS.

Reconsiderations of Denial of Registration

Under title 17, the Register of Copyrights may determine that the material deposited for copyright registration does not constitute copyrightable subject matter or that the claim is invalid for other reasons. In such cases, the Register refuses registration and notifies the applicant in writing of the reason(s) for such refusal. Applicants whose claims for registration are rejected can seek reconsideration of such decisions in a two-stage process. The claimant first requests reconsideration by the Examining Division. If the Division upholds the refusal, the claimant may make a second request to the Copyright Office Review Board. The Register of Copyrights, the General Counsel, and a third member designated by the Register, constitute the Review Board.

During fiscal 2006, the Examining Division handled 239 first requests for reconsideration covering 465 claims. Of the initial refusals to register, 117 claims (25 percent) were reversed upon first request.

The Copyright Office Review Board met 11 times during the year to review and make final administrative determinations on the Examining Division's refusals to register works. The Board reviewed requests for second reconsideration involving 126 works. The Board issued 17 decisional letters involving 107 works. The Board agreed to register 7 of the contested works, and upheld the Examining Division's refusal to register the other 100 works.

Copies of Deposits and Certifications

The Copyright Office makes certified copies of its records, including registration certificates and deposited works, usually when the owner is engaged in infringement-related litigation. To obtain a certified copy, the requester must meet one of three conditions: (1) the Office receives a written authorization from the copyright claimant of record or his or her designated agent, or from the owner of any of the

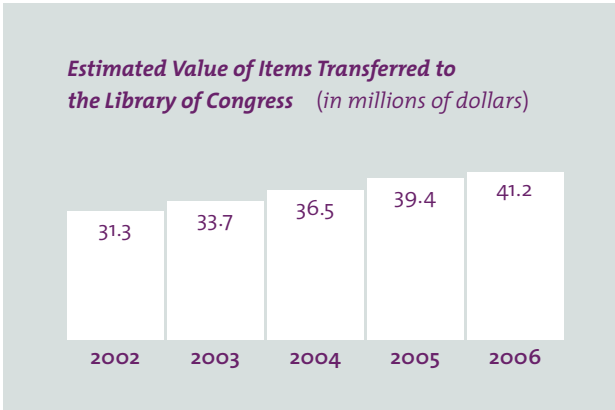
exclusive rights in the copyright, as long as this ownership can be demonstrated by written documentation of the transfer of ownership; (2) an attorney or authorized representative completes and submits the Copyright Office Litigation Statement Form in connection with litigation involving the copyrighted work and the Office finds a basis for providing a copy; or (3) the Office receives a court-issued order for a reproduction of a deposited article, facsimile, or identifying portion of a work that is the subject of litigation in its jurisdiction.

The Information and Reference Division's Certifications and Documents Section produced 4,539 copies of certificates of registration. During the fiscal year, the section made 2,321 copies of copyright deposits and certified 1,006 deposits and records.

Contributions to Library of Congress Collections

The Library of Congress may select for its collections copies of works submitted for registration or to fulfill the mandatory deposit provision of the law. Copyright deposits form the core of the Library's "Americana" collections and serve as the primary record of American creativity.

During the fiscal year, the Office transferred 1,120,791 copies of registered and nonregistered works valued at more than $41 million to the Library of Congress for its collections.



Mask Works

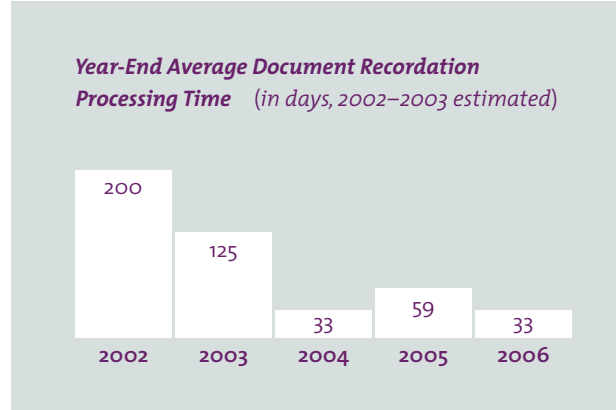
The Semiconductor Chip Protection Act of 1984 created protection for mask works, a series of related images of the predetermined three-dimensional pattern on the layers of a semiconductor chip product. In fiscal 2006, the Office received applications for 322 mask works and registered 349, some of which were carried over from the previous fiscal year.

Vessel Hull Designs

Chapter 13 of title 17 *USC* grants the owner of an original vessel hull design certain exclusive rights, provided that application for registration of the design with the Copyright Office is made within two years of the design being made public. The Office received 62 applications for registration of vessel hull designs this fiscal year and registered 61.

Recordation

The Copyright Office creates records of documents relating to a copyrighted work, a mask work, or a vessel hull design that have been recorded in the Office. Documents may involve transfers of rights from one copyright owner to another, security interests, contracts between authors and publishers, and notices of termination of grants of rights. These documents frequently reflect popular and economically valuable intellectual property.



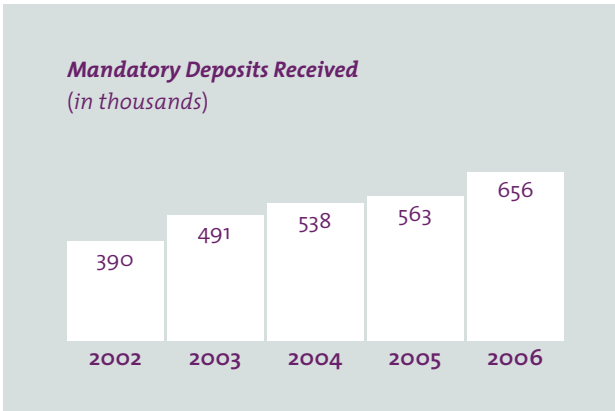
During fiscal 2006, the Office recorded 13,016 documents covering more than 350,000 titles of works. The Office reduced the year-end average processing time to 33 days, dramatically faster than at the beginning of the decade.

Online Service Provider Designations of Agents

The Office also processed online service providers' designations of agents. Congress amended the copyright law in 1998 to limit potential liability of service providers for monetary and injunctive relief for copyright infringement. To take advantage of this limitation on liability, the service provider must file a designation of agent statement identifying the agent to whom one must send notification of claims of infringement. The service provider must also post such information on its publicly accessible website. The Office then makes these designations of agents available to the public through a directory of agents on its website, one of the website's most-visited areas with three million hits in fiscal 2006. During the year, the Office posted an additional 632 designations of agents to the website, for a total of 6,811.

Mandatory Deposit

The mandatory deposit provision in §407 of the copyright law requires, with certain exceptions, that the owner of copyright or of the exclusive right of publication deposit two copies of every copyrightable work published in the United States within three months of publication. These copies are deposited with the Copyright Office for the use of the Library of Congress in its collections or for exchange or transfer to other libraries.



The Copyright Acquisitions Division (CAD) encourages copyright owners to deposit or register works regularly and voluntarily immediately after publication; however, the copyright law authorizes the Register to issue demands for the required copies any time after publication.

CAD made demands for 6,090 titles based on recommendations by CAD librarians and Library of Congress recommending officers, and from Congressional requests. CAD received 5,887 titles from publishers in response to these demands. CAD also completed eighteen reviews of publisher compliance and twelve followup reviews. The Office referred one noncompliant publisher to the Department of Justice for legal action.

More than half of the copies of works the Office transferred to the Library of Congress for its use arrived under the mandatory deposit provisions of the copyright law. The value of these mandatory deposits was $17.6 million or 43 percent of the estimated value of all materials transferred to the Library (see above under "Contributions to the Library of Congress Collections").

Statutory Licenses

These licenses deal with secondary transmissions of radio and television programs by cable television systems; the making of ephemeral recordings; the noninteractive digital transmission of performances of sound recordings; the making and distributing of phonorecords of nondramatic musical works; the use of published nondramatic musical, pictorial, graphic, and sculptural works and nondramatic literary works in connection with noncommercial broadcasting; secondary transmissions of superstations and network stations by satellite carriers for private home viewing; secondary transmissions by satellite carriers for local retransmissions; and the importation, manufacture, and distribution of digital audio recording devices and media.

Statutory Licenses and Obligations

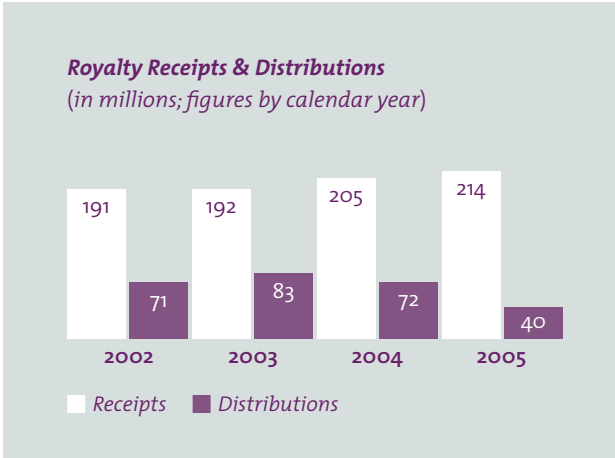
The Copyright Office oversees the statutory licenses and obligations in the copyright law. Congress created statutory copyright licenses to remove the burden of negotiating individual licenses from certain users and owners of copyrighted works.

Some of these statutory licenses require the users of the works to deposit royalty funds with the Copyright Office. Statutory licenses were included in the Copyright Act of 1976, Pub. L. No. 94-553, 90 Stat. 2541 (title 17 *USC*) and later laws amending it. The Licensing Division dates from 1978 when the Copyright Act of 1976 became effective.

The Licensing Division is responsible for collecting royalty fees from cable operators, satellite carriers, and importers and manufacturers of digital audio recording devices and media (DART); investing the royalty fees, minus operating costs, in interest-bearing securities with the U.S. Treasury for later distribution to copyright

owners; recording voluntary licensing agreements between copyright owners and specified users of their works; and examining licensing documents submitted for these statutory licenses to determine whether they meet the requirements of the law and the Office's regulations.

Royalty rates, terms and conditions of statutory licenses, and distribution determinations have been made by three different bodies that Congress created at different times: first, by the Copyright Royalty Tribunal, 1978–1993, an independent agency outside the Library of Congress; second, by Copyright Arbitration Royalty Panels (CARPs), 1993–2005, under the aegis of the Librarian of Congress and administered through the Copyright Office; and third, by the Copyright Royalty Board, beginning in 2005, an independent organization also under the aegis of the Librarian of Congress.



The Licensing Division collected nearly $227 million in royalty payments during the fiscal year. The division worked on developing options for electronic filing for cable statements of account (SA) to be tested in a pilot e-filing program, scheduled for fiscal 2007. The division also pursued several internal measures to create processing efficiencies in workflow and quicker public availability of completed SA documents, including completion of a regulation requiring that all royalties be deposited via electronic funds transfer.

Royalty Fee Distributions

The Copyright Office distributes royalties collected under §111, §119, and chapter 10 of the copyright law, as determined by agreements among claimants or by proceedings of the Copyright Royalty Board.

In fiscal 2006, the Office distributed royalties totaling more than $191 million in the following distributions:

- On October 6, 2005: a distribution totaling $110,213,284.82, comprising 50% of the 2001, 2002, and 2003 satellite royalties
- On October 27, 2005: a distribution totaling $649,113.32, comprising the Digital Audio Recording Technology (DART) 2004 Featured Artist Subfund
- On January 26, 2006: a final distribution of $11,616,515.35, to the Motion Picture Association of America, for the 1996, 1997, and 1998 satellite royalties
- On July 13, 2006: a distribution of $64,182.63, comprising the DART 2005 Nonfeatured Musicians Subfund and Nonfeatured Vocalists Subfund
- On September 7, 2006: a distribution of $68,500,057.81, comprising 50% of the 2003 cable royalties

Financial statements for royalty fees available for distribution in the cable and satellite statutory licenses and in the digital audio recording technology statutory obligation are compiled and audited on a calendar year basis as required by law. The total royalty receipts and disbursements shown in calendar year statements are therefore not the same as the fiscal year total. Calendar year 2005 financial statements are included in the appendices.

Compulsory License Administration

Up to 2005, when the Copyright Royalty Distribution and Reform Act of 2004 took effect, CARPs determined distribution of royalties collected by the Licensing Division for the cable and satellite licenses and for DART when copyright owners could not resolve controversies among themselves. CARPs also set and adjusted royalty rates and set terms and conditions of payment. A CARP panel consisted of three arbitrators.

During fiscal 2006, the Copyright Office reviewed the open CARP proceedings and prepared to make further distributions of royalty fees before terminating the proceedings as a result of the implementation of the Copyright Royalty and Distribution Reform Act of 2004 which replaced the CARP system with three Copyright Royalty Judges and their staff. However, the decision to make further distributions awaits the resolution of a number of pending motions filed by the parties to these proceedings.

Rate Adjustments; Distribution Proceedings; Claims Filed for Royalty Fees

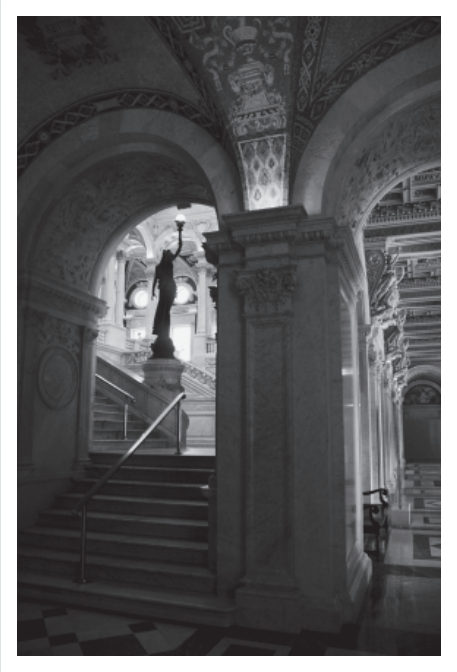
Please refer to decisions and annual reports of the Copyright Royalty Board, which now has jurisdiction over rate adjustments and terms of the licenses, distribution proceedings, and claims filed for royalty fees.

Notices of Intent to Audit

On December 21, 2004, SoundExchange, a collecting rights entity designated by the Librarian to collect and distribute royalty fee payments made under §114(d)(2) of the copyright law, filed with the Copyright Office eleven notices of intent to audit these eligible nonsubscription and new subscription services that digitally transmit sound recordings under statutory licenses for the years 2002, 2003, and 2004: Bonneville International Corporation; Susquehanna Radio Corp.; RealNetworks, Inc.; Clear Channel Communications, Inc.; America Online, Inc.; Beethoven Radio; MTV Networks, Inc.; Microsoft Corporation; Live365, Inc.; Cox Radio Interactive; and Yahoo! Inc. Pursuant to Copyright Office regulations 37 *CFR* §262.6(c), the Office is required to publish in the *Federal Register* within thirty days of receipt of a notice of intent to audit a public notice announcing the designated agent's intent to conduct the audit. In accordance with this regulation, the Office published the required notice on January 5, 2006.

[*Regulations related to statutory licenses are listed in the Regulatory Activities portion of this report.*]

Regulatory activities, policy assistance, and litigation



Sculpture of a torch-bearing female figure graces one of the grand staircases in the Great Hall of the Thomas Jefferson Building.

Copyright Office Regulations

The Register of Copyrights is authorized under §702 of the copyright law to establish regulations for the administration of the copyright law. In addition to regulatory activities discussed elsewhere in this report, regulations issued during fiscal 2006 included the following:

Preregistration of Certain Unpublished Copyright Claims

On July 22, 2005, pursuant to the Artists' Rights and Theft Prevention Act of 2005 (the ART Act), Title I of the Family Entertainment and Copyright Act of 2005, the Copyright Office proposed regulations for the preregistration of certain classes of unpublished works that are being prepared for commercial distribution. As part of this rulemaking process, the Register evaluated and proposed the classes of works to be eligible for preregistration based on prior history of pre-release infringement and other statutory requirements. The initial proposed rule and a Supplemental Notice of Proposed Rulemaking elicited ten comments regarding the proposed classes and preregistration procedures, and 230 comments regarding the utility of employing the particular web browser that had been tested for filing preregistration forms with the Copyright Office, an issue that had been raised in the supplemental notice. On October 27, 2005, the Office issued an interim regulation in which it identified motion pictures, sound recordings, musical compositions, literary works being prepared for publication in book form, computer programs, and advertising or marketing photographs as the six classes of works eligible for preregistration, and announced that preregistration would be available as of November 15, 2005.

Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

Pursuant to 17 *USC* §1201(a)(1), the Office initiated a triennial rulemaking proceeding to determine what, if any, exceptions to title 17's prohibition on circumvention of access controls are currently warranted. The Office received seventy-four written comments and thirty-five reply comments pursuant to its Notice of Inquiry, conducted four days of public hearings in Washington, DC, and Palo Alto, California, pursuant to its Notice of Public Hearings, and consulted with the National Telecommunications and Information Administration. The Office will make its recommendation to the Librarian of Congress early in fiscal 2007.

Fees

The Copyright Office adjusted its fees to account for an increase in its costs. Under §708 of the copyright law, the Office completed a cost study, and for services specifically enumerated in §708(a)(1)–(9) (statutory fees), the Office submitted the cost study and proposed fee schedule to Congress on March 1, 2006. The copyright law provides that the statutory fees may take effect 120 days after submission, unless Congress enacts a law disapproving the new fees. In addition, on March 28, 2006, the Copyright Office published a notice of proposed rulemaking which informed the public about the proposed new statutory fees, and about the new discretionary fees, which are fees not subject to congressional review. The most significant change was the increase of the basic registration fee to $45. The notice of proposed rulemaking indicated that new fees would be implemented on July 1, 2006, assuming no legislative action was undertaken before that date. On June 1, 2006, the Office published a final rule in the *Federal Register* adopting the new fees with two exceptions. A proposed fee increase for preregistration was eliminated, and a proposed increase for group registration of photographs was reduced to the fee for basic registration. The new fees went into effect on July 1, 2006.

Notices of Termination

The Copyright Office issued a technical amendment clarifying the determination of the date on which a notice of termination is deemed served. Copyright Office regulations (37 *CFR* §201.10) establish procedures governing the form, content and manner of service of notices of termination of transfers and licenses under sections 203 and 304 of the copyright law. Regarding service of a notice of termination, the regulation authorizes the use of first class mail. In order to record a notice of termination, the regulation further requires that the copy submitted for recordation set forth the date the notice was served. While the proper reading of the regulation was that the date of service with respect to first-class mail is the day the notice of termination was deposited with the United States Postal Service, there was confusion on this matter which led to ambiguous statements regarding date of service. The technical amendment added a clarification that the proper date of service was the day the notice was deposited with the U.S. Postal Service.

Electronic Payment of Royalties

The copyright law assigns the Copyright Office various responsibilities associated with the administration of the statutory licenses. These responsibilities include collecting copyright royalty fees for ultimate distribution to copyright owners from cable operators, satellite carriers, and manufacturers and distributors of digital audio recording technology and media. Under a proposed amendment of its regulations, the Copyright Office proposed eliminating the option of submitting payments by certified or cashier's check, and instead requiring that all payments be made by electronic funds transfer. The *Federal Register* notice stated that over 95% of payments were being made by electronic funds transfer, and that remitters secured several advantages through this process. The Office received no comments on the proposed change, and published a final rule implementing the amended regulation.

Retransmission of Digital Broadcast Signals Pursuant to §111

The Office published a Notice of Inquiry to address matters regarding the simultaneous retransmission of digital and analog broadcast signals as well as the secondary retransmission of multiple streams of digital broadcast content and to

determine whether it is necessary to amend its regulations and the cable Statement of Account forms. The Office is seeking comment on several issues associated with the secondary transmission of digital television broadcast signals by cable operators under §111 of the copyright law and the appropriate methodology for reporting carriage of these types of signals. Among the issues that need to be addressed are the identification of a digital signal's local television market and the correct calculation of royalty fees for the simultaneous carriage of a station broadcast signal in both analog and digital formats. The Notice also seeks comment on cable operators' marketing and sales practices and equipment issues associated with the retransmission of digital broadcast signals to determine whether fees for these ancillary items should be included in a cable system's calculation of its gross receipts.

Adjustment of Cable Statutory License Royalty Rates

Cable operators may retransmit to their subscribers over-the-air broadcast signals under the statutory license in §111 of the copyright law. Royalty fees for this license may be readjusted every five years. Rate adjustment proceedings are initiated upon receipt of a petition from a party with a significant interest in the royalty rates. In 2005, a window year for adjusting the rates for the cable license, the Office received two such petitions and prepared to initiate a Copyright Arbitration Royalty Panel proceeding to adjust the rates. The parties to the proceeding, however, reached a settlement and submitted the rate changes to the Librarian for publication in the *Federal Register*. Having received no opposition to the proposed rate adjustments, the rates paid by cable operators for the retransmission of over-the-air broadcast signals were increased, as were the gross receipts limitations determining the calculation of the royalty fees. No adjustment was made to the 3.75 percent rate for carriage of non-permitted signals.

Cable Compulsory License Reporting Practices

The Copyright Office has sought comment on several possible amendments to the rules governing the reporting practices of cable operators under §111 of the copyright law. The Office initiated a Notice of Inquiry to address reporting practice matters raised by the program suppliers in their 2005 Petition for Rulemaking. The Notice sought comment on how cable operators report certain information relating to gross

receipts, service tiers, subscribers, headend locations and cable communities on the statements of account they file with the Office. The Notice also sought comment on possible revisions to the statement of account forms that would be necessary if the Office adopted new cable reporting practice requirements.

Correction of Certain Errors in Certificates of Registration of Vessel Hull Designs

The Copyright Office issued an interim rule establishing procedures for correcting certain errors in certificates of registration for vessel hull designs. Pursuant to the new rule, if the Office discovers that it made a clerical or typographical error on a certificate of registration, it will issue a corrected certificate. If a similar error in a certificate is discovered by an owner of a registered design, the owner may submit an application for correction of the certificate of registration.

[*Docket numbers and dates of Federal Register documents issued during fiscal 2006 are listed in an appendix of this Report.*]

Reports and Legislation

The Copyright Office provides advice and testimony to Congress on copyright matters and proposed copyright legislation, and undertakes studies and provides authoritative reports on current issues affecting copyright.

Hearings

The Register of Copyrights or her designee presented testimony in seven congressional hearings during fiscal 2006, two of which dealt with the Copyright Office budget. The subjects of the other five hearings were:

Before the Subcommittee on Courts, the Internet, and Intellectual Property of the House Committee on the Judiciary —

- Orphan works on March 8, 2006

- Remedies for small copyright claims on March 29, 2006
- Music licensing reform on May 16, 2006
- Fashion design protection on July 27, 2006

Before the Subcommittee on Intellectual Property of the Senate Committee on the Judiciary —

- Orphan works on April 6, 2006

Orphan Works

Orphan works are copyright-protected works whose owner cannot be identified or located. The Associate Register for Policy and International Affairs testified in two hearings regarding the Copyright Office's *Report on Orphan Works*, published in January 2006. The Office prepared the report at the request of Senators Orrin Hatch, then Chairman, and Patrick Leahy, ranking member of the Senate Committee on the Judiciary. In 2005, the Office had received more than 850 written comments from the public and held two roundtable discussions and dozens of informal meetings with interested parties. The Office then submitted its report and recommendations on orphan works to Congress in January 2006.

The Report indicated that when the user is unable to find the owner of an orphan work, even after a reasonably diligent effort to identify or locate the owner, the user faces uncertainty about whether or under what conditions the owner would permit use. The user cannot reduce the risk of copyright liability because there is always a possibility that a copyright owner could bring an infringement action after that use has begun.

Such a situation forestalls a possibly productive and beneficial use of the work merely because the user cannot locate the owner. This outcome is not in the public interest, particularly where the copyright owner no longer exists or otherwise does not care to restrain the use of his work.

The numerous comments on the orphan works problem proposed solutions that fell into four categories: solutions that already exist under current law and practice; non-legislative solutions (e.g., improved databases for locating owners of works); legislative solutions that involve a limitation on remedies when a user uses an orphan work; and other legislative solutions (e.g., deeming all orphaned works to be in the public domain). Most of the comments focused on various aspects of the third category, legislative proposals involving a limitation on remedies.

The Office concluded that the orphan works problem is real, but is elusive to quantify and describe comprehensively; many orphan works situations are not addressed by existing copyright law; and legislation is necessary to provide a meaningful solution to the problem. The Report recommended that the orphan works issue be addressed by amending the copyright law's remedies section to cover two main components: the threshold requirements of a reasonably diligent search for the copyright owner and attribution to the author and copyright owner; and the limitation of remedies that would be available if the user proves that he conducted a reasonably diligent search but could not find the copyright owner. In the report, the Office supplied suggested legislative language. A slightly modified version of the Office's proposal was introduced as the Orphan Works Act of 2006 (H.R. 5439) with additional modifications. The Orphan Works Act was subsequently incorporated into the proposed Copyright Modernization Act of 2006 (H.R. 6052) (see "Other Legislation and Studies" below).

Remedies for Small Copyright Claims

The Office contributed to a March 29, 2006, hearing on "remedies for small copyright claims" by preparing written testimony for the House Subcommittee on Courts, the Internet, and Intellectual Property. The testimony outlined many of the challenges to enforcing small-dollar amount copyright infringement claims in federal court, such as expensive attorney's fees, lengthy and costly discovery processes, and the uncertainty of prevailing and recovering these costs. These burdens are greatest on those authors who have modest finances to support the litigation. The Office offered to conduct a study of this matter. Congress placed the authorization for the proposed study in the pending legislation related to orphan works (see the Copyright Modernization Act of 2006 under "Other Legislation and Studies" below).

Music Licensing Reform

Discussions and negotiations continued during 2006 about how to modernize §115 of the copyright law to provide an efficient and reliable mechanism whereby legitimate music services would be able to clear all of the rights necessary to make large numbers of musical works quickly available by electronic means while ensuring that the copyright holders are fairly compensated. The discussions this year were primarily among interested parties and congressional staff, culminating in the drafting of the

proposed Section 115 Reform Act of 2006 (SIRA), H.R. 5553. The Copyright Office periodically participated in these continuing negotiations when requested, and provided its comments on SIRA to the House Subcommittee on Courts, the Internet, and Intellectual Property as part of an oversight hearing on May 16, 2006. The Office's comments focused on supporting SIRA's blanket licensing approach, the designation of agents to administer the licensing process, and the rate setting process. However, the Office also expressed serious reservations about several aspects of the proposed legislation. In late summer, the Subcommittee postponed further action on SIRA, but subsequently incorporated it into the Copyright Modernization Act of 2006 (H.R. 6052), which Congress did not pass. It is likely that discussions regarding SIRA, or some variation thereof, will continue into the next Congress.

Fashion Design Protection

The Office submitted written testimony for a July 27, 2006, hearing before the House Subcommittee on Courts, the Internet, and Intellectual Property regarding protection for fashion designs as proposed in H.R. 5055. Congress has long considered offering sui generis protection for designs of useful articles, and came close to enacting such legislation as part of the Copyright Act of 1976. In 1998, as part of the Digital Millennium Copyright Act, Congress finally enacted such legislation, but limited its scope to the protection of the designs of vessel hulls. During the year, the Copyright Office engaged in many discussions with proponents of fashion design protection. The Office stated that there may be merit to protecting fashion designs, but the Office has not received sufficient information to reach a conclusion on the need for such legislation. However, were Congress to conclude that fashion design protection legislation should be enacted, the Copyright Office believes that H.R. 5055 provides a sound basis for balancing competing interests.

Other Legislation and Studies

Copyright Modernization Act of 2006

This bill, sponsored by Representative Lamar Smith, combined three previously introduced bills into one piece of legislation: the SIRA (discussed above), the Orphan Works Act (discussed above), and the Intellectual Property Enhanced Criminal Enforcement Act of 2006 (H.R. 5921). In addition to providing for the licensing of

musical works and the use of works whose copyright owners cannot be located after a reasonably diligent search, this proposed consolidated legislation addressed the effect of inaccurate information in a copyright registration upon the registrant's ability to bring a copyright infringement action in Federal court, the calculation of statutory damages available for compilations and derivative works, and improved investigative and forensic resources for enforcement of laws relating to intellectual property crimes. Congress did not act on this legislation in fiscal 2006.

PERFORM Act

The Office also provided support and guidance to the staff of Senate Judiciary Members regarding music licensing in the digital age. Specifically, staff members sought information on the lack of parity among certain music providers operating under the §112 and §114 statutory licenses. The latter in part prompted Senators Feinstein, Graham, and Frist to introduce S. 2644, the Platform Equality and Remedies for Rights Holders in Music Act of 2006 (the PERFORM Act). Among other things, the Act would create a single process for setting rates and terms of royalty payments for digital subscription transmissions of sound recordings made under the statutory license, require that the Copyright Royalty Board set rates that represent the fair market value of the rights licensed, and forbid all services operating under the §114 license from taking affirmative steps to enable, cause or induce the making of a copy for a recipient of a transmission.

Copyright Royalty Judges Program Technical Amendments Act of 2006

The Office advised Congress regarding this act, which further amends provisions in chapter 8 of the copyright law, as amended by the Copyright Royalty and Distribution Act of 2004 (Public Law 108-419) and the Satellite Home Viewer Extension and Reauthorization Act of 2004 (title IX of division J of Public Law 108-447). The legislation was expected to go to the President for his signature in early October 2006.

The primary purpose of the act is to clarify procedures for setting rates and terms for the statutory licenses set forth in the copyright law and in making determinations concerning the distribution of royalty fees collected by the Copyright Office. The act also restores noncontroversial language which requires the Copyright Royalty Judges to act in accordance with the Administrative Procedures Act, and it clarifies that prior determinations of the Copyright Arbitration Royalty Panels that are not inconsistent

with a decision of the Librarian of Congress or the Register of Copyrights are among the precedents that the Copyright Royalty Judges must consider. The Office assisted in drafting these amendments.

Satellite Home Viewer Extension and Reauthorization Act §110 Report

The Satellite Home Viewer Extension and Reauthorization Act of 2004, Pub. L. No. 108-447, in addition to extending for an additional five years the statutory license for satellite carriers retransmitting over-the-air television broadcast stations to their subscribers and making a number of amendments to the existing §119 of the copyright law, requires the Copyright Office to conduct two studies regarding statutory licensing and report its findings to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate. The first study was completed in February 2006, and it examined: (1) the extent to which the unserved household limitation for network stations contained in §119 of the copyright law has operated efficiently and effectively, and (2) the extent to which secondary transmissions of primary transmissions of network stations and superstations under §119 harm copyright owners of broadcast programming and the effect, if any, of the statutory license under §122 which provides for the retransmission of local network stations into their local TV markets, in reducing such harm.

Based upon written submissions from the interested parties, the Office concluded that while the unserved household provision operates efficiently and effectively, copyright owners are harmed because the current statutory rates are not based upon fair market value and because certain copyright owners bear all the administrative costs associated with the new Copyright Royalty Board. The Office also concluded that the lack of an audit provision contributes to the harm inflicted on copyright owners because copyright owners are unable to evaluate whether satellite carriers have made full and accurate payments in accordance with the law.

The Office, however, did find that the §122 statutory license, which provides for the retransmission of a local broadcast signal into the local TV market for that signal, reduces the harm caused to copyright owners by distant signal retransmissions under §119. Specifically, the Office concluded that the §122 license has reduced over time the satellite carriers' reliance on distant signals based upon an examination of the data that showed a correlation between a decrease in the number of distant signal instances and an increase in the number of local signals offered to satellite subscribers.

Section 108 Study Group

The Library of Congress National Digital Information Infrastructure and Preservation Program (NDIIPP), in cooperation with the Copyright Office, is sponsoring this group, which began its work in mid-2005. The Section 108 Study Group is a select committee of public-sector and private-sector copyright experts charged with making recommendations to update the copyright law for the digital world to balance the rights of creators and copyright owners and the needs of libraries and archives in a manner that best serves the national interest.

Digital technologies are radically transforming how copyrighted works are created and disseminated, and also how libraries and archives preserve and make those works available. Cultural heritage institutions, in carrying forward their missions, have begun to acquire and incorporate large quantities of "born digital" works (those created in digital form) into their holdings to ensure the continuing availability of those works to future generations.

Yet it has been observed that §108 of the Copyright Act, which provides limited exceptions for libraries and archives, does not adequately address many of the issues unique to digital media, either from the perspective of rights owners or libraries and archives.

The Section 108 Study Group is reexamining several areas: the criteria for exceptions and limitations currently applicable to libraries and archives under the copyright law, specifically in light of the changes wrought by digital media; exceptions and limitations for preservation purposes; the making of copies for purposes of providing access, to permit eligible institutions to publicly display digital materials, and to capture and preserve websites and other online content; and how §108 of the copyright law may need to be amended to address the relevant issues and concerns of libraries and archives, as well as creators and other copyright holders.

The study group met six times in fiscal 2006 and held two public meetings in Washington, DC, and Los Angeles. During 2007, the group expects to provide findings and recommendations to the Librarian of Congress and the Copyright Office in 2007.

International Activities

The Copyright Office's international activities advance the economic health of the United States by promoting adherence to copyright laws and treaties that ensure protection and compensation to American creators and copyright owners, thereby encouraging the creation and dissemination of works to the public throughout the world.

Protection against unauthorized use of a copyrighted work in a country depends primarily on the national laws of that country. Most countries offer protection to foreign works under the aegis of international copyright treaties and conventions.

The Copyright Office continued to work in tandem with executive branch agencies on international matters, particularly with the United States Trade Representative (USTR), the Patent and Trademark Office (USPTO), and the Departments of State and Commerce.

The Copyright Office participated in numerous multilateral, regional, and bilateral negotiations and the U.S. delegations to meetings of international organizations in fiscal 2006. This included serving as the head of the U.S. delegation to the 14th and 15th sessions of the World Intellectual Property Organization's (WIPO) Standing Committee on Copyright and Related Rights, which considered the draft basic proposal for a treaty on the protection of broadcasting organizations. The Office assisted in convening meetings of an array of interested parties in the United States to solicit views on the new treaty, which would create new international standards of protection against piracy of broadcast signals across national borders. The Office also participated in other copyright-related meetings at WIPO, such as the WIPO Intergovernmental Committee on "Intellectual Property and Genetic Resources, Traditional Knowledge, and Traditional Cultural Expressions" and various meetings related to the so-called "Development Agenda" which considered how WIPO should address issues related to the role of intellectual property in developing countries.

The Copyright Office undertakes international copyright activities by offering advice to Congress on compliance with multilateral agreements, such as the Berne Convention for the Protection of Literary and Artistic Works, and by working with executive branch agencies to promote copyright principles and protection worldwide.

Copyright Office staff were instrumental in drafting and negotiating the intellectual property provisions of bilateral Free Trade Agreements (FTA) between the United States and the Republic of Korea, Malaysia, the United Arab Emirates, and a group of Andean countries, and worked with other FTA partners, such as Australia, Bahrain, the Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Nicaragua, and Oman on implementation issues. Staff also actively participated in numerous additional bilateral negotiations and consultations during the year, providing assistance to France, Ireland, Japan, Kuwait, Malaysia, New Zealand, Russia, Saudi Arabia, and Ukraine on issues ranging from enforcement to copyright law revision. In addition, the Office joined with the USTR in providing assistance to five nations in their World Trade Organization accession processes and provided responses regarding U.S. copyright law and policy to the WTO Trade Policy Review queries.

In September 2006, staff attended meetings with Mexican and Canadian government officials on the Security and Prosperity Partnership, a partnership created to increase security and enhance prosperity between the countries through greater cooperation and information sharing.

Copyright Office staff met with foreign officials and visitors interested in learning about the U.S. copyright system and exchanging information about topics of mutual concern. For example, Malaysia, which is in the process of setting up a copyright registration system, sent an eight-person delegation in August 2006 to learn about how registration is done in the United States.

The Copyright Office also participated on the interagency Special 301 Committee, which evaluates the adequacy and effectiveness of intellectual property protection and enforcement throughout the world. The U.S. government uses this process to improve global protection for U.S. authors, inventors, and other holders of intellectual property rights.

Among the Office's responsibilities is engaging in public discussion about copyright and educating the public about copyright law. To this end, staff gave presentations and participated in a number of international conferences on copyright.

In October 2005, the Register of Copyrights traveled to Germany as part of the Department of State's U.S. Speaker's Program. She delivered a speech titled "Copyright in the Digital Age," at the Deutsche Bibliothek in Frankfurt; gave an interview on U.S. copyright policy in the digital environment to the economic editor of *Süddeutsche Zeitung* in Munich; lectured at the Max Planck Institute for Intellectual Property

Rights, Competition, and Tax Law on the direction of U.S. copyright law and policy; met with the president of the German Patent Office and the head of oversight of a copyright collective management organization; spoke in Berlin about challenges to copyright in the digital era at the Federation of German Industry and addressed the German-American Lawyers Association; led a roundtable discussion on various digital library issues in Leipzig; and toured the Deutsche Bücherei, which houses a museum on the history of printing in Germany.

The Register also traveled to Rome in January 2006 where she was a panelist in a policy roundtable titled "Identifying Priority Issues, Tools, and Policy Challenges: Moving Forward" at the Organization for Economic Cooperation and Development (OECD) "Conference on the Future Digital Economy: Digital Content Creation, Distribution, and Access." The Register's paper is posted on the OECD website at *www.oecd.org/dataoecd/14/28/36167270.pdf*. In July, she gave a keynote address on copyright policy formulation at the Finnish Presidency of the European Union's Conference, "Creativity Online: Content and Copyright Policy," in Helsinki, Finland.

In March 2006, the Register met with Canadian government officials in Ottawa regarding the implementation in the U.S. of the WIPO Internet treaties and spoke in Toronto on several programs dealing with copyright reform in Canada and the situation in the United States.

Staff participated in a number of other symposia and conferences outside the United States, including the Creative Economy Conference in London, and the Transatlantic Dialogue on Broadcasting and the Information Society in Helsinki, Finland.

Litigation

The Copyright Office does not enforce the provisions of title 17. However, it may be involved in litigation by (1) choosing to intervene under §411(a) in a case where registration has been refused; (2) being sued under the Administrative Procedure Act; and (3) being asked to assist in the preparation of an *amicus curiae* brief in support of a particular position, by assisting the Department of Justice in defending a particular action, or by asking the Department of Justice to bring a suit under §407 to compel the deposit of copies of the best edition of a copyrighted work published in the U.S.

The Office was a party in several cases and responded to the Department of Justice's requests for assistance relating to copyright litigation.

New York Mercantile Exchange, Inc. (*NYMEX*) v. *Intercontinentalexchange, Inc.* (*ICE*)

As reported in the Annual Report for fiscal 2005, the United States District Court for the Southern District of New York ruled that individual settlement prices of futures contracts, such as those listed on the plaintiff's commodities exchange, are not copyrightable. In so ruling, the court adopted the position set forth by the Copyright Office in a Statement of Interest, and as a result granted summary judgment to the defendant competitor who utilized such settlement prices without the plaintiff's authorization.

In October 2005, the plaintiff appealed the decision to the United States Court of Appeals for the Second Circuit. The Solicitor General requested various agencies' views, including the Copyright Office's, as to potential *amicus* participation in the appeal, and ultimately authorized participation. The Copyright Office provided counsel to the United States Attorney's Office in drafting the United States' *amicus curiae* brief. In March 2006, the government filed its brief supporting appellee and arguing that the district court correctly held that: (1) settlement prices are uncopyrightable facts rather than copyrightable, original, creative works; (2) settlement prices are uncopyrightable short phrases; and (3) the merger doctrine precludes a claim for copyright infringement in this instance. Oral argument is scheduled to take place in November 2006.

Kiss Catalog, Ltd. v. *Passport International Productions, Inc.*

As reported in the Annual Report for fiscal 2005, the Copyright Office assisted the Department of Justice in its decision to intervene to seek reconsideration of an order finding 17 *USC* §1101 (the "anti-bootlegging" provision) to be unconstitutional because perpetual protection for live performances would violate the "limited times" provision of the Copyright Clause. On December 21, 2005, the District Court for the Central District of California issued an order granting the United States' motion to reconsider. More importantly, the order vacated the finding of unconstitutionality. On reconsideration, the court found that the anti-bootlegging statute was properly enacted

pursuant to a constitutional exercise of Congress' power under the Commerce Clause, regardless of the fact that the Copyright Clause itself does not provide Congress a source of constitutional authority to legislate live performances.

Golan v. *Gonzales*

As reported in the Annual Reports for fiscal years 2004 and 2005, this case unsuccessfully challenged the constitutionality of the Sonny Bono Copyright Term Extension Act and the restoration provisions of the Uruguay Round Agreements Act, naming both the Attorney General and the Register of Copyright as defendants. The plaintiffs appealed the decision to the United States Court of Appeals for the Tenth Circuit. The Copyright Office assisted the Department of Justice in drafting the government's appellee brief and in preparing for oral argument via a moot court. Oral argument took place in June 2006 and as of the end of the fiscal year, the Court of Appeals had not yet issued its ruling.

Aharonian v. *Gonzales*

The Office continued this year to assist the Department of Justice in defending the constitutionality of certain portions of the copyright law providing protection for computer programs. In the prior fiscal year, the U.S. government filed a motion to dismiss, or—in the alternative—for summary judgment, for which the United States District Court for the Northern District of California heard argument in November 2005. Specifically, the court considered Aharonian's claim that patentable material is not subject to copyright protection and that portions of the copyright law protecting software were unconstitutional because they were fatally vague or improperly enacted. In January 2006, the court ruled that the first claim was not justiciable because it amounted to a generalized grievance, and dismissed the claims of vagueness and improper enactment as failing as a matter of law. The court therefore dismissed these claims without leave to amend.

The plaintiff appealed the ruling to the Ninth Circuit in May 2006, and the United States filed its opposition brief in June 2006. The Ninth Circuit had not yet set this matter for hearing as of the end of fiscal 2006. The Register of Copyrights is not a named party in this action.

Macrovision Corp. v. *Sima Products Corp.*

In response to the Office's urging and with its assistance, the Department of Justice filed an *amicus curiae* brief in this case to clarify the conclusions of the Register of Copyrights and the Librarian of Congress in a rulemaking proceeding conducted in 2000 regarding §1201 of title 17—conclusions which Sima mischaracterized to the U.S. Court of Appeals for the Federal Circuit.

Defendant Sima appealed an order from the District Court for the Southern District of New York preliminarily enjoining Sima from selling its video enhancer products. Plaintiff Macrovision argued that such products circumvented Macrovision's Analog Copy Protection technology for DVDs in violation of §1201's prohibition on anti-circumvention. In its appellate brief, Sima argued that Macrovision's ACP technology was not protected by §1201 because it was not an effective protection measure, and erroneously cited the Copyright Office's rulemaking as purported supporting authority.

The United States filed its brief supporting appellee Macrovision in September 2006. It clarified that, contrary to Sima's assertion, the Copyright Office's and Librarian's comments in this rulemaking did not speak to whether or not the ACP technology is a technological measure that effectively protects the right of a copyright owner. Rather, the comments simply noted that this technology is not implicated in §1201(a) because it does not control access to copyrighted works, but that because this technology was presumed to protect the reproduction right of the copyright owner, it would be implicated in §1201(b) which prohibits the trafficking of circumvention devices. The court is still entertaining motions and has not set a date for argument.

Darden v. *Peters*

As reported in the Annual Report for fiscal 2005, plaintiff William Darden brought suit against the Register of Copyrights in the U.S. District Court for the Eastern District of North Carolina due to the Copyright Office's refusal to register his copyright claims in two works, pages from a website and maps that appeared on those pages. The Office refused registration on the basis that Darden's claim in the website pages was for the format in the pages, which is not copyrightable subject matter, and that Darden's maps do not have sufficient creativity to be copyrightable. Both parties filed motions for summary judgment and, on June 6, 2005, the district court held a hearing. On

December 7, 2005, the court granted the Register's motion and denied the plaintiff's motion.

On December 28, 2005, the plaintiff appealed the District Court's decision to the U.S. Court of Appeals for the Fourth Circuit. The Appellant challenged the District Court's deference to the agency by arguing that the issue of copyrightability for purposes of registration is a question of law subject to de novo review by the court and maintained that the works are copyrightable as supported by the evidence in the administrative record. The Copyright Office filed its response on May 23, 2006, arguing that the Register's decisions not to register a work are subject to review under the abuse of discretion standard set forth in §706(2)(A) of the Administrative Procedures Act. As of the end of fiscal 2006, this case has not yet been set for hearing.

Hendrickson v. *United States Copyright Office*

In a case involving a *pro se* litigant, the plaintiff attempted to reinstate his ownership of the copyright renewal right in a motion picture documentary entitled *Manson*. Plaintiff had secured renewal registration of the motion picture from the Copyright Office, but in litigating a copyright infringement action based on that registration, the registration had been declared invalid on the grounds that another party owned the renewal right. While Mr. Hendrickson's copyright renewal in *Manson* remained in the public records of the Copyright Office, he nevertheless brought an action against the Copyright Office in order to be declared the rightful owner of the renewal right. The Office moved for summary judgment on the grounds that it had no dispute with the plaintiff, and there was no actual controversy between the plaintiff and the Office. The court dismissed the case for lack of jurisdiction without issuing a written opinion.

Elektra Entertainment Group Inc. v. *Barker*

Plaintiff record company sued individual defendant Denise Barker in the Southern District of New York for copyright infringement stemming from her alleged use of the Kazaa peer-to-peer file sharing software to reproduce and distribute unauthorized copies of the plaintiff's copyrighted works. The issue is whether a participant in a peer-to-peer file sharing network who makes phonorecords of sound recordings available for "file-sharing" on such a network is engaged in activities that infringe

the distribution right. The defendant filed a motion to dismiss, arguing that neither the reproduction nor distribution claims asserted against her were viable because they were not stated with particularity. The Office advised and assisted the United States Attorney for the Southern District in the preparation of a Statement of Interest, submitted on April 21, 2006, which expressed the view that the exclusive right of distribution is implicated by the transmission of copies or phonorecords over the Internet. The court had not yet ruled on the motion to dismiss as of the end of fiscal 2006.

Fonovisa, Inc. v. *Alvarez*

Similar to the Elektra case, plaintiff record company filed a complaint in the United States District Court for the Northern District of Texas against the individual defendant for copyright infringement in violation of the plaintiff's reproduction and distribution rights pursuant to 17 *USC* §106(1), (3). The defendant allegedly used an online media distribution system to download and then distribute plaintiff's copyrighted works without authorization. The Office reviewed filings involving the scope of the distribution right. After comparing this case to the government's position in the Elektra case, the Office again assisted the Department of Justice in drafting a statement of interest on the distribution issue which was submitted to the court in May 2006. In July 2006, the court denied the motion to dismiss. The court has not yet set a date for the trial.

Mallard Cablevision v. *Register of Copyrights*

The Liquidating Trustee of the Liquidating Trust for Mallard Cablevision LLC commenced an adversary proceeding against the Register of Copyrights in the United States Bankruptcy Court for the District of Delaware on May 4, 2005, seeking to recover royalty payments made under §111 of the copyright law as preferential transfers. Because the plaintiff failed to serve the Register in accordance with the Federal Rules of Bankruptcy Procedure, the government made no appearance in this matter and a default judgment was entered against the Register. Nevertheless, the plaintiff has agreed to a joint stipulation to set aside the default judgment and dismiss adversary proceedings against the Register based on the plaintiff's failure to effect service

rather than on a determination of the merits. The stipulation still must be signed and submitted to the court for approval.

Borset v. *Librarian of Congress*

On September 26, 2005, Trudy Ann Borset, a pro se litigant, filed suit in the United States Court of Appeals for the District of Columbia, challenging the Library's dismissal of her 2003 and 2004 claims to royalty fees collected by the Copyright Office under the Audio Home Recording Act. Ms. Borset, whose claims to royalty fees in the Sound Recordings Funds were dismissed by the Copyright Office for failure to provide adequate information to validate her claims, filed the current action after the United States District Court for the Eastern District of Michigan dismissed a similar suit for lack of subject matter jurisdiction.

Like the district court, the court of appeals never reached the merits of Borset's case. Instead, it directed the parties to address whether the Librarian's orders dismissing Borset's claims were final and reviewable and, if so, whether her appeal was timely. The Office advised and assisted the United States Attorney in drafting the government's response to these questions. On May 23, 2006, the court of appeals issued an order stating that it lacked jurisdiction to consider Borset's claims because the orders dismissing her claims to royalty fees were not issued by a Copyright Arbitration Royalty Panel or as a result of a proceeding before the Copyright Royalty Judges as required under chapter 8 of the copyright law. The court also held that certain claims to royalty fees were still pending and thus not subject to judicial review, and it refused to issue a writ of *mandamus* in this action, noting that *mandamus* is an extraordinary remedy reserved only for the most transparent violations of a clear duty to act.

Kahle v. *Ashcroft*

As reported in the Annual Reports for fiscal years 2004 and 2005, this suit unsuccessfully challenged in the United States District Court for the Northern District of California the constitutionality of the 1976 Copyright Act, the Berne Convention Implementation Act, the Copyright Renewal Act of 1992 and the Sonny Bono Copyright Term Extension Act. The plaintiffs appealed the district court's dismissal to the United States Court of Appeals for the Ninth Circuit, and the Copyright Office

assisted the Department of Justice in preparing the brief for the government as appellee. The Ninth Circuit will hear argument in November 2006.

United States v. *Martignon*

As reported in the Annual Report of fiscal 2005, the government appealed a ruling by the United States District Court for the Southern District of New York that 18 *USC* §2319A (an "anti-bootlegging" statute) was unconstitutional. The antibootlegging statute makes it unlawful to record a live musical performance without the consent of the performer or to distribute or offer to distribute copies or phonorecords of such recordings. Martignon was accused of selling such recordings at his record store.

The district court held that §2319A is unconstitutional because it violates the Copyright Clause by granting exclusive rights to non-"writings" (live performances) for an unlimited time and because it violates the First Amendment by altering the "traditional contours of copyright protection" in a speech-inhibiting manner by granting perpetual protection to unfixed performances. The Office assisted the Department of Justice in drafting the government's appeal to the Second Circuit, which was argued in June 2005. As of the end of fiscal 2006, the matter was still pending before the Second Circuit.

Illinois Tool Works v. *Independent Ink*

In November 2005, the Supreme Court heard oral arguments in this case examining whether, in an action under Section 1 of the Sherman Act, an antitrust plaintiff alleging improper tying of a patented product or copyrighted work to another product must prove that the defendant has "appreciable market power" in the tying product market or whether market power is presumed based solely on the existence of a patent or copyright on the tying product.

In the specific case before the Court, Illinois Tool Works is a manufacturer of a patented ink jet printhead, a patented ink container, and a nonpatented ink specially formulated for use in its patented printhead system. Independent Ink is a distributor and supplier of printer ink and printer products, and the plaintiff in an antitrust tying claim against Illinois Tool Works. Independent Ink brought the antitrust claim against Illinois Tool Works for conditioning use of its patented product on use of its

nonpatented ink. Independent Ink offered no proof of market power in the printhead market, but rather relied on a presumption of market power based on Illinois Tool Works' ownership of a patent.

The Copyright Office had assisted the Office of the Solicitor General of the Department of Justice in the prior fiscal year in its preparation of the government's *amicus curiae* brief, which argued that courts should not presume that a patent confers the market power necessary to establish that tying is unlawful per se. In March 2006, the Supreme Court agreed with the government's position and held, "Because a patent does not necessarily confer market power upon the patentee, in all cases involving a tying arrangement, the plaintiff must prove that the defendant has market power in the tying product."

eBay Inc. v. *MercExchange, L.L.C.*

Arising from MercExchange's successful suit against eBay for infringement of its business method patent, the narrow issue elevated to the Supreme Court centered on the standards a court should follow in evaluating the appropriateness of a permanent injunction once the court has determined that a patent is valid and has been infringed. Specifically, the Court considered (1) whether a court should presumptively issue a permanent injunction prohibiting the infringement absent the infringer showing that exceptional circumstances exist that render an injunction unwarranted, or (2) whether a court should weigh the traditional four equitable factors and require the patent holder to prove that it should receive an injunction.

The United States filed an *amicus curiae* brief in support of respondent MercExchange, arguing in essence that although a court should consider the four factor test, it is not contrary to the law for a court to abbreviate this analysis in its written opinion due to the practical reality that once patent validity and infringement have been adjudged, the four factor test will generally weigh in favor of issuing a permanent injunction. Although this case arose in the context of patent litigation, the Copyright Office assisted the Office of the Solicitor General in drafting the brief and preparing for oral argument due to the potential interplay of the eventual ruling and the permanent injunction provision of the copyright law.

In May 2006, the Supreme Court vacated the Federal Circuit's decision and remanded the case to the District Court, stating that the equitable principles apply

to permanent injunctions issued in disputes arising under the patent law and that a categorical rule as to when a permanent injunction should issue is inappropriate. The lower court is now considering the issues in light of that decision.

Medimmune, Inc. v. *Genentech, Inc.*

The Office worked with the Department of Justice to draft an *amicus curiae* brief of the United States concerning the jurisdiction of federal courts to hear declaratory judgment actions for patent invalidity brought by licensees in good standing. The government submitted its brief to the Supreme Court, and the case is ongoing.

Apotex v. *Pfizer*

Due to potential implications for copyright law, the Office reviewed filings in this patent case which sought a declaratory judgment of patent invalidity. After comparing this case to the government's position in a similar litigation matter, the Office made its recommendations to the Department of Justice. As in *Medimmune*, the Office then assisted the department with its drafting of an *amicus curiae* brief for the United States concerning the jurisdiction of federal courts to hear declaratory judgment actions for patent invalidity brought by licensees in good standing. The government submitted its brief to the Supreme Court, which has yet to issue its ruling as of the end of fiscal 2006.

Potential Copyright Office Intervention Pursuant to 17 *USC* §411(a)

The Office continued to review all copyright cases in which the Register of Copyrights received notice of her right to intervene pursuant to 17 *USC* §411(a). The Register received five notices pursuant to section 411(a) in fiscal 2006, and chose not to intervene in three of these cases. The Register received the remaining two notices late in the fiscal year and will make a determination on them in the beginning of the next year.

Public information and education

Staff dismantle the Copyright Office public exhibit in preparation for renovation of the Office's space in the James Madison Memorial Building.

The Copyright Office, as the agency responsible for copyright law administration, is well qualified to disseminate information on copyright law and its application, providing copyright education to the public and responding to telephone, correspondence, and in-person information requests.

The Register and her staff spoke at more than fifty domestic symposia, conferences, and workshops on various aspects of copyright law and the intellectual property world's current challenges. These included two successful programs sponsored by state bar intellectual property sections: "The Copyright Office Comes to California" (Los Angeles and San Francisco) and "The Copyright Office Comes to New York." See the "International Activities" section earlier in this report for international appearances.

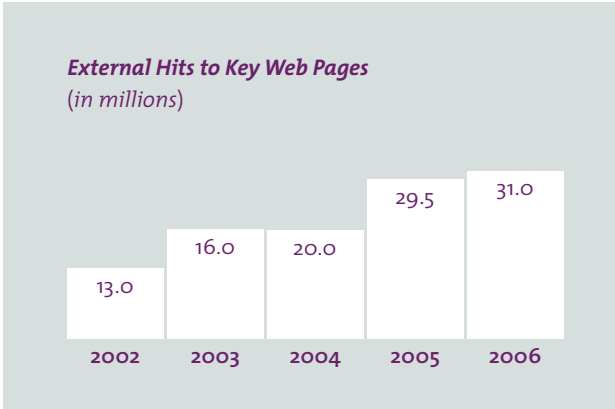
Copyright Office Website

The Copyright Office website serves as an important public face for the Copyright Office and continues to play a key role in fulfilling the Office's strategic goal to "improve public understanding of copyright law." The website (*www.copyright.gov*) makes available informational circulars, announcements, regulations, the copyright law and related material, application forms, and historical information on copyright. The website also provides the capability to search records of copyright registrations and recorded documents from 1978 to the present. Portions of the website and popular circulars are available in Spanish.

The Office logged more than 31 million external hits on key pages of its website during the year—a six percent increase over the previous year. The public conducted almost two million searches of the Copyright Office registration database utilizing the Office website's search feature. The website also served as a vehicle for information about changes directly affecting members of the public, such as the increase in the basic registration fee and other fees for services on July 1, 2006.

The website received numerous additions and enhancements throughout the year, including:

- the first e-service portal, for preregistration of certain classes of works likely to be infringed before publication;
- an expanded historical documents section, including past annual and special reports, previous enactments of copyright law, and biographies of past registers;
- a new system to synchronize Copyright Office regulations (37 *CFR*) with the Government Printing Office's daily updates of its beta website for regulations.



Jefferson Patterson Junior Fellows Summer Intern Program

The Copyright Office served as cosponsor of the Librarian's 2006 Jefferson Patterson Junior Fellows Summer Intern Program, with an Office staff member serving as that program's project manager. This ten-week program was designed to enable the Library of Congress to locate and itemize works in its collections deposited for copyright that have increased in value and significance since they were originally registered. The Library selected twenty-five junior fellows for this program, two of whom worked within the Copyright Office. They reviewed approximately 63,000 registration applications, stored in forty-five one-cubic-foot boxes retrieved from offsite storage. The interns inventoried a total of 1,494 pictorial and photographic deposit copies that they discovered and prepared them for transfer to the Prints and Photographs Division. In addition to preparing a comprehensive inventory which will serve as an invaluable research tool to the Prints and Photographs Division and to the Copyright Office, the interns also stabilized many of the treasures by placing them in Mylar and acid free folders.

Copyright Records Project

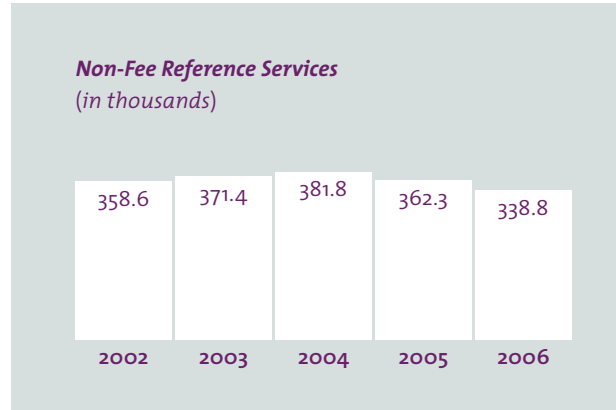
The Copyright Office, with the Library's Office of Strategic Initiatives conducted a business analysis that determined the feasibility of digitizing millions of Copyright Office paper records from 1790 through 1977. A comprehensive report in 2005 provided implementation strategies, cost estimates, and a recommendation for how the conversion could be handled in two stages. The first stage would cost approximately $6,000,000 over a six-year period and would achieve the preservation goal and very basic online access. The second stage would add item-level indexing, enhanced searching and retrieval, and would cost between $5,000,000 and $65,000,000 depending on the extent of fields indexed. The Copyright Office submitted a FY 2007 budget request for $1 million to start the first stage.

Public Information Outputs

In fiscal 2006, the Office overall responded to 338,831 requests for direct reference services. The decrease in 2005 and 2006 is primarily due to the Office being more current in its processing and the increased use of the Office's website for information. The Office as a whole also assisted more than 21,500 public visitors. The Public Information Section assisted 8,886 members of the public in person, taking in 12,758 registration applications and 2,463 documents for recordation. The section answered 106,141 telephone inquiries, 8,380 letter requests, and 29,795 email requests for information. The Office is working to reduce the average caller wait time, which is higher than the Office's target of under 90 seconds.

The Office published twenty issues of *NewsNet*, an electronic news update about the Copyright Office and copyright-related activities, to 6,333 subscribers (an increase of twenty percent over 2005) during the fiscal year.

In response to public requests, the Reference and Bibliography Section searched 12,792 titles and prepared 832 search reports.



In addition, the section assisted 8,886 users of copyright records in the Copyright Card Catalog and online.

The Clerical Support Unit responded to 12,906 letter requests, 40,471 telephone requests, and 12,643 email requests from the public for forms and other publications.

During the fiscal year, the Office processed 352,884 deposits, constituting 6,731 cubic feet, for storage at the Deposit Copies Storage Unit in Landover, Maryland (a 30 percent increase over fiscal 2005). The unit transferred 6,731 cubic feet of records, consisting of unpublished deposits and registration applications, to other remote off-site storage facilities. The unit consistently met its performance goal of retrieving requested deposits within one business day.

Freedom of Information Act (FOIA)

The Office received and responded to forty requests under the FOIA during the fiscal year. Although several of these requests sought information that is already publicly available or that is under the control of the Library of Congress, the Copyright Office responded to the requests or referred them to the Library as appropriate. The Copyright Office average turnaround time for FOIA requests is four business days, one of the best in the federal government.

Planned Storage Facility at Fort Meade

Efforts continued to provide a strong and economically viable case for congressional approval of funds to construct the proposed copyright deposit copy storage facility at Fort Meade, Maryland. During FY 2006, the Office evaluated various versions of the original architectural design for this facility. The Office worked with the Architect of the Capitol and the Army Corps of Engineers to redesign the structure so that the storage areas are on a single floor instead of the originally proposed multi-story plan and so that the height of storage shelving in these areas increases from six to fifteen feet. While these changes in the design will affect some work processes in this facility and require purchase of some additional equipment to service the collections, they provide considerable savings in construction costs. By the end of fiscal 2006, the outside architectural contractor selected by the Architect of the Capitol had completed a 30 percent design proposal for the deposit storage facility based on the proposed

redesign and submitted it for review. Future planning calls for design completion in fiscal 2008 and construction to begin in fiscal 2010 with occupancy in fiscal 2011, if Congress authorizes funding.

Management

Renovation of Copyright Office space in the James Madison Memorial Building is part of the Office's reengineering project.

Reengineering

The Copyright Office continued its multiyear effort, begun in fiscal 2000, to reengineer its principal public services. Implementation will occur in fiscal 2007. See the annual reports for fiscal years 2001–2005 for additional background on the project.

Reengineering Planning and Management

The Office's implementation efforts in fiscal 2006 continued to focus on the three fronts that support the reengineered processes: organization, information technology, and facilities. Each front has a coordinator who monitors and tracks program-related risks, issues, and change requests. Because the three fronts are interconnected and the Office must provide uninterrupted customer service, the Office will implement all fronts simultaneously when it switches to new processes in mid to late fiscal 2007. In preparation for full implementation, the Office is conducting pilot projects to test the new processes and IT systems.

The Reengineering Program Office (RPO) manages the effort. During the year, the RPO revamped status meetings to improve communication with key stakeholders and to provide a forum for the resolution of issues. The RPO, Copyright Technology Office (CTO) and contractor SRA International, Inc. took part in a two-day offsite meeting to review progress of the new IT system under development.

Reengineering Objectives

- *Improve the efficiency and timeliness of Copyright Office public services.*
- *Provide more services online.*
- *Ensure the prompt availability of new copyright records.*
- *Provide better tracking of individual items in the workflow.*
- *Increase the acquisition of digital works for Library of Congress collections.*

Organization

As part of the Reengineering Program, the Office will reorganize, and in some cases realign, its divisions and modify most of its individual job roles. The new organization will include the Receipt, Analysis, and Control Division; the Registration and Recordation Program with three divisions (Literary Division, Performing Arts Division, and Visual Arts and Recordation Division); the Information and Records Division; the Copyright Acquisitions Division; and the Licensing Division. The RPO completed the reorganization package in fiscal 2006. The Office will submit the reorganization package for approval to the Library of Congress Office of Human Resources Services and to the Librarian in early fiscal 2007, after which the Office will bargain any adverse impact of the implementation of the reorganization with labor organizations.

Information Technology (IT)

Earlier in the project, the Office selected SRA International, Inc. of Fairfax, Virginia, to design and develop its new systems infrastructure to integrate the functions currently performed by several IT systems and applications. The integrated IT infrastructure, to be known as eCO (electronic Copyright Office), uses Siebel customer relationship management (CRM) and case management software along with Captiva optical character recognition software. The Office also considered what search engine to use, and will make a decision in early fiscal 2007. eCO will enable the Office to provide its services to the public online and manage its internal processes through a centralized case management system. In addition to speeding up the registration process, eCO will allow users of Copyright Office services to check the status of their in-process service requests, supply additional information, and resolve discrepancies.

The single most significant step this fiscal year towards achieving the IT reengineering objectives was the implementation of the online web portal to enable the public to submit electronic applications for preregistration and to pay for that service with a credit card or automatic debit through a seamless link to the U.S. Treasury's *Pay.gov* website. On November 15, 2005, the Office implemented preregistration—a service available only online and the first use of eCO to process work submitted electronically.

Beyond the system development work to enable online preregistration, the Office completed considerable planning to prepare staff for processing the records and to set

up a help desk for applicants who encounter problems in their use of the portal. Work began on planning the help desk support that will be needed when more fee services are added to the portal.

Implementation of the new system's full operating capability will occur in late fiscal 2007 upon completion of the facilities renovation in the Library of Congress Madison Building and the relocation of staff in their reconstructed workplace.

Facilities

The project passed two major milestones in fiscal 2006. First, nearly all staff and contractors moved to swing space locations to permit the renovation of Copyright Office space in the Madison Building. Approximately 75 percent moved to temporary swing space in Crystal City (Arlington, Virginia) in July 2006; others moved to swing space within the Capitol Hill complex; and a few remained in place. Second, after years of planning, the Architect of the Capitol began the renovation of Copyright Office space in the Madison Building. The renovation is scheduled to be completed in time for some divisions that remained in the Madison Building to move to their renovated spaces in December 2006 and January 2007, followed by the major staff to move back to the Madison Building in mid-2007.

Communication

The RPO continued to involve stakeholders in the reengineering process and included Copyright Office management and staff at all levels on teams, task groups, and pilot projects. The RPO communicated with staff about reengineering implementation through a variety of means: *ReNews* (the reengineering newsletter) and *ReNews Lite* (an email version used for quick updates); articles in *Copyright Notices*; the Reengineering Intranet website; and, stakeholder meetings with staff and managers within the Office and in affected areas of the Library's service and support units. The Office encouraged staff to submit ideas and questions to a designated RPO email address.

Information regarding the move to Crystal City and other swing space moves was available on a special interactive website designed by the Copyright Office and the move coordination contractor, Fox Corporation. The site contained updates

on the renovation of the Crystal City buildings, progress photographs, new office locators, and practical guidelines to help staff prepare for the move. Staff could submit questions about the move through a "Got a Question?" feature.

The Office held all-hands meetings in October 2005 to update the staff on the status of the reengineering project and in April 2006 to prepare the staff for the move to Crystal City.

There were monthly meetings with labor organizations to provide regular updates and discuss staff concerns regarding the temporary relocation of staff to offsite office space, as well as other reengineering-related issues.

The Reengineering Program Manager, the Chief of the Copyright Technology Office, and others provided regular updates at Copyright Office management meetings and to a House Appropriations Committee staff member, the Deputy Librarian of Congress, the Office of Strategic Initiatives, the Library Leadership Development Program, the Library Facilities quarterly forum, Library Services staff, Reference and Bibliography Section staff, the Intellectual Property Section of the American Bar Association, the Copyright Committee of the American Intellectual Property Law Association, and the Association of American Publishers.

Training

In May, the Office filled the new position of Copyright Office Training Officer, who participated in the preparation of the reorganization package, revised position descriptions, and a skill gap analysis. The Training Officer then updated and refined the reengineering training plan.

To help prepare for the extensive training in the use of eCO that will be needed for all staff in fiscal 2007, the Training Officer and others participated in demonstrations of OnDemand software. OnDemand is an automated training tool that provides step-by-step instruction online in combination with eCO. It may be run in various modes: demonstrating an entire operation as the staff member watches; allowing the staff member to interact via on-screen prompts; and a testing mode. The software can also produce trainer guides, user guides, and fact sheets.

In October 2005, the Office implemented a major cross-training program to prepare current examiners and catalogers to perform the combined duties of the

proposed registration specialist position, which will include both examining claims and the creation of the registration record.

Motion Picture Pilot

Throughout the fiscal year, the first reengineering pilot project that began in 2005 continued and some motion picture claims were processed daily using eCO. Based on change requests submitted by the staff working in the pilot, improvements were made to eCO in a number of software releases. For instance, a major improvement involved the implementation of an online certificate view that greatly expedited the review of certificates printing.

Electronic Registration Pilot

Preparation continued for a pilot project in which selected participants will submit registration claims electronically into eCO via the internet. The Office almost completed development by the end of the fiscal year, with testing and pilot implementation scheduled for fiscal 2007.

Selection Pilot

Selection is the process of deciding whether materials should be added to Library of Congress collections. A pilot project began in 2005 to test the new procedures under which Copyright Office staff members make selection decisions for routine categories of registration deposits. Deposits examined in the pilot include books from large trade publishers, other monographs, printed music, and audio compact discs. Statistics and survey responses gathered from the participants resulted in a final assessment recommending that registration specialists implement selection as part of the reengineered registration process.

Public Records of the Future

As reported in the 2005 annual report, the Register of Copyrights issued a memorandum emphasizing the primacy of copyright facts in registration records and the importance of clearly distinguishing copyright facts from bibliographic information. The latter is to be limited to information clearly necessary to identify the registered work and considered essential for searching using current automated search technology.

The Register created a working group to deal with unresolved issues and develop detailed recommendations. During fiscal 2006, the working group forwarded recommendations to the Register for approval. These recommendations required the formulation of revised rules for the creation of registration records. A special task group completed this assignment and forwarded proposed rules, which have been approved in principle.

Application Form

The Office considered revising paper application forms to facilitate optical character recognition (OCR) as part of the internal electronic processing of claims in the reengineered processes. Although in fiscal 2005 a working group completed work on the design of a revised application form to replace the current Forms PA, SR, TX, and VA, a test of approximately 200 completed applications in fiscal 2006 demonstrated that the drawbacks of these six-page forms outweighed the OCR benefits. A successor task group designed more user-friendly forms, including not only the basic form, but also continuation sheets, a group registration form, and Form CA. The group recommended the use of an alternative technology such as the 2-d barcode to facilitate data capture. Two dimensional barcodes contain more information than conventional one dimensional barcodes and could be used to encode all of the information on a completed copyright application. This technology was being tested as the fiscal year ended.

Information Technology Activities

In addition to the IT work done as part of the reengineering program outlined earlier in this report, the Office undertook the following information technology work during the fiscal year:

Conversion of Registration Records from COPICS to the Voyager Integrated Library System

The Office and the Library's Information Technology Services (ITS) determined in 2003 that some 20 million registration records would be transferred from the Copyright Office Publication and Interactive Cataloging System (COPICS) to the Library's Voyager platform in 2004. The conversion of registration records from COPICS to the Voyager system presented challenges as some data in the records resisted conversion. There were continuous challenges in conversion to the Machine Readable Cataloging (MARC) format. Initial attempts produced a 95 percent conversion rate, with complex issues preventing accurate conversion of the remaining 5 percent of records (approximately one million records). Integrity and accuracy of all registration records are of paramount importance, and difficulties in achieving these goals will delay completion until 2007. However, all new records created in eCO will migrate directly from that system into the Voyager registration record database.

Copyright Office Electronic Registration, Recordation, and Deposit System (CORDS)

CORDS has been the Copyright Office's prototype system to receive and process digital applications and digital deposits of copyrighted works for electronic registration via the Internet from a limited number of cooperating participants who meet specific criteria. The Office processed more than 20,000 electronic claims in textual works and musical compositions through the system in fiscal 2006. The Office's new IT systems infrastructure—eCO—will replace the CORDS system.

e-Deposit for e-Journals Project

The Office continued to participate in the e-Journals Working Group, formed by the Library of Congress, which is working with selected electronic journal publishers to build and demonstrate a system to receive electronic journals in a preservable format. The e-Journals project, which is oriented toward a prototype system, will run concurrently with eCO service, which is oriented toward a production system. Both will share learning and experience from the other and will eventually converge when technology and regulations permit.

Management Controls, Security, Budget

Management Controls

The Management Control Program ensures that Copyright Office programs are carried out in the most effective and economical manner possible and that assets are safeguarded.

During fiscal 2006, the Office conducted vulnerability assessments on its management control modules and decided to perform control reviews for five modules. There were a few new management letter findings (problem issues in management controls that required correction), and the Office resolved several findings that were outstanding from previous years. Fifteen findings remained open from previous years, virtually all of which will be closed upon completion of the reengineering project.

Budget

The Copyright Office annually receives three appropriations from Congress: Basic, Licensing, and CARP/CRJ. Total fiscal 2006 Copyright Office budget authority was $58,014,990 with a full time equivalent (FTE) staff ceiling of 530 (6 of which are for the Copyright Royalty Board). The total Basic appropriation derives its funding from two revenue sources: net appropriations from the U.S. Treasury ($22,428,450 in fiscal 2006) and authority to spend user fees ($30,176,190). The Basic appropriation funded the

majority of the Office's activities. The Licensing budget activities ($3,826,350) and the CARP/CRJ budget activities ($1,584,000) were fully funded from user fees withdrawn from royalty pools.

Respectfully submitted to the Librarian of Congress by

Marybeth Peters

Register of Copyrights and
Associate Librarian of Congress for Copyright Services

Appendices & tables

Workers pack and move the Copyright Card Catalog in preparation for renovation of space during the final phases of the Office's reengineering project.

Testimony to Congress

- Before the Subcommittee on the Legislative Branch, Senate Committee on Appropriations on the FY 2007 budget request (March 1, 2006)
- Before the Subcommittee on Courts, the Internet, and Intellectual Property, House Committee on the Judiciary on the Copyright Office's report on orphan works (March 8, 2006)
- Before the House Committee on Appropriations on the FY 2007 budget request (March 10, 2006)
- Before the Subcommittee on Courts, the Internet, and Intellectual Property, House Committee on the Judiciary on remedies for small copyright claims (March 29, 2006)
- Before the Subcommittee on Intellectual Property, Senate Committee on the Judiciary on proposals for legislative solutions to the problem of orphan works (April 6, 2006)
- Before the Subcommittee on Courts, the Internet, and Intellectual Property, House Committee on the Judiciary on the Section 115 Reform Act (SIRA) of 2006 (May 16, 2006)
- Before the Subcommittee on Courts, the Internet, and Intellectual Property, House Committee on the Judiciary on protection for fashion design (July 27, 2006)

Federal Register Documents Issued

- Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies: Notice of inquiry (70 FR 57526, October 3, 2005)
- Adjustment of Cable Statutory License Royalty Rates: Final rule (70 FR 58310, October 6, 2005)
- Preregistration of Certain Unpublished Copyright Claims: Interim regulation (70 FR 61905, October 27, 2005)

- Cost of Living Adjustment for Performance of Musical Compositions by Colleges and Universities: Final rule [Issued by Copyright Royalty Board, Library of Congress.] (70 FR 72077, December 1, 2005)
- Digital Performance Right in Sound Recordings and Ephemeral Recordings for a New Subscription Service: Notice announcing commencement of proceeding with request for Petitions to Participate [Issued by Copyright Royalty Board, Library of Congress.] (70 FR 72471, December 5, 2005)
- Notice of Intent to Audit: Public notice (71 FR 624, January 5, 2006)
- Determination of Reasonable Rates and Terms for Noncommercial Broadcasting: Notice announcing commencement of proceeding with request for Petitions to Participate [Issued by Copyright Royalty Board, Library of Congress.] (71 FR 1453, January 9, 2006)
- Adjustment or Determination of Compulsory License Rates for Making and Distributing Phonorecords: Notice announcing commencement of proceeding with request for Petitions to Participate [Issued by Copyright Royalty Board, Library of Congress.] (71 FR 1454, January 9, 2006)
- Adjustment of Rates and Terms for Preexisting Subscription and Satellite Digital Audio Radio Services: Notice announcing commencement of proceeding with request for Petitions to Participate [Issued by Copyright Royalty Board, Library of Congress.] (71 FR 1455, January 9, 2006)
- Section 108 Study Group: Exceptions for Libraries and Archives: Notice of public roundtables with request for comments (71 FR 7999, February 15, 2006)
- Notice of Public Hearings: Exemption to Prohibition on Circumvention of Copyright Protection Notice of Public Hearings: Notice of Public Hearings (71 FR 9302, February 23, 2006)
- Fees: Notice of proposed rulemaking (71 FR 15368, March 28, 2006)
- Electronic Payment of Royalties: Notice of proposed rulemaking (71 FR 24829, April 27, 2006)
- Fees: Final rule (71 FR 31089, June 1, 2006)
- Notice of Termination: Final rule: technical amendment (71 FR 36486, June 27, 2006)
- Electronic Payment of Royalties: Final rule (71 FR 45739, August 10, 2006)

- Cable Compulsory License Reporting Practices: Notice of inquiry (71 FR 45749, August 10, 2006)
- Correction of Errors in Certificates of Registration of Vessel Hull Designs: Interim rule (71 FR 46402, August 14, 2006)
- Retransmission of Digital Broadcast Signals Pursuant to the Cable Statutory License: Notice of Inquiry (71 FR 54948, September 20, 2006)

[All testimony and *Federal Register* items are available at *www.copyright.gov*.]

Registrations, 1790–2006

Date	Total	Date	Total	Date	Total	Date	Total
1790–1869	150,000[1]	1904	104,431	1939	175,450	1974	372,832
1870	5,600	1905	114,747	1940	179,467	1975	401,274
1871	12,688	1906	118,799	1941	180,647	1976	410,969
1872	14,164	1907	124,814	1942	182,232	1976	108,762[2]
1873	15,352	1908	120,657	1943	160,789	1977	452,702
1874	16,283	1909	121,141	1944	169,269	1978	331,942
1875	16,194	1910	109,309	1945	178,848	1979	429,004
1876	15,392	1911	115,955	1946	202,144	1980	464,743
1877	16,082	1912	121,824	1947	230,215	1981	471,178
1878	16,290	1913	120,413	1948	238,121	1982	468,149
1879	18,528	1914	124,213	1949	201,190	1983	488,256
1880	20,993	1915	116,276	1950	210,564	1984	502,628
1881	21,256	1916	117,202	1951	200,354	1985	540,081[3]
1882	23,141	1917	112,561	1952	203,705	1986	561,208[3]
1883	25,892	1918	107,436	1953	218,506	1987	582,239[3]
1884	27,727	1919	113,771	1954	222,665	1988	565,801
1885	28,748	1920	127,342	1955	224,732	1989	619,543[4]
1886	31,638	1921	136,765	1956	224,908	1990	643,602
1887	35,467	1922	140,734	1957	225,807	1991	663,684
1888	38,907	1923	151,087	1958	238,935	1992	606,253
1889	41,297	1924	164,710	1959	241,735	1993	604,894
1890	43,098	1925	167,863	1960	243,926	1994	530,332
1891	49,197	1926	180,179	1961	247,014	1995	609,195
1892	54,741	1927	186,856	1962	254,776	1996	550,422
1893	58,957	1928	196,715	1963	264,845	1997	569,226
1894	62,764	1929	164,666	1964	278,987	1998	558,645
1895	67,578	1930	175,125	1965	293,617	1999	594,501
1896	72,482	1931	167,107	1966	286,866	2000	515,612
1897	75,035	1932	153,710	1967	294,406	2001	601,659
1898	75,634	1933	139,361	1968	303,451	2002	521,041
1899	81,416	1934	141,217	1969	301,258	2003	534,122
1900	95,573	1935	144,439	1970	316,466	2004	661,469
1901	93,299	1936	159,268	1971	329,696	2005	531,720
1902	93,891	1937	156,930	1972	344,574	2006	520,906
1903	99,122	1938	168,663	1973	353,648	**Total**	**32,513,119**

1. Estimated registrations made in the offices of the Clerks of the District Courts (source: pamphlet entitled *Records in the Copyright Office Deposited by the United States District Courts Covering the Period 1790–1870*, by Martin A. Roberts, Chief Assistant Librarian, Library of Congress, 1939).
2. Registrations made July 1, 1976, through September 30, 1976, reported separately owing to the statutory change making the fiscal years run from October 1 through September 30 instead of July 1 through June 30.
3. The totals for 1985–1987 were corrected as of the FY 2004 annual report to include mask works registrations.
4. The total for 1989 was corrected as of the FY 2004 annual report to be consistent with the FY 1989 table of "Number of Registrations by Subject Matter."

Number of Registrations by Subject Matter, Fiscal Year 2006

Category of Material	*Published*	*Unpublished*	*Total*
Nondramatic literary works:			
Monographs and computer-related works	122,396	60,324	182,720
Serials:			
Serials (non-group)	45,960	—	45,960
Group Daily Newspapers	2,567	—	2,567
Group Serials	12,531	—	12,531
Subtotal: *Nondramatic literary works*	**183,454**	**60,324**	**243,778**
Works of the performing arts, including musical works, dramatic works, choreography and pantomimes, and motion pictures and filmstrips	39,094	85,316	124,410
Works of the visual arts, including two-dimensional works of fine and graphic art, sculptural works, technical drawings and models, photographs, cartographic works commercial prints and labels, and works of applied arts	49,152	41,597	90,749
Sound recordings	16,344	34,465	50,809
Total: *Basic registrations*	**288,044**	**221,702**	**509,746**
Renewals			10,750
Mask work registrations			349
Vessel hull design registrations			61
Grand total: *All registrations*			**520,906**
Preregistrations			**309**
Documents recorded			**13,016**

Fee Receipts and Interest, Fiscal Year 2006

Fees	*Receipts recorded*[1]
Copyright registrations	$19,195,568
Mask works registrations	$24,815
Vessel hull design registrations	$9,920
Renewal registrations	$544,700
Subtotal	**$19,775,003**
Recordation of documents	$1,765,715
Certifications	$241,040
Searches	$111,972
Expedited services	$1,913,905
Preregistrations	$33,200
Other services	—
Subtotal	**$4,065,832**
Total receipts recorded	**$23,840,835**
Fee receipts applied to the Appropriation	$24,126,884
Interest earned on deposit accounts	$186,062
Fee receipts and interest applied to the Appropriation[2]	**$24,312,946**

1. "Receipts recorded" are fee receipts entered into the Copyright Office's in-process system.
2. "Fee Receipts and Interest Applied to the Appropriation" are income from fees and deposit account interest that were fully cleared for deposit to the Copyright Office appropriation account within the fiscal year. The amount of fee receipts applied to the appropriation during the FY does not equal the total receipts recorded, since some receipts recorded at year end are applied in the next fiscal year.

Estimated Value of Materials Transferred to the Library of Congress, Fiscal Year 2006

	Registered works transferred to other Library departments	*Non-registration works transferred to other Library departments*	*Total works transferred to other Library departments*	*Average unit price*	*Total value of works transferred to other Library departments*
Books[1]	**126,091**	**91,991**	**218,082**		**$11,057,159**
Ink print	107,399	45,336	152,735	$68.20	$10,416,527
Electronic works (ProQuest)	16,801	45,477	62,278	$4.18	$260,322
Microfilm	1,891	1,178	3,069	$123.92	$380,310
Serials[2]	**253,366**	**553,269**	**806,635**		**$17,553,243**
Periodicals	226,729	521,700	748,429	$37.71	$16,933,955
Ink print newspapers	24,070	29,400	53,470	$1.01	$32,403
Microfilm newspapers	2,567	2,169	4,736	$123.92	$586,885
Computer-related works	**4,362**	**2,034**	**6,396**		**$2,138,274**
Software	1,527	60	1,587	$29.35	$46,578
CD-ROMs	872	1,974	2,846	$734.96	$2,091,696
Printouts	1,963	0	1,963	indeterminate value	
Motion Pictures	**9,167**	**2,731**	**11,898**		**$5,983,563**
Videotapes	8,709	2,707	11,416	$90.18	$1,029,495
Feature films	458	24	482	$10,278.15	$4,954,068
Music	**40,863**	**733**	**41,596**	$89.44	**$3,720,346**
Dramatic works, choreography and pantomimes	**835**	**0**	**835**	$68.20	**$56,947**
Sound recordings	**23,352**	**4,617**	**27,969**	$16.50	**$461,489**
Maps	**1,671**	**171**	**1,842**	$38.20	**$70,364**
Prints, pictures, and works of art	**5,398**	**21**	**5,419**	$30.87	**$167,285**
Total	**465,105**	**655,567**	**1,120,672**		**$41,208,670**

1. 60% of "Books" are selected for the collections; 40% are used for the Library's exchange program.
2. 60% of "Serials" are selected for the collections, except in the case of microfilm newspapers (100% of which are selected).
3. Includes 11 copies selected by the Library under motion picture agreements.

Non-Fee Information Services to Public, Fiscal Year 2006

Information and Reference Division direct reference services	
In person	21,479
By correspondence	74,627
By email	45,763
By telephone	167,193
Total	**309,062**
Office of the General Counsel direct reference services	
By correspondence	956
By telephone	1,900
Total	**2,856**
Receiving and Processing Division services	
By correspondence	3,969
By telephone or email	14,638
Total	**18,607**
Licensing Division direct reference services[1]	
In person	483
By correspondence	742
By telephone	7,081
Total	**8,306**
Grand total direct reference services	**338,831**

1. As of FY 2005, the Licensing Division figures do not include correspondence and telephone contacts initiated by licensing examiners.

Financial Statement of Royalty Fees for Compulsory Licenses for Secondary Transmission by Cable Systems for Calendar Year 2005

Royalty fees deposited	$135,862,161.99
Interest income	$2,526,596.26
Gain on matured securities	$1,460,702.37
Transfers in	$20,110.96
Total	**$139,869,571.58**
Less:	
Licensing operating costs	$3,433,982.14
Refunds issued	$214,367.14
Cost of investments	$136,161,391.06
Cost of initial investments	($410,084.57)
CARP operating costs	$220,421.54
CRJ operating costs	$163,281.74
Transfers out	$81,074.07
Total	**$139,864,433.12**
Balance as of September 30, 2006	$5,138.46
Plus: Face amount of securities due	$136,785,087.41
Less: Pending refunds	$55,105.39
Cable royalty fees for calendar year 2005 available for distribution by the Library of Congress	**$136,735,120.48**

Financial Statement of Royalty Fees for Statutory Obligations for Distribution of Digital Audio Recording Equipment and Media for Calendar Year 2005

Royalty fees deposited	$2,420,155.01
Interest income	$13,237.50
Gain on matured securities	$65,115.54
Transfers in	$127,211.51
Total	**$2,625,719.56**

Less:	
Licensing operating costs	$69,922.71
Refunds	—
Cost of investments	$2,362,598.82
Cost of initial investments	($8,692.58)
CARP operating costs	$79,086.24
CRJ operating costs	$58,584.74
Distribution of fees	$64,182.63
Transfers out	—
Total	**$2,625,682.56**

Balance as of September 30, 2006	$37.00
Plus: Face amount of securities due	$2,373,420.95

Audio Home Recording Act royalty fees for calendar year 2005 available for distribution by the Library of Congress	**$2,373,457.95**

Financial Statement of Royalty Fees for Statutory Licenses for Secondary Transmission by Satellite Carriers for Calendar Year 2005

Royalty fees deposited	$78,309,387.37
Interest income	$2,100,491.25
Gain on matured securities	$914,656.32
Total	**$81,324,534.94**
Less:	
Licensing operating costs	$76,367.20
Cost of investments	$81,101,169.35
Cost of initial investments	($2,844.67)
CARP operating costs	$85,959.12
CARP operating costs	$63,675.97
Total	**$81,324,326.97**
Balance as of September 30, 2006	$207.97
Plus: Face amount of securities due	$81,544,499.88
Satellite carrier royalty fees for calendar year 2005 available for distribution by the Library of Congress	**$81,544,707.85**

Copyright Office Contact Information

U.S. Copyright Office
Library of Congress
101 Independence Avenue SE
Washington, DC 20559-6000

Website · *www.copyright.gov*

Public Information Office · (202) 707-3000

Staff members are on duty to answer questions by phone from 8:30 AM to 5:00 PM, eastern time, Monday through Friday, except federal holidays. Recorded information is also available 24 hours a day.

Forms and Publications Hotline · (202) 707-9100

TTY · (202) 707-6737

NewsNet

Subscribe to the Copyright Office free electronic mailing list via the Copyright Office website, or send an email message to *listserv@loc.gov*. In the body of the message, indicate: *Subscribe USCopyright*

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International Copyright Treaties and Conventions

Protection against unauthorized use of a copyrighted work in a country depends primarily on the national laws of that country. Most countries offer protection to foreign works under the aegis of international copyright treaties and conventions.

Treaties and Conventions

- *Berne Convention*—the leading international agreement that sets standards for protecting literary and artistic works
- *Bilateral*—a unique agreement on copyright protection between the United States and another country
- *Geneva Phonograms Convention*—known as the Geneva Convention, sets standards for protection of sound recordings against piracy
- *Universal Copyright Convention* (*UCC*)—an international agreement that sets standards for protecting literary and artistic works, largely superseded by Berne
- *WIPO Copyright Treaty* (*WCT*)—an international treaty setting standards for protection of works in digital format
- *WIPO Performances and Phonograms Treaty* (*WPPT*)—an international agreement setting standards for protection of sound recordings
- *World Trade Organization* (*WTO*)—the World Trade Organization's obligations regarding Trade-Related Aspects of Intellectual Property Rights, incorporating and expanding on Berne and adding enforcement obligations

International Copyright Treaties and Conventions

RELATIONS AS OF SEPTEMBER 2006

- ■ Berne Convention
- ◆ Bilateral
- ✸ Geneva Phonograms Convention
- ▲ Universal Copyright Convention (UCC)
- ● Unclear
- ❖ WIPO Copyright Treaty (WCT)
- ✦ WIPO Performances and Phonograms Treaty (WPPT)
- ▼ WTO
- ◗ None

This map does not indicate membership in the UCC or bilateral treaty relations for any country that is either party to the Berne Convention or a member of the WTO.

Organization of the U.S. Copyright Office

SEPTEMBER 30, 2006