

Statement of Maria A. Pallante
United States Register of Copyrights
Before the
Subcommittee on Legislative Branch Appropriations
U.S. House of Representatives
Fiscal 2016 Budget Request
February 26, 2015

Chairman Graves, Ranking Member Wasserman Schultz, and Members of the Subcommittee:

Thank you for the opportunity to present written testimony in support of the budgetary needs of the United States Copyright Office.

The Copyright Office is a congressionally created department within the Library of Congress and is vested with the statutory responsibility of administering the Copyright Act and other provisions of Title 17, including the national copyright registration and recordation systems. Today, the Copyright Office sits at the center of a complex and dynamic legal and regulatory system. Its work is vital to all types of businesses, the Congress, courts, and ultimately the national economy.

Again for fiscal year 2016, the Library of Congress has sought to prioritize its many competing needs, including those of the Copyright Office. I am grateful to the Librarian for putting forward the request detailed below, which includes two program increases that would primarily be funded through fees. The request this year does not reflect the entirety of the Copyright Office's needs. However, it is a reasonable request put forward in a difficult budget environment, and one of many that the Librarian has sought to balance in his overall agency request involving library acquisitions, storage, preservation and other urgent needs, as stated in more detail in the Librarian's written statement.

As Register, I believe that the Copyright Office makes an outsized contribution to the public, but, as described below, this work requires sufficient funding. Over time, the Office will likely require capital investments to make the copyright system more efficient and more useful for the twenty-first century marketplace. In the meantime, we hope the Committee will agree that the request put forward for next year is both reasonable and responsible.

Funding and Overall Budget Request

The Copyright Office is funded through a combination of fees for services and dedicated appropriated dollars. Some of the Office's operational costs are offset by services provided by the Library of Congress through its agency-wide appropriations.

These costs are not itemized and are not taken into account when the Copyright Office sets and implements revised fee schedules. (The Office last implemented a revised schedule on May 1, 2014, following an extensive public process.)

The Copyright Office's total request for fiscal 2016 is \$58.875 million, of which:

- \$30.0 million derives from authority to spend fee collections;
- \$5.777 million derives from licensing royalty and filing fee collections;¹ and
- \$23.098 million derives from appropriated dollars.

The Office administers these funds through separate budgets for three program areas:

(1) Copyright Basic budget, which funds most Copyright Office operations;

(2) Copyright Licensing Division, which is a fiscal operation that disperses royalty income after statutory distribution proceedings and is funded entirely by fees from private parties; and

(3) Copyright Royalty Judges, who report to the Librarian but are included by the Library under the Register's budget for administrative convenience.

Copyright Office Basic Budget Request

The Basic Budget funds most of the Copyright Office. The request this year is \$51.9 million, of which \$30.0 million or 58% is a request for authority to spend the fees we collect for services.

The request includes two program increases, one for our Registration Program and one for our Recordation Section, totaling \$2.705 million dollars. However, \$2.029 million of the total would be funded by fees, and we would use this fee authority to add 20 new hires to our Registration Program. The remaining \$675,825 would require appropriated dollars; we would use this funding to add five new hires to our Recordation Section.

Licensing Division Budget

The budget request for the Copyright Licensing Division is \$5.388 million, all of which would derive from licensing-related collections. Copyright owners contribute to the funding by virtue of deductions from statutory royalty payments, as do cable television and satellite licensees through the payment of filing fees under the applicable

¹ Royalties and filing fees are private monies remitted to the Copyright Office by users of certain statutory licenses. Operations of the Copyright Office's Licensing Division and non-personnel spending of the Copyright Royalty Judges are funded out of such royalties and filing fees.

statutory license. The increase in spending authority requested here is to support mandatory pay-related and price level increases affecting the administration of the various statutory licenses.

Copyright Royalty Judges

The Copyright Royalty Judges report by statute to the Librarian, but the Register administers their budget as an administrative courtesy. The budget request for the Copyright Royalty Judges is \$1.584 million to support mandatory pay-related and price level increases, of which \$389,000 (for non-personnel-related expenses) derives from the above-described licensing collections. The remainder, \$1.195 million in appropriated dollars, is to cover the personnel-related expenses of the Judges and their staff.

Administering the Copyright Law

Registration

If the Committee approves our request for additional spending authority, most of the two million dollars would go to strengthening the registration staff. In fiscal year 2014, the Copyright Office approved and registered claims in approximately 476,000 creative works, including 219,000 literary works and 65,000 sound recordings. Since fiscal year 2012, however, the Office has been experiencing an upward trend in the backlog of claims and average processing time for registrations. In 2012, the average processing time for claims filed on paper applications was 4.8 months; the current processing time is 13.5 months. The average processing time for claims filed online electronically has also increased, rising from 3.1 months to 4.4 months over the same period. These increases are mostly attributable to the loss of registration staff, which has declined by approximately 50 FTEs (roughly 27% of the Registration Program).² (In the case of electronic claims, some of the delay stems from ongoing problems with technology systems, as well.)

As we hire new registration experts, the Office must train them in the copyright law, regulations and practices, and prepare them to address a constantly changing world of content and business models. The lengthy training schedule, coupled with the fact that the backlog continues to grow, provides a sense of urgency to reverse staff losses in this critical division. It is also the case that practices are becoming more complex than before, as authors, publishers and producers continue to change the ways in which they create and disseminate works of authorship.

² This number tracks losses since 2010. The Copyright Office today has 76 professionally trained examiners to handle approximately half a million copyright claims involving millions of works of authorship; we had close to 130 examiners in 2010. Assuming we can hire 20-30 examiners in 2015 and 2016, the Office will still be below capacity, particularly given the increasing complexity of addressing digital works and new practices.

In December, 2014, we completed a major, multi-year special project by releasing the *Compendium of Copyright Office Practices, Third Edition*. The first major revision in two decades, the *Compendium* is a comprehensive guidebook regarding registration and other Copyright Office practices. It is relied upon by Office staff but also serves as a recognized authority consulted by copyright owners, legal practitioners, and the courts, which frequently give the Copyright Office deference in registration policy and related issues. This was an important and necessary accomplishment for the Office, and one that we announced publicly in our 2011-2013 work plan, entitled *Priorities and Special Projects of the U.S. Copyright Office*.

Notably, the *Compendium* is just the beginning of a digital makeover for registration. It provides the necessary legal foundation by which the Office may now pursue regulations and practices that recognize and serve the digital economy. For example, the Office will need to determine the rules and standards by which it registers works that change routinely (like news sites); works that are disseminated by streaming instead of copies (like on-demand film, television and sports programming); works that contain valuable and proprietary source code (like business software); and works that contain copy controls and other anticircumvention measures (like video games).

Recording Assignments, Security Interests and Other Copyright Documents

Regarding the recordation provisions of the Copyright Act, the Office also needs resources. The requested increase of \$675,825 in appropriated dollars for fiscal 2016 would fund five new hires in the Recordation division. The Office has a very lean permanent staff of 13 dedicated to this function at the moment. As last analyzed in 2014, this staff recorded 8,146 documents pertaining to copyright interests in more than 144,376 identified works. This function remains a paper process, however, in which staff manually index the materials received.

In fiscal 2015, the Congress allocated \$1.5 million to the Copyright Office to conduct planning and business analysis related to updating the recordation function. The long-term objective is to automate the document submission and review process to include an online filing capability for customers. Significant changes are also contemplated regarding service options and the content and format of the public record. As noted below, the business analysis we are now engaged in follows two years of research regarding the overall technology of the Copyright Office (relevant to its customer base) as well as the relevant legal and business issues related to recording documents in the online environment. The additional FTEs we are requesting for Recordation represent new positions with skills that will be more appropriate to an online function.

The future of the document recordation function has been an intense focus of the Copyright Office for several years, and it too was publicly announced in the 2011-2013 *Priorities* work plan. In the past two years, the Office engaged stakeholders through multiple public roundtables on potential changes to the legal and administrative aspects of document recordation. I am also pleased that in 2014, we completed a business reorganization that, among other things, established a dedicated Office of Public Records and Repositories. For the first time, these functions are now headed by a senior level officer reporting directly to the Register.

I also appointed and tasked the Office's first Abraham L. Kaminstein Scholar in Residence (Professor Robert Brauneis of George Washington University) with conducting an in-depth study of the relevant legal issues, and engaged with Stanford University Law School (under Professor Paul Goldstein) in an academic partnership to examine these questions. In January 2015, we released the report of the Kaminstein Scholar, entitled *Transforming Document Recordation at the U.S. Copyright Office*, which in turn references the work of the Stanford students.

Statutory Licenses

The Copyright Office administers several statutory licenses that require the Office to manage and distribute royalties, including those collected on behalf of copyright owners of broadcast television programming that is retransmitted by cable and satellite operators. The disposition of these private monies is determined by the Copyright Royalty Judges (together, the Copyright Royalty Board or "CRB") in distribution proceedings. The work of the CRB is reviewable by the Register for legal error, but for constitutional reasons the CRB reports to the Librarian as head of the agency. In fiscal year 2014, the Copyright Office collected approximately \$318 million dollars of royalties and made disbursements in accordance with CRB's decisions.

In fiscal 2014, the Office completed a second pilot of an electronic licensing system to facilitate its administration of statutory licenses, and development of the system will continue in fiscal 2015 and 2016. The end goal is to launch a system that supports online filing and processing of statements of account by statutory licensees. As with all Licensing Division operations, this administrative initiative is being funded by private funds collected under the relevant licenses.

Copyright Law and Policy

Copyright Policy and the Digital Economy

With respect to policy, the Copyright Office has been at the center of discussions regarding potential updates to the Copyright Act, working closely with Members of Congress and, in particular, the House Committee on the Judiciary. The House Judiciary Chairman convened twenty copyright hearings in the 113th Congress, with the clear mission of comprehensively reviewing the law to assess how well it is working in the digital age. As Register, I have both testified on these issues and lent the impartial expertise of my Office to assist the process.

It would be an understatement to say that the copyright law is complex. Indeed, in the context of the digital economy, the entire copyright ecosystem is in a state of ongoing transformation and innovation. While challenging, this is also an exciting development for the United States, which has long championed a strong but balanced intellectual property framework to the benefit of both the content and technology industries.

In addition to its service to the Congress, the Copyright Office supports the work of the U.S. Trade Representative, the U.S. Department of Justice, the U.S. Department of State, and the U.S. Department of Commerce. This work involves major trade agreements, treaty negotiations, Supreme Court briefs and other interagency and intergovernmental matters. The Copyright Office has relationships with copyright and other intellectual property offices around the world, and is frequently involved in intergovernmental and bilateral meetings, as well.

Congressional Hearings on the Copyright Office

The Congress is also interested in the Copyright Office itself, particularly its ability to meet the challenges of the twenty-first century. This means in large part the ability to support a marketplace in which creative content is in demand around the globe but vulnerable to unauthorized uses. In the past several years, I have focused the Office on projects that are self-evaluative, including how to upgrade our current practices and whether to create entirely new paradigms for certain processes. This might include, for example, the ways in which we register works of authorship or record documents such as assignments, licenses, security interests and other forms of ownership. Most would agree that the Copyright Office must be more interoperable with the technology of its customers, and must offer timelier and more innovative services, including business-to-business data exchange and applications that work on mobile devices.

We are aware that on February 26, 2015, the House Committee on the Judiciary will explore issues related to the Copyright Office's funding, services and authority. We understand this hearing is a part of the overall review of our copyright laws. It follows the Committee's September 18, 2014 oversight hearing of the Copyright Office at which I testified. During that hearing, Members explored a range of questions including budgetary and resource needs, efforts to upgrade and improve Office services, and the Office's current statutory structure within the Library. We are both respectful of these proceedings and available, as always, to assist the Congress with these issues.

Policy Reports of the Copyright Office

In February 2015, the Copyright Office published an in-depth study and legislative recommendations entitled *Copyright and the Music Marketplace*. This report, which analyzes the statutory framework and business environment of the music industry, is indicative of the Office's policy role. The report has been recognized by Members of Congress, songwriters and composers, music publishers, performing rights organizations, record labels and digital delivery services. The expertise comes from the Office's daily role in administering the Copyright Act, and the legal and cultural significance of issues such as these is an important factor we use to recruit talented lawyers. Nonetheless, the lack of resources, including insufficient staff and travel budgets, makes for a challenging environment for even the most dedicated of public servants.

In addition to the music study mentioned above, the Office is currently preparing to issue reports on orphan works and mass digitization issues, as well as the application of authors' "making available" rights in the online environment under U.S. law. Beyond studies, the Office works closely with congressional offices every day to provide assistance on complex issues.

Through its work with the Intellectual Property Enforcement Coordinator, the Copyright Office is also nearing completion of an online index of fair use cases to serve as a resource for authors and others.

Challenges of the Current Fiscal Environment

The Copyright Office carries out a significant workload for the benefit of the Nation. It is doing so, however, with reduced staffing and technology deficiencies. These challenges are part of broader discussions throughout the Library, but I will note them here briefly.

Staffing

The Copyright Office's total staff is smaller than it should be to perform its complex and important statutory assignments. Our authorized FTE ceiling has been reduced to 411 (for the Copyright Basic Budget) following recent Congressional direction to the Library to reconcile and eliminate unfunded positions. This is a considerable reduction at a time when the Office needs staff and would in fact hire them if it had funding. In 2005, by comparison, the FTE ceiling was 492 (again, for the Copyright Basic Budget). However, all of these positions are not filled. We currently have approximately 360 filled positions on the basic staff, a number that will improve somewhat if fees remain steady and we can make hires in Registration and Recordation. Internally the reduced staff is felt as a workload distribution increase on already over-burdened employees. And over time the Office will be at a disadvantage if it cannot attract and retain experts, particularly in the legal and technology fields.

Information Technology

The agency's IT systems and infrastructure are of paramount concern for the Copyright Office, and it has been working with the Library, the public and the Government Accountability Office ("GAO") to assess the issues in the past year. This Committee directed the GAO to audit the priorities and planning process for all Library programs, an audit that we understand is almost complete. Moreover, the Senate asked the GAO to identify deficiencies in the Copyright Office's ability to meet the needs of the global copyright marketplace, and to evaluate modernization goals and needs.

The Copyright Office has participated fully in both audits, and we look forward to learning of the GAO's findings and recommendations when its audit reports are released in the near future.

Technical Upgrades Special Project

During the past few years, the Chief Information Officer of the Copyright Office chaired a special project designed to assess the areas in which the Copyright Office needs to modernize, which included soliciting the talent and expertise of the Office's customers and stakeholders. In February 2015, the project team delivered its findings and recommendations to me, and I have in turn released them to the public. This document, *Report and Recommendations of the Technical Upgrade Special Project Team*, will be a very helpful resource as we consider future strategies for the Copyright Office. The report acknowledges challenges with the current user experience and with access to the public record, while offering recommendations for improvement, such as developing a more dedicated IT infrastructure to support the registration and recordation functions, and

deploying Application Programming Interfaces (“APIs”) to provide for data exchange with the rich data of private copyright databases.

Statutory Authority to Set Fees

The Copyright Office appreciates the Committee’s dedicated appropriation in fiscal 2015 of \$2.25 million, with \$750,000 to fund backlog reduction in registration and \$1.5 million for year one planning and analysis for reengineering the document recordation process.

More globally, as Register I have concluded that we should reconsider the funding process for the Copyright Office as it relates to fees. For business planning, including expenditures for IT and related issues involving multi-year contracts, the Office is constrained by the inability to spend across multi-year budget cycles. In addition, the Office would benefit from more flexibility in both its retention and spending of fee revenues, particularly in relation to longer-term capital improvements. This would require us to take a look at the statutory provisions for fees in Chapter 7 of the Copyright Act.

I would like to thank the Subcommittee for your support of the Copyright Office and national copyright system. Our fiscal 2016 budget request, if approved, would address some immediate, high-priority needs, primarily through the authority to use fee revenues received for services rendered.