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U.S. COPYRIGHT OFFICE

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RECORDATION REENGINEERING
ROUNDTABLE

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TUESDAY
MARCH 25, 2014

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The Roundtable met in the UCLA School of Law, 405 Hilgard Avenue, Los Angeles, California, at 9:00 a.m.

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PRESENT

ROBERT BRAUNEIS, United States Copyright Office

ED ARROW, Universal Music Publishing Group

GEORGE BORKOWSKI, Recording Industry

Association of America

CATHERINE S. BRIDGE, The Walt Disney Company

NICHOLAS BUNIN, 20th Century Fox

JOHN CATE, American Music Partners

BONNIE CHAVEZ, SAG-AFTRA

BILL COLITRE, Music Reports, Inc.

JOANNA CORWIN, United States Copyright Office

RYLAND HAWKINS, Author Services, Inc.

JASMINE JOHNSON, SAG-AFTRA

TEGAN KOSSOWICZ, Universal Music Group

MICHAEL LIGON, Dean Ligon Entertainment

GARY YOUNG LIM, The Walt Disney Company

LAWRENCE LIU, Universal Studios

SUSAN LOWRY, SAG-AFTRA

ZARIFA MADYUN, United States Copyright Office

GAYLE MCDONALD, Sony Pictures Entertainment,

Inc.

MARY MCGUIRE, 20th Century Fox

NEIL NETANEL, UCLA

DAVID NIMMER, UCLA

PATRICK T. PERKINS, Warner Bros. Entertainment,

Inc.

BRADLEY RUSSELL, Sony Pictures Entertainment,

Inc.

CARLY SEABROOK, Universal Studios

BRIAN SBARDELLI, Manatt, Phelps & Phillips, LLP

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

2 (9:07 a.m.)

3 MR. BRAUNEIS: Okay. I think we're
4 about ready to get started. I think just about
5 everybody's here. My name is Bob Brauneis.
6 I'm currently serving as the Abraham Kaminstein
7 Scholar in Residence at the U.S. Copyright
8 Office.

9 And I'm very pleased to be
10 accompanied today by two of my colleagues,
11 Joanna Corwin, who is a project manager with the
12 Copyright Technology Office and Zarifa Madyun,
13 who is the head of the Recordation section at
14 the Copyright Office.

15 And we'd like to start by thanking
16 UCLA for hosting this event and, particularly,
17 Professors Neil Netanel and David Nimmer, with
18 whom I corresponded in order to get this here
19 today. And here we are, so thanks so much.

20 I don't know whether you want to say
21 anything, but --

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1 MR. NETANEL: Yes, I want to say
2 welcome. We're very pleased. We've had a
3 number of Copyright Office public meetings here
4 at UCLA. We're always pleased to do it, so
5 welcome and have a productive meeting.

6 MR. BRAUNEIS: Well, thank you.
7 Thank you very much. And on behalf of those of
8 us from the Copyright Office and from Maria
9 Pallante, the Register of Copyrights, I want to
10 welcome all of you and thank you for
11 participating in this meeting.

12 We know that you all have busy
13 schedules and that it is a commitment to take
14 out a big chunk of a day and not do the other
15 things that you need to do to come help us. So
16 we're looking forward to hearing your comments
17 and your views and we're very grateful for your
18 participation.

19 And by way of sort of setting the
20 stage and setting expectations for this
21 meeting, I want to say that I think of this

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1 meeting as a kind of occasion for a lopsided
2 dialog. Why lopsided? Because mainly we want
3 to listen.

4 We do have some things to say. We
5 have a bit of background and context, those are
6 the facts about the way recordation is working
7 right now, to make sure that everybody's on the
8 same page when the discussion starts.

9 That will come towards the
10 beginning, which may make you think that we're
11 lecturing to you. But as soon as we're done,
12 we mainly just want to listen and to, as
13 carefully as we can, understand your concerns,
14 maybe occasionally ask up follow-up questions
15 to understand those concerns in more detail.

16 And I also want to say that we very
17 much think of this meeting as one stage in a
18 larger process. Many of the organizations you
19 represent or that your organizations are
20 members of have already provided written
21 comments in response to the Notice of Inquiry

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1 that we sent out on January 15.

2 And we thank you very much for those
3 comments. Got one copy of them all right here
4 at my side and they've already been very helpful
5 to us.

6 And then, of course, we have this
7 meeting and then, this meeting's not the end of
8 it. And I want to issue an invitation right now,
9 to all of you to email, call, keep the
10 conversation going.

11 For me, part of this is just to meet
12 all of you and to start getting to know you and
13 the kinds of work you do and the way that the
14 Copyright Office can help you. So that is
15 particularly important to me.

16 Let me just do a quick run through
17 the agenda, which I think you all should have
18 a copy of, so we understand how we're going to
19 proceed.

20 I'm going to start by actually just
21 going around the table and having each of us

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1 introduce ourselves and then we're going to
2 start with two background presentations.

3 Zarifa is going to give a
4 presentation on recordation as it's currently
5 run. And I'm going to give a little
6 presentation about some statistics about
7 recordation over the past 35 years, since 1978
8 and the beginning of the electronic copyright
9 catalog, so we can have that perspective.

10 Then we've broken this up into four
11 sessions which broadly parallel the questions
12 in the Notice of Inquiry. We will be taking a
13 coffee break sometime around 10:30 or so. We'll
14 be having lunch around 11:45 to 12:45 and then
15 we will end by 3 o'clock.

16 And then finally, you'll notice that
17 we have a court reporter here, Jacqueline
18 Denlinger, who I want to thank for transcribing
19 this session.

20 But I also want to give notice that
21 that means that when you speak here, you give

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1 consent for those comments to be transcribed and
2 the transcript may be made public and you give
3 consent for that publication. So I appreciate
4 that.

5 Are there any questions about
6 anything I've said so far in setting the stage?
7 Okay. Well, then I'd like to just start with
8 introductions.

9 And I'd appreciate it if each of us
10 just sort of -- each of you, including me, say
11 your name, your position and maybe just one or
12 two sentences about your experience with and
13 interest in recordation.

14 As I said, I'm Bob Brauneis. I'm
15 currently serving as the Scholar in Residence
16 at the Copyright Office, but my sort of
17 full-time job is Professor of Law at George
18 Washington University.

19 I've been teaching and writing about
20 copyright for over a decade now. And I have a
21 particular interest in the way the system works

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1 in providing copyright information about works,
2 how that information system works.

3 And that's doing several different
4 projects this year with the office, sort of with
5 those, that general theme, but this is
6 definitely at the center of that. I've never
7 personally recorded a document at the Copyright
8 Office. I have registered works, though, so I
9 know what it's like to be a registrant.

10 MS. CORWIN: I'm Joanna Corwin of
11 the U.S. Copyright Office. After I'd say about
12 10 or 11 years in copyright registration, I
13 started working as a project manager.

14 I have worked with some of you on the
15 technical upgrades project which I gave you sort
16 of a larger umbrella to this project and now,
17 I'm happy to be helping with recordation
18 reengineering.

19 MS. MCDONALD: Hi, I'm Gayle
20 McDonald from Sony Pictures. I run the
21 Copyright Department for Sony and I have since

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1 1990. We do lots and lots and lots of
2 recordations.

3 MR. RUSSELL: My name is Bradley
4 Russell. I'm at Sony Pictures Entertainment.
5 I work with Gayle McDonald in Copyright and
6 Title. And I help facilitate and provide her
7 with the support she needs to take care of our
8 databases and make sure that the recordations
9 and registrations are filed properly.

10 MS. MCGUIRE: I'm Mary McGuire with
11 Fox and I handle copyright administration for
12 the company. And we're very happy to be here
13 to provide our input on how to make our jobs
14 easier.

15 MR. BUNIN: My name's Nicholas
16 Bunin. I'm in charge of legal operations and
17 technology for Fox Entertainment Group. So in
18 relation to work with Mary, our area is
19 basically what takes care of designing the
20 technology that actually implements the various
21 tracking and transmission processes around

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1 copyright and recordation. In our system we
2 call it ACOPDOC.

3 MR. BORKOWSKI: I'm George
4 Borkowski, Senior Vice President of Litigation
5 and Legal Affairs at the Recording Industry
6 Association of America. My interest is
7 primarily the extent to which recordation
8 requirements can impact litigation and
9 copyright enforcement. And I once actually did
10 have a copyright mortgage expunged.

11 MS. KOSSOWICZ: My name is Tegan
12 Kossowicz. I work for Universal Music Group.
13 My department's responsible for submitting all
14 of the copyright registrations for the
15 Universal labels and we're also involved in
16 recordation of documents. So that's my
17 interest.

18 MR. ARROW: I'm Ed Arrow with the
19 Universal Music Publishing Group and I head up
20 the copyright department and among other things
21 we file a boat-load of copyright registrations

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1 and a significant number of recordations as
2 well.

3 MS. JOHNSON: My name is Jasmine
4 Johnson. I'm the case manager at SAG-AFTRA and
5 I handle mostly the security and inter-party
6 agreement filings with the copyright office.

7 MR. LIM: My name is Gary Lim. I'm
8 with Walt Disney Company. I handle the
9 registrations and recordations for the company
10 itself and its employees.

11 MS. LOWRY: I'm Susan Lowry. I'm
12 the Associate General Counsel of Financial
13 Services at SAG-AFTRA. SAG-AFTRA takes
14 secured interests in all the independent film
15 and TV projects that their members participate
16 in and we have for about over the last 20 years.
17 So we handle hundreds and hundreds of filings
18 at the Copyright Office every single year.

19 MS. CHAVEZ: Bonnie Chavez,
20 Assistant General Counsel, Financial
21 Assurances at SAG-AFTRA.

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1 MS. SEABROOK: I'm Carly Seabrook.
2 I am the Director of Copyright Administration
3 for Universal Studios. I handle all of
4 copyright registrations and recordations for
5 the studio and so I have an invested interest
6 in what happens in these sessions.

7 MR. LIU: I'm Larry Liu. I'm Vice
8 President, Senior IP Technology Counsel at NBC
9 Universal. I work in the Corporate Legal
10 Department on mainly intellectual property and
11 technology matters. And one of the areas I
12 manage is the Copyright Administration
13 Department.

14 MR. PERKINS: I'm Patrick Perkins
15 from Warner Bros. Entertainment. I am Vice
16 President Senior Intellectual Property Counsel
17 there and I help to manage the copyright
18 registration recordation function at the
19 studio.

20 MR. HAWKINS: I'm Ryland Hawkins,
21 Director of Legal Affairs at Author Services,

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1 Inc. And I'm here just because I file hundreds
2 of registrations every year and also
3 recordation of all those registrations and the
4 titles, et cetera.

5 And I'm also on the Copyright
6 Committee at the Association of American
7 Publishers and although they'll be seeing you
8 in New York, they asked that I speak, if needed,
9 here as well.

10 MR. NIMMER: I'm David Nimmer. As
11 a treatise writer, I'm interested in all aspects
12 of copyright law. Formalities are
13 particularly of interest because in 1989 I wrote
14 about the Berne Convention Implementation Act
15 and the so-called death of formalities in the
16 United States.

17 But over the intervening quarter
18 century, I've returned to the field time and
19 time again, including an appearance before the
20 U.S. Supreme Court, about registration. So I'm
21 fascinated to see what is happening about

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1 recordation.

2 MR. NETANEL: I'm Neil Netanel.
3 I'm a Professor here at UCLA School of Law. I've
4 practiced and taught in the area of copyrights
5 since 1984.

6 MS. MADYUN: I'm Zarifa Madyun.
7 I'm the Section Head of the recordation section.
8 I'm sure I probably have spoken to a few of you
9 a couple of times about your recordation.

10 I started in the recordation section
11 in 2005 as a document specialist and I've been
12 the head of the section now for about a
13 year-and-a-half.

14 MR. BRAUNEIS: Excellent. Well,
15 thank you all. And next up we actually have a
16 presentation from --

17 MS. MADYUN: Yes.

18 MR. BRAUNEIS: -- Zarifa. But
19 having introduced yourself, you can just keep
20 talking.

21 MS. MADYUN: Okay. Okay. So

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1 again, Zarifa Madyun, Section Head. I'm just
2 going to go through the current system as it
3 stands now, just so you can get a better
4 understanding of the work hours and the man
5 power that it takes to actually record the
6 documents in the system that we currently have.

7 So just as an introduction, the
8 recordations section is responsible for the
9 examination and cataloging of documents
10 submitted for recordation. And, of course,
11 they have to follow the requirements
12 established in the Copyright Act and in the
13 Copyright Office regulations.

14 My section creates and issues
15 official certificates of recordation for those
16 documents that actually meet the recordation
17 requirements.

18 As you know, all documents are
19 currently submitted in hard copy paper form.
20 Each document is assigned to a document
21 specialist who then begins examining the

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1 document.

2 The specialist makes sure that the
3 following four requirements are there and are
4 satisfied. One is legibility, that is to make
5 sure that we're able to scan it and image it in
6 our system; completeness, that everything that
7 you say is there is actually there; signature,
8 if it's a photocopy signature that there's some
9 certification on our document cover sheet that
10 assures that the photocopy is actually a copy
11 of the original; and then the filing fees.

12 The document specialist then enters
13 information about the document into an
14 electronic record that forms part of the
15 Copyright Office catalog.

16 And that information includes the
17 date of recordation, that's the date that we
18 receive your document in the Office; the dates
19 of execution and certification, those are the
20 dates that you actually provide to us.

21 The parties involved in the

1 transaction; the heading of the recorded
2 document whether it's a security agreement and
3 assignment, short form assignment; titles of
4 the works listed; registration numbers if
5 provided and if applicable.

6 And I know you're probably thinking,
7 okay, looking at that, that's not a lot, six
8 things should be pretty easy. You should be
9 getting your recordations back in record speed.

10 Well, the process actually requires
11 close reading and interpretation of the
12 document. So here we have a scanned document
13 that we have. It looks simple, two pages.
14 You're probably thinking, again, okay, what's
15 the big deal.

16 But this process actually requires
17 close reading, excuse me, and interpretation of
18 the document. If one were to just take a quick
19 glance, they would think, okay, Nicholas
20 Spencer is the assignor, okay, we'll just put
21 that in the field and move on.

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1 But if you actually look, it's
2 providing you with a lot of information that
3 Nicholas Spencer is an individual and he's also
4 the Vice President of Epitek.

5 And he and Epitek are collectively
6 referred to as the assignors. So if a
7 specialist is looking at that and if they're
8 just going to the signature line, they would
9 miss all of that important information and then
10 that information wouldn't go into the public
11 record.

12 Again, here's more information with
13 regards to registration numbers. If you're
14 looking for, let's say, the work, if once the
15 specialist is going, they're just looking,
16 okay, I see two registration numbers, it says
17 work product.

18 Well, what's the title of the work
19 product? The registration number comes before
20 both of the titles, so they would actually have
21 to take the time to make sure that they're

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1 transcribing that information accurately.

2 And then if they move down further
3 in the document, they find that there's another
4 registration number with another title. So if
5 they're not actually taking the time to make
6 sure that they're going through this properly,
7 they could be missing some key information that
8 I'm pretty sure is very important for you to get
9 into our public record.

10 So the majority of the documents
11 that we receive concern a single work, that's
12 just one work, one title. But between two to
13 five percent concern 100 works or more and some
14 documents can concern over 50,000 works.

15 And this is somewhere a lot of the
16 time that the document specialist spends on the
17 documents takes place. The document
18 specialist has to count the work titles
19 contained in the document to confirm that the
20 document is complete and the correct filing fee
21 has been paid.

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1 So you can imagine if we receive a
2 document with 50,000 titles, that's going to
3 take a lot of man power, a lot of hours because
4 they're actually going to have to sit and count
5 each individual title.

6 And then a separate catalog record
7 is created for each work in a multi-work
8 document. So someone's typing all the
9 information in as well.

10 So right now, the way that the system
11 stands, the recordation specialist currently,
12 immediately, as soon as they create that basic
13 record, they're entering work titles for
14 documents that concern 100 works or less. So
15 they do that as soon as they get that document
16 and begin cataloging.

17 If a document concerns over 100
18 works, the initial record is placed on hold. So
19 they'll create that basic record, they'll put
20 it on hold, the document is numbered, imaged and
21 mailed back to the remitter along with a

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1 certificate of recordation.

2 A copy of the list of the works is
3 made and set aside and then specialists enter
4 these titles at a later date. So some of you
5 may have documents that you're maybe not seeing
6 on our public catalog right now, and that could
7 be because it concerns thousands of works and
8 it's just taking a little time for us to enter
9 all that information in.

10 Recordation section staff number
11 each page of the document by manually attaching
12 stickers. So I'm pretty sure if you've gotten
13 your recordations, your documents back, you see
14 those labels on there with the volume, the
15 document number and then the page number.

16 We have a support specialist who
17 then scans that document and uploads the digital
18 scan file to the copyright imaging system.

19 Unfortunately, the copyright
20 imaging system is available to the public on
21 site at the Copyright Office, but it's not

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1 available externally. So you're not able to
2 access this from your offices.

3 Our support specialists then create
4 certificates in batches and match them to their
5 corresponding documents. And then the
6 Copyright Office returns the original document
7 to the remitter accompanied by the certificate
8 of recordation.

9 So right now, in terms of staffing
10 workload, between 2008 and 2012, there are four
11 document specialists working and two support
12 specialists.

13 MS. CORWIN: Wow.

14 MS. MADYUN: Yes. 2013, we had a
15 series of details where we had people come in
16 to help us and we were able to hire some new
17 people. So now we're at nine document
18 specialists and two support specialists.

19 These specialists, on average, can
20 do about 35 to 45 documents a week, sometimes
21 more depending on the complexity of the

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1 documents that were submitted.

2 And here are some labor estimates,
3 just to give you an idea of what it takes now,
4 in the current system. A simple document like
5 the one that I showed you earlier that's just
6 two pages, maybe one party, and I'm talking
7 about from beginning to end, from the time that
8 the specialist examines it to the time that it's
9 scanned, imaged and then mailed back, it takes
10 about an hour for a single simple document.

11 On average, we're talking about two
12 hours per document. More complex, times can
13 vary depending on the number of titles and the
14 number of pages. And that is because someone
15 has to count the titles, count the number of
16 pages, et cetera.

17 So looking at, again, the staffing
18 and workload for fiscal year 2013, we had 11,900
19 documents received. Out of that we were able
20 to catalog 7,879 documents.

21 Out of those, 566 documents

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1 contained over 100 titles and some of those
2 could have contained over, maybe 10,000 titles.

3 And our fees have increased over
4 time driven by cost studies and that's the
5 amount of time that it just takes us to process
6 this in the current system that we have.

7 So in 1978 it was \$10 to record and
8 then \$.50 per additional title. In 1990 the
9 fees were raised and it was \$20 to record and
10 then \$10 per additional ten titles. In 1999,
11 the Office raised its fees again and it was \$50
12 to record, plus \$20 per additional ten titles.

13 In 2002, we raised our prices again,
14 and it was \$80 for the basic filing fee and then
15 \$20 per ten additional titles. 2006, we raised
16 it again and it's \$95 for the filing fee, plus
17 \$25 per additional ten titles. 2009, it was
18 \$105 for filing fee and then an additional \$30
19 per ten additional titles.

20 And I'm pretty sure you may have seen
21 or been aware that there's a new fee increase

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1 coming May 1st of this year. We're keeping the
2 filing fee the same, which is \$105, but we're
3 raising the additional titles of ten to \$35. So
4 there's a \$5 increase in that.

5 And before I move it over to Bob, are
6 there any questions about what you just saw, how
7 the system works now? Did it give you a better
8 understanding of what the section is doing now?

9 MR. BORKOWSKI: Yes, I have one
10 question.

11 MS. MADYUN: Okay.

12 MR. BORKOWSKI: On one of those
13 slides you said you received, I think in 2013,
14 something like 11,000-something documents and
15 you processed something like --

16 MS. MADYUN: I'll have to --

17 MR. BORKOWSKI: -- I don't know.

18 MS. MADYUN: -- go back to that.

19 MR. BORKOWSKI: What happened to
20 the ones that weren't processed?

21 MS. MADYUN: I'm sorry?

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1 MR. BORKOWSKI: What happened to
2 the group of documents that you didn't process?
3 The --

4 MS. MADYUN: The documents that we
5 didn't process are part of what you may consider
6 a backlog. So those are the ones that we were
7 able to get out during that particular fiscal
8 year and then the other ones just carried over
9 into the next fiscal year.

10 MR. BRAUNEIS: If we brought
11 pictures, we could show you the room --

12 MS. MADYUN: Yes.

13 MR. BRAUNEIS: -- in which those
14 documents were sitting.

15 MS. MADYUN: Yes, it's a large room.

16 MR. NIMMER: I have a question.

17 MS. MADYUN: Yes.

18 MR. NIMMER: Do you have any idea,
19 given that mistakes are inevitable, how often
20 an error occurs? What percentage is it? Is it
21 much less than one percent? Did you have any

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1 statistics on that?

2 MS. MADYUN: You mean errors in the
3 cataloging records?

4 MR. NIMMER: Yes.

5 MS. MADYUN: If I had to guess, and,
6 you know, I do get calls and emails about that,
7 I would say roughly about maybe three percent
8 of what we do. Because we have, you know,
9 there's a series of quality assurance that we
10 have to go through.

11 So with the new staff, for example,
12 they have trainers who look at their work and
13 after they look at their work, I look at their
14 work to make sure that everything is accurate.

15 That's not to say that in the
16 situation where you may have 10,000 titles,
17 there may be a title that isn't entered just
18 because this is all manual. It can happen, but
19 there are fixes for that and it's easy for us
20 to go in and make sure that that information is
21 entered into the record.

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1 MR. NETANEL: What percentage of
2 the documents fail the core requirements for
3 recordation?

4 MS. MADYUN: I would say, and if
5 you're saying failed, you mean just we send them
6 back and we'll never record them, I would say
7 one percent or less than one percent. Because
8 most of the documents that we receive, if
9 there's an issue with it, it's easy for us to
10 get that information.

11 For example, if someone had a
12 photocopy signature, it's easy for us to get a
13 document cover sheet with the certification
14 signed or sometimes some remitters like to just
15 send in the original copy.

16 If an attachment was missing, it's
17 easy for them to just fax that attachment in to
18 us. So I would say it's really less than I would
19 say one percent, less than one percent.

20 MS. CHAVEZ: Your specialists, are
21 they full-time, contract, and what's your

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1 turnover?

2 MS. MADYUN: They're full-time. I
3 will say that between 2008 and 2012, we had some
4 retirements, some people moved on to other jobs,
5 like myself. I had left and gone to the public
6 information office for a while. Some people
7 left the Office.

8 The four specialists that were
9 there, they've been there for years, I would say
10 maybe 20-plus. The specialists that we have
11 now, they've been in the Copyright Office for
12 a while and I don't anticipate them leaving.

13 They're happy where they are and
14 they like the job and they feel challenged, so
15 it's not that high of a turn-over. It's just
16 people left, retired and there was no
17 backfilling of those positions.

18 MR. BRAUNEIS: Other questions?
19 Okay. Well, one of the things I've been doing
20 since I arrived at the Copyright Office in
21 September, I've been building a database that

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1 lets me do large scale statistical research into
2 the Copyright Office catalog.

3 And so I'd like to show you a little
4 bit of what I've found out so far was that there's
5 certainly a lot still to find out about recorded
6 documents over the span of what turns out to be
7 about 30 years or 31 years between 1978, which
8 is the first year in which the catalog became
9 electronic, and 2009.

10 Why is 2009 the end date? It's
11 because I'm not confident that the numbers after
12 that are complete due to various elements of the
13 backlog that we've previously referred to. I'm
14 pretty confident that through 2009 everything's
15 been entered.

16 So in that period how many documents
17 in total were recorded? It's about 450,000
18 documents. And that represents about 8 million
19 identified works.

20 And so by identified work, I mean a
21 work for which a title or a registration number

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1 or some other identifier was given and it's
2 either contained in the single work document or
3 it is contained in a separate record, which is
4 what happens when there's more than one work in
5 a document.

6 Lots of different types of documents
7 are recorded. Assignments, of course, and
8 grants and releases of security interests, but
9 also licenses, options, notices of terminations
10 of transfers, notices of intent to enforce out
11 of Uruguay Round Agreement Act and at least 20
12 more types that we could identify and pick out.

13 We have been able, so far, to
14 reasonably classify by type of document, about
15 85 percent of the documents that are in that
16 database, representing about 90 percent of the
17 identified works.

18 So that identification, I'm not
19 reading each of the documents, I'm relying
20 mainly on the heading of the document that as
21 Zarifa noted, is entered into the catalog as

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1 part of the cataloging process. So using that
2 information, we're confident we're able to
3 classify about that percentage of the
4 documents.

5 The two largest types of documents
6 are assignments and financing documents
7 representing grants and releases of security
8 interests. You can see that the assignments
9 represent about 60 percent of the documents, but
10 only about 43/44 percent of the works.

11 The financing documents represent
12 only about 16/17 percent of the documents, but
13 they represent actually a slightly larger
14 number of works than the assignment. So the
15 average size of a document that grants or
16 releases a security interest is much larger in
17 terms of the number of titles.

18 As you, you know, for various
19 practical reasons might suspect that if you're
20 doing a financing transaction, unless it
21 represents, you know, work like a major motion

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1 picture that has great value as one work, these
2 financing transactions are more likely to
3 involve multiple works at the same time.

4 Here's the first just raw look at
5 documents recorded by year. So this is those
6 450,000 documents spread out over that 31 year
7 period.

8 And, you know, when I first did the
9 calculations that made this chart, I thought,
10 oh my gosh, what's that peak there in 1997?
11 Well, it turns out that those are notices of
12 intent to enforce under the Uruguay Round
13 Agreements Act and so if you take off that peak,
14 that sort of lofts that down a little bit.

15 And then there's one other type of
16 document that was part of the Copyright Office
17 catalog for only about the first three to four
18 years of the catalog. And that is, so called,
19 Section 508 litigation statements.

20 When you file a copyright
21 infringement action you're required to report

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1 that filing to the Copyright Office and any
2 subsequent judgment is required to be reported
3 to the Copyright Office.

4 They started cataloging those
5 electronically. For my research purposes, I
6 sure wish they had continued. That would be
7 great to have that information over the last 30
8 years.

9 But for reasons that are unknown to
10 me, because this decision took place many years
11 ago, but one could imagine it was related to
12 resources, they stopped. The Copyright Office
13 stopped cataloging those litigation
14 statements.

15 So that represents a kind of, you
16 know, bump there at the beginning that's really
17 not represented in the rest of the years.

18 So here's another view which makes
19 things look a little different. And the top
20 green line there represents the number of
21 identified works in registrations, excuse me,

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1 recorded documents per year.

2 And although the number of
3 documents, you got that kind of peak and then
4 a decline into the 2000s, the number of works
5 looks like it's going up.

6 And so maybe that tells a different
7 story, which is gee, the transactions have
8 gotten larger and maybe slightly fewer in
9 number, but the number of works continues to,
10 on average, rise over the years.

11 Here's a look at the number of works
12 recorded by the size of document or that is to
13 say by how many works were in each document. And
14 it gives you a little more detailed sense of how
15 the document size has changed over the years.

16 You can see that the very top and the
17 light blue band is the works in documents that
18 were of 10,000 or more works in a single
19 document.

20 And so some of the peaks during those
21 years are because of single transactions or

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1 maybe one or two transactions which were so
2 large that they changed the entire numbers for
3 that year.

4 But even the middle bands, you can
5 see that the works in documents that contained
6 between 1,000 and 9,199 works has risen quite
7 consistently over the years as has the number
8 of works in documents that between 100 and 999
9 works.

10 So I've taken out the rest of the
11 documents and focused on the two largest types,
12 assignments and financing documents. And by
13 financing documents I mean grants and releases
14 of security interests.

15 And here's what that looks like. As
16 financing documents, you see a steady rise at
17 least until the year 2000 and then something of
18 a plateau after that.

19 Assignments, you see this somewhat
20 jagged rise and fall between 8,000 and 10,000
21 documents between 1978 and 2000 or there about,

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1 and then a drop off of a substantial drop off
2 and what looks like a new plateau of slightly
3 under 6,000 documents after 2,000.

4 I'll have more reason to come back
5 and think about why this is happening, but two
6 initial comments on the financing document
7 side.

8 Many of you may know that in 1990
9 Judge Kozinski, then on the Central District of
10 California decided in repair of entertainment
11 that security interests in works under
12 copyright are perfected not by filing a UCC
13 financing statement with a state Secretary of
14 State's office, but are perfected by recording
15 with the Copyright Office.

16 Now, and even before that there was
17 some discussion, certainly, about where you
18 should record these documents. Some of you may
19 know more than I the nature of that discussion.

20 But that certainly suggests
21 something to me about the cause of the

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1 substantial increase between 1990 and 2000.
2 And then in 2002, the 9th Circuit following a
3 district court decision a year before clarified
4 that rule and said, you know, you're supposed
5 to record the grants of security interests with
6 the Copyright Office in order to perfect those
7 security interests only if we're talking about
8 registered works.

9 If the works are unregistered, then
10 you file one of uniform commercial code. You
11 know, it would take a lot more study to say
12 conclusively that that decision and the
13 district court decision before are the cause of
14 that plateauing out, but we'll see a little
15 later that there's some secondary evidence for
16 that as well.

17 And I think I'll leave a little
18 discussion of this trend for later. And that
19 is so this is all recorded documents, but taking
20 away financing documents and the 508s and the
21 URAA notice of intents.

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1 And again, you can see that there is
2 this kind of up and down between now, it's 12,000
3 and 14,000 documents between 1978 and 2000. And
4 then a large downward trend until you hit a new
5 plateau of around 8,000, so you've lost a third
6 or more of those documents. And that's
7 continued forward to the present day.

8 And maybe we'll have some occasion
9 to think about why that is. Here's the number
10 of works represented in assignments versus
11 financing documents. Remember that I showed
12 you earlier that green line which suggested
13 there was this sort of continuous trend upward
14 in terms of number of works.

15 And looking at that earlier green
16 line alone you might think well, it's just
17 because corporate transactions have gotten
18 bigger, but we're still seeing major activity.

19 Here we see that the major activity
20 has been more in financing documents than in
21 assignments. That the number of assignments --

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1 works in assignments, works represented in
2 assignments, has actually gone down since about
3 2003. And so that breaks out that.

4 And the last thing I want to show you
5 that I broke out just to make sure I wasn't
6 getting too much distortion of data, of course,
7 in a financing transaction you may have two
8 documents, you may have a grant and a release.

9 And so how's that affected in the
10 numbers here? Are the number of financing
11 documents and works representing financing
12 documents just going up because for every
13 transaction we double the numbers?

14 Well, not quite. It turns out that
15 actually not all financing transactions have
16 both grants and releases. I guess some of the
17 grants have sort of self-executing releases and
18 the parties don't need to or bother to file a
19 separate release.

20 So that sort of pinkish line
21 underneath the red line represents stripping

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1 the releases out of the financing documents.
2 And there are some noticeable differences in
3 1983.

4 I think there must have been one huge
5 release that makes that difference between over
6 100,000 and something like 20,000. But
7 otherwise it's not a doubling. It's, you know,
8 maybe ten or 20 percent of those documents are
9 releases rather than grants.

10 So that slide represents my first
11 spin through what recording has looked like over
12 the last 30-plus years. Questions about those
13 trends and about or remarks about anything you
14 saw in those that made you think or comment or?
15 Yes --

16 MR. PERKINS: Just --

17 MR. BRAUNEIS: -- Patrick.

18 MR. PERKINS: -- out of curiosity,
19 have you done any work to correlate those
20 numbers with the numbers of works registered?

21 MR. BRAUNEIS: I haven't yet. And

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1 that is definitely my next task. Right.
2 Because we'd love to see, you know, certainly,
3 in thinking about the effect of the cost of
4 recordation and registration on the numbers.

5 I'd love to do correlative studies
6 and I'd love to see, for example, whether when
7 the Copyright Office lowered its basic
8 electronic registration fee to \$35, whether we
9 can see a bump in the numbers.

10 But no, sorry. But thanks, that is
11 absolutely the right thing to be thinking and
12 that sort of reinforces my determination that
13 that's the next task is to do some correlation.

14 MS. KOSSOWICZ: With respect to
15 your graph titled works recorded by document
16 size, where you had the colors coded --

17 MR. BRAUNEIS: Yes.

18 MS. KOSSOWICZ: -- to the number of
19 works, you know, one, two to 99, do you have a
20 sense of what type of works are recorded in
21 greater volumes?

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1 MR. BRAUNEIS: Yes.

2 Unfortunately, it's not nearly as easy to figure
3 out without going back to the documents
4 themselves what types of works were involved.

5 There, occasionally, the title of
6 the document will give you a clue and
7 occasionally, I'll talk a little later about the
8 percentage of documents that have registration
9 numbers in them.

10 Occasionally because of the prefix
11 to the registration number, you can get a very
12 broad idea. But, for example, performing arts
13 includes actually vastly different types of
14 works, you know, both motion pictures and
15 musical works. So I don't have that yet.

16 We spent a couple of weeks trying to
17 figure out if we could find any easy way to do
18 that because that would be great information to
19 have, but so far, not really.

20 We did take a look at the 20 largest
21 transactions of all time and it turns out that

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1 most of them are music industry transactions
2 involving either musical works, musical
3 compositions or sound recordings. A couple of
4 them, however, were from text publishing, were
5 from the book publishing industry. Other
6 questions?

7 MR. PERKINS: Just --

8 MR. BRAUNEIS: Yes.

9 MR. PERKINS: -- a follow up on that.
10 Has there been any attempt to categorize, again,
11 these large document sized transactions by type
12 of company? I mean, it sounds like you have a
13 little bit of visibility into that. Have you
14 done any sort of categorization by subcategory
15 within the industry for example?

16 MR. BRAUNEIS: Yes, well the only
17 thing that we've done so far is, as I said, take
18 a look at the 20 largest transactions. And we
19 actually know the names of the companies that
20 are involved in those transactions.

21 But of course, that's by number of

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1 works, not necessarily by value of transaction.
2 One could imagine that a transaction involving
3 ten motion pictures might be larger in value
4 than a transaction involving 10,000 musical
5 compositions, so.

6 And as I said, in those 20 largest
7 transactions we saw mostly music publishing and
8 recording industry and a couple of book
9 publishing.

10 Other questions? Okay. Well, so
11 if not, I'd like to start our first session on
12 electronic recordation and on electronic
13 recordation models.

14 And just to give you a sense of what
15 we're thinking about in the Notice of Inquiry,
16 we made up this neat term called the Guided
17 Remitter Responsibility Model of Electronic
18 Recordation. And I want to give you a sense of
19 what we mean by that.

20 Well, the guided part sounds good
21 and that is taking advantage of what can be done

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1 through interaction with electronic forms these
2 days that could not be done on paper previously
3 to try to minimize mistakes.

4 And so that takes advantage, we
5 would hope, of all sorts of techniques for doing
6 that. And some of these examples that I'll be
7 illustrating with are examples from the
8 currently existing electronic registration
9 process.

10 We know that that itself needs a kind
11 of 2.0 version. But you start with a structured
12 submission process so that you understand and
13 give the remitter understanding that there are
14 a finite number of stages in this process.

15 When at all possible you use
16 enumeration so that you select categories
17 rather than typing them in and making various
18 mistakes.

19 Here's two examples from the current
20 electronic registration process for type of
21 work and for type of international standard

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1 number.

2 You do validation of various kinds.
3 So when I tried to enter in the 19,785 into the
4 year of completion, I get back an error message,
5 right? It says it has to be in a certain format,
6 it has to be greater than 1900, can't exceed the
7 current year.

8 We hadn't implemented this yet, but
9 you could do things like address and zip code
10 validation. And in the case of repeat
11 remitters, you could validate against
12 previously remitted documents to see whether
13 name and contact info are consistent or not.

14 Key information, you could require
15 it to be repeated. I'm sure all of you have
16 repeated your email address more than once in
17 order to subscribe to something or other.

18 We would provide definitions and
19 other help at various points. So if you click
20 on a help button, you'd get more text defining
21 what citizenship or domicile means.

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1 And then a capacity to save
2 templates or save certain repeat information,
3 certainly your contact information as remitters
4 and maybe even other kinds of information that
5 you find repeating in your submissions.

6 And then review screens. At the
7 end, present you back with the entire submission
8 and suggests that you review it before submitted
9 it.

10 And then possibly a confirmation
11 that would include the copy of all data that's
12 been submitted. This is actually the
13 confirmation that I received when I actually
14 registered a song that my son had composed. It
15 doesn't actually contain the copy of all data
16 submitted, but it would be a nice feature.

17 And one could imagine a system in
18 which you actually had the option not to have
19 the submitted data immediately published, but
20 were given a couple of days where you could
21 circulate the confirmation email if you had many

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1 parties to a transaction and they all wanted to
2 take a quick look at the submission.

3 We could imagine a feature that'd
4 say, you know, hold this for a day or two and
5 then we'll confirm at a later date. So that's
6 the guidance part. Right. That's some of what
7 I think could be accomplished with an electronic
8 recordation system.

9 Now, here's the remitter
10 responsibility part. And, I guess I want to say
11 pay careful attention to this stuff because I'm
12 going to be asking you are you ready to do this.

13 So remitter responsibility really
14 means more than one thing. It certainly means
15 that a remitter of documents rather than a
16 recordation specialist at the Copyright Office
17 submits the cataloging information. So you
18 don't just mail a document in, you have to have
19 somebody entering that information.

20 Secondly, remitter responsibility
21 may mean that if there is a discrepancy between

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1 the published catalog information in the
2 copyright catalog and the remitted document, it
3 may be the cataloging information of which the
4 public has constructive notice, right.

5 If you have submitted to the
6 catalog, for example, in a sort of extreme
7 example, the wrong list of titles or some of the
8 wrong list of titles such that anybody searching
9 to see whether a particular work has been
10 transferred or not, doesn't find the document
11 because the wrong information has been entered
12 into the catalog.

13 It may be that we consider that the
14 public only had constructive notice of what was
15 in the catalog not what was contained in a
16 document that nobody could find because the
17 wrong catalog information was submitted.

18 And then, lastly, it means that the
19 document is not examined. And I'll be asking
20 you what value you find in the examination
21 that's done for completeness and legibility and

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1 signature and, implicitly, the examination
2 that's done during catalog entry to check that
3 there's parties and there are titles and they've
4 been correctly entered.

5 So the first part, you know, if about
6 electronic recordation generally, and sort of
7 envisions a kind of web entry model like we
8 currently have for registration.

9 The second part contemplates the
10 possibility of slightly more high tech
11 solutions or more complicated solutions
12 involving what we've called structured
13 electronic documents.

14 And those are document or document
15 files that contain their own indexing
16 information, so that when you submit an
17 assignment or a financing document, it's in
18 electronic form.

19 It's not just an image of a paper
20 document, it is a native electronic document and
21 it contains not only the view that lets you read

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1 the document as you would ordinarily, but it
2 contains tagged information that could populate
3 a database or a catalog.

4 So one implementation, certainly
5 not the only one, but one that is a simple one
6 that may be easy to understand, one could
7 imagine a document that's drafted that uses a
8 fillable PDF form that at the end can be locked
9 so it can't be changed and electronically
10 signed.

11 And so you've got a document that
12 when you read it, it reads as if it were an
13 assignment, but the particular information
14 about the parties and the title of the work and
15 the registration number and the execution date
16 and so on, as this document is drafted, those
17 become entered into particular fields that can
18 then be used to automatically populate a
19 database once the document is submitted.

20 And so one could imagine that
21 underneath that document in a layer that is not

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1 visible to you when you open it, are tagged
2 fields in which the document type is assigned
3 as assignment and the names of the parties are
4 entered as is the title, registration number,
5 et cetera.

6 And that then alleviates the need
7 for a separate entry of information into the
8 copyright catalog. And that's certainly one of
9 its advantages, right. A couple of advantages.

10 One, if you were circulating these
11 electronic documents during a negotiation and
12 drafting process, then all of the parties would
13 be reviewing that information.

14 You wouldn't be dependent on an
15 individual after the fact, sort of transcribing
16 or entering information from the document into
17 a web-based form.

18 There aren't any possibilities of
19 discrepancies baring computer error between the
20 document and the submitted cataloging
21 information because the cataloging information

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1 is integrated into the document itself.

2 On the other hand, that assumes that
3 this infrastructure could be developed whereby
4 parties and attorneys started getting used to
5 using electronic forms, that a format was
6 developed, that appropriate forms are developed
7 on top of that format.

8 And just to give you a sense of
9 scale, you saw that we were recording about
10 11,000 documents a year, these structured
11 electronic documents have been implemented in
12 real property recording offices around the
13 country.

14 And a sort of average real property
15 recording office in a large municipality may be
16 recording two million documents a year. And
17 also has the advantage of repeat players like
18 title companies and banks who are involved in
19 many, many, many, many transactions and who
20 therefore can develop these electronic formats
21 and documents more easily.

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1 So there's some sort of advantage
2 and disadvantage of that. That having been
3 said, I now want to start listening rather than
4 talking, I've done enough talking, and start
5 getting your feedback now on this sort of this
6 first topic of electronic recordation and
7 electronic documents.

8 So are you willing to submit your own
9 cataloging information? I guess that's the
10 first. It's a non-starter because you
11 actually, when push comes to shove, you just
12 want to send that paper document in and be done
13 with it and you're happy to pay the \$110 and even
14 if we, you know, the fee went down to \$10 for
15 electronic recordation, you don't want to do it.
16 That would be a --

17 MR. HAWKINS: I'd be more than
18 willing to submit electronically. I mean, I
19 went to the, despite my attorney that I work with
20 in D.C. who is an old time examiner at the
21 Copyright Office and he was against the

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1 electronic form of the registry for the longest
2 time. And I said no, we're going to do this.
3 I want to do this. I want to do it. And now
4 he's doing it after I pushed him into it.

5 I find it extremely useful. I think
6 for recordation cataloging it would be great.
7 The main reason I record is for constructive
8 notice.

9 So to me, when you're in court, the
10 Judges like to see all the ribbons and whistles
11 and bells from the Copyright Office. It makes
12 them feel comfortable, I guess, in deciding and
13 all that good stuff, and prevents the other side
14 from refuting it.

15 So it would seem like the
16 cataloging, if we could do that, because there's
17 very simple electronic ways that we could input
18 the information or just even just each
19 individual title, copy text, all those.
20 There's different ways to do it very quickly.

21 If we did the cataloging, how is that

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1 compared to the examining part? Because the
2 examining part, it seems important to have a
3 constructive notice because you'd want to make
4 sure that somebody's not just sending some false
5 document and then they get constructive notice
6 on your copyright and then you have to fight it
7 or whatever.

8 But it seems like, like they said,
9 if we did the cataloging, would the examining
10 then be cut down sufficiently that you could
11 still do the examining part? And because we did
12 the cataloging, the examining part would be much
13 faster?

14 MR. BRAUNEIS: Well, those are
15 interesting questions. I'm definitely aware
16 of a possible problem of increase of fraud,
17 shall we say, where people might submit
18 documents that are fraudulent in some way.

19 And of course, one of the kind of
20 ironic paradoxes is it's possible that the more
21 you lower the fee, the more likely it is that

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1 fraudulent conveyances or other things might be
2 recorded.

3 I'm going to be very interested to
4 see the experience of the Patent and Trademark
5 Office. They recently reduced the recording
6 fee for patent assignments to zero. And so you
7 actually don't need to pay to record a patent
8 assignment.

9 I hope nobody ever records a
10 fraudulent patent assignment once it's reduced
11 to zero. But I suppose it's true that, you know,
12 \$105 is something of a barrier to start
13 recording fraudulent stuff.

14 I'm not sure the degree to which the
15 kind of examination that's done currently by
16 recordation specialists really goes to fraud.
17 And maybe there's, you know, we should discuss
18 that and you should give me your sense in which
19 it does or it doesn't.

20 But, you know, when even though we
21 say we check that the signature is actual, you

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1 know, what does that mean? Zarifa could
2 probably tell us better than me what the means.

3 But, you know, my sense is sometimes
4 it's really hard to tell if it's a black
5 signature on an otherwise black document.

6 And even if you see that it's in ink,
7 we certainly don't have graphologists there
8 checking to see that that actually is the
9 signature of the person who it says it is. You
10 know, it's just, it passes through and is
11 recorded.

12 So although I'm cognizant of a risk
13 and maybe an increased risk of fraudulent
14 recording and fraudulent registration as fees
15 go down, I don't know that the kind of
16 examination that's done now and might be done
17 less under electronic recording, would really
18 address that potential of fraud. Yes, George.

19 MR. BORKOWSKI: Yes, thanks. We
20 have a good deal of concern that if you went to
21 an electronic format that was exclusive,

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1 meaning that you didn't have the option of still
2 mailing in the paper documents if you so choose,
3 that there would be a potential increase not
4 only in the risk of fraud, but also just in the
5 risk of erroneous filings that could
6 potentially cloud somebody's title, even by
7 mistake or by fraud.

8 And I think one way to approach that
9 perhaps, is if you were to institute some kind
10 of electronic system that you would require any
11 remitter to have an account with the Copyright
12 Office that that person or organization could
13 access for each time they recorded something,
14 which would also have the benefit of preserving
15 certain basic data about that organization --

16 MR. BRAUNEIS: Right.

17 MR. BORKOWSKI: -- that wouldn't
18 have to be repeated. But also have a system in
19 place whereby anytime a recordation is filed
20 against a particular work, a particular
21 copyright, that the record owner of that

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1 copyright gets a notification of it by email or
2 in some other way.

3 And if you implemented that, I think
4 you'd also encourage people to keep their
5 contact information current. Because they
6 knew there would be an advantage to that.
7 Meaning that if somebody files against your
8 copyright, you know about it.

9 MR. ARROW: Are you proposing, by
10 the way, that it's an all-or-nothing, that
11 there's a choice between guided remitter or the
12 current manual process, or would you have both
13 processes so the user could decide which way
14 they wanted to do it?

15 MR. BRAUNEIS: I cannot imagine
16 that the Copyright Office would discontinue the
17 paper-based filing any time soon. You know, I
18 think that some folks would continue to want to
19 do that and it would be decades into the future,
20 I bet, before the Office would contemplate
21 actually discontinuing acceptance of paper

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1 filings.

2 So I don't think that's a
3 possibility. On the other hand, I don't think
4 the Office has any interest in building an
5 electronic system that, for whatever reason,
6 doesn't get used, right. The people, they see
7 the electronic system and they think, well,
8 let's just do it on paper after all.

9 So you know, we'd like to build the
10 kind of system that many remitters would see
11 advantages to and would move to once it was --

12 MR. ARROW: Yes, right. I mean, I
13 think it would be critical that it would be easy
14 for a user of the system to import a list of works
15 that are subject to the assignment or whatever
16 recorded document it is into that electronic
17 database rather than re-keying something that
18 already exists on paper.

19 MR. BRAUNEIS: Absolutely. I mean,
20 when it comes particularly to titles and
21 registration numbers or other standard

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1 identifiers of works and to documents that may
2 pertain to hundreds or thousands of those works,
3 there will have to be, as part of the system,
4 some way that you can attach a
5 suitably-formatted file and have those titles
6 entered.

7 So one could imagine a, you know, a
8 tab delimited text file in a certain format and
9 you just attach that file of 10,000 titles, not
10 typing each one -- retyping each one in. That's
11 both labor and the possibility for further error
12 introduced in the system. Susan.

13 MS. LOWRY: I was wondering -- I have
14 a subsequent question for Zarifa, I think. What
15 -- in terms of the areas that the examiners check
16 for, legibility and completeness, et cetera, do
17 you know what your current rejection rate is?

18 MS. MADYUN: It's hard to say
19 rejection because we don't really -- I mean, if
20 there are errors in those areas, it's easy to
21 rectify that.

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1 So if, again, if the signature is a
2 photocopied signature or if the document isn't
3 complete, most remitters have that additional
4 information. Again, it would be a small
5 percentage if we call a remitter and they can't
6 provide us with either of those. I would say,
7 and it doesn't happen frequently, I would say
8 maybe like less than two percent and I'm
9 thinking that's high.

10 Because even if you, let's say,
11 submitted a document that doesn't have an
12 attachment, on our document cover sheet you do
13 have the ability to say document is incomplete,
14 record as is. And then that document would
15 still go through and we will make a note in the
16 record that the document was incomplete and that
17 it was recorded as it was submitted. So it
18 doesn't happen frequently, yes.

19 MS. LOWRY: So how much time, then,
20 in terms of how much time each examiner is
21 spending going through those documents to make

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1 a determination and then go, okay, well,
2 everything's not here, file as is. How much of
3 the time of the examiners is going into that part
4 of the process that has an extremely low error
5 rate?

6 MS. MADYUN: Well, let's see. I can
7 give you an example where if, right now, my staff
8 would get ten documents at a time. And let's
9 say out of that ten, eight can be cataloged with
10 no problem; there's no correspondence that's
11 needed; they don't need to call anybody or email
12 anybody. But, there are two that, okay, there
13 are some issues. It could take some time.

14 It could take maybe a five minute,
15 you know, phone call and an email and it's done
16 or if we can't get the remitter and, you know,
17 they've said they sent something and it doesn't
18 come through, it could take a week. It could
19 take a little bit more than that. So it just
20 really depends on, I would say the remitter's
21 cooperation and making sure that we get that as

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1 quickly as possible.

2 So let's just say it's a photocopied
3 signature issue and they need to send us in a
4 document cover sheet with an original
5 signature. Because that would have to be mailed
6 in, a couple days to rectify that and then to
7 get that process and then sent on. But if it's
8 an attachment, let's say, and we call the
9 remitter and they email that attachment, it
10 could take five minutes. So it varies.

11 MR. BRAUNEIS: Nicholas.

12 MR. BUNIN: Question, two things.
13 One on the two electronic scenarios you
14 outlined, one was a very, very basic one of going
15 to a website, in-putting information and
16 another one, a very sophisticated one that's
17 structured document --

18 MR. BRAUNEIS: Yes.

19 MR. BUNIN: -- control. Have you
20 also considered a third option of, which is
21 what's used a lot right now, which is

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1 essentially document accompanied by separate
2 file, a very simple file that contains all the
3 metadata cataloging information as such that is
4 then ingested into the system?

5 And by way of like, for our example,
6 everybody's had kind of a different scenario on
7 what they're able to do electronically, some
8 very simple, some very complicated. And the
9 idea of us being able to provide you, like, an
10 output from our system without necessarily
11 changing our technologies to some new third
12 thing. Just being able to give you, okay,
13 here's the document and here's the file of
14 essentially electronic packing slip that then
15 your system could ingest.

16 I think a lot more people would be
17 able to find their way to it down that road sooner
18 than something much more sophisticated like
19 structured document creation.

20 MR. BRAUNEIS: Yes. I mean, that
21 would be similar, I think that would be similar

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1 to having -- well, okay. So you're suggesting
2 maybe a paper document, but it --

3 MR. BUNIN: No, no, it's still
4 here's a PDF --

5 MR. BRAUNEIS: PDF.

6 MR. BUNIN: -- an electronic
7 document.

8 MR. BRAUNEIS: Yes.

9 MR. BUNIN: This has just spit out
10 of our system --

11 MR. BRAUNEIS: Right, yes.

12 MR. BUNIN: -- as is.

13 MR. BRAUNEIS: Yes.

14 MR. BUNIN: And then here is a line
15 file with separated --

16 MR. BRAUNEIS: Right.

17 MR. BUNIN: -- comma. All the
18 different, you know, it's this title, it's this
19 --

20 MR. BRAUNEIS: Yes, yes, yes,
21 right.

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1 MR. BUNIN: -- this, this. Anybody
2 could do that.

3 MR. BRAUNEIS: Yes.

4 MR. BUNIN: They're separate. It
5 is at a -- you know, not meaning to take you into
6 the weeds, it is much different
7 technologically.

8 MR. BRAUNEIS: Absolutely.

9 MR. BUNIN: Instead of doing this --

10 MR. BRAUNEIS: Wait a minute,
11 absolutely.

12 MR. BUNIN: -- it gets it doing this.

13 MR. BRAUNEIS: Absolutely, of
14 course. Yes. No, but I think that's similar
15 to the situation I was describing before in
16 which much of the information about cataloging
17 would be entered via a web interface.

18 You'd upload your PDF document and
19 you'd upload, at some point, a list of titles
20 rather than entering each title in. Is that --

21 MR. BUNIN: Well, actually what I

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1 was thinking is all the information you want,
2 we've got in our system already and I can push
3 a button and give that to you.

4 MS. MCGUIRE: Including the
5 parties, the title of the document, the
6 execution date, the effective dates, we've got
7 all of that.

8 MR. BRAUNEIS: I see. Okay.
9 Right, well, so then, okay. So then, I guess
10 what we would need then is much of what we would
11 need for constructing these structured
12 electronic documents which is simply a format
13 or a template or a set of tags that would -- which
14 you could submit that information and it would
15 be tagged or formatted or structured in a way
16 that our computers would understand --

17 MR. BUNIN: Exactly right. Like a
18 standard --

19 MR. BRAUNEIS: -- the submission.

20 MR. BUNIN: Like an open standard of
21 which you could put on any form you want, but

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1 like between these two tags this is what this
2 means --

3 MR. BRAUNEIS: Right.

4 MR. BUNIN: -- that anyone could
5 adopt and spit it out that way as opposed to
6 trying to come up with some hardline
7 communication.

8 MR. BRAUNEIS: Yes.

9 MR. BUNIN: Because everybody's at
10 a different level, if indeed they're there at
11 all, of being able to, you know, create the type
12 of electronic feed you'd want that puts kind of
13 everybody at the same table.

14 MR. BRAUNEIS: Right.

15 MR. BUNIN: You can either --

16 MR. BRAUNEIS: So we could create
17 like a --

18 MR. BUNIN: -- build a full layer --

19 MR. BRAUNEIS: -- an XML document
20 type --

21 MR. BUNIN: Exactly.

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1 MR. BRAUNEIS: -- definition which
2 would have just the set of tags and what they
3 need.

4 MR. BUNIN: This is our schema, you
5 guys do whatever you like with it.

6 MR. BRAUNEIS: Yes. We could do
7 that.

8 MR. BUNIN: I'm assuming you're
9 looking to build this from scratch or do you have
10 ideas? Is it --

11 MR. BRAUNEIS: Well, you know, from
12 scratch, it's an interesting question, which is
13 to say the Copyright Office has existing vendors
14 that provide the technology for the
15 registration system, for example.

16 This is kind of, you know, above my
17 pay grade or whatever, but it seems less likely
18 to me that we would, you know, contract with a
19 completely different vendor to just start
20 building the recordation system from scratch.

21 It seems more likely we would

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1 probably take this to the same vendor and that
2 already is providing much of the infrastructure
3 for data input and in fact, we are now migrating
4 the existing paper-based system to, at least on
5 the back end, to a new interface that is provided
6 by this vendor.

7 So, you know, from scratch is a
8 little relative. I mean, yes, from scratch in
9 the sense that we'll be thinking sort of from
10 the bottom up, what the, you know, where do we
11 validate and how do we validate for the
12 information and where do we have double entries
13 and et cetera.

14 But we're not starting from a blank
15 slate in the sense that, well, we just have some
16 money and we can do whatever we want with it.

17 MR. BUNIN: Okay. No, I just meant
18 in terms of -- and I doubted very much that there
19 was any pre-written software that kind of did
20 what --

21 MR. BRAUNEIS: Right. Now --

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1 MR. BUNIN: -- you need to do which
2 is --

3 MR. BRAUNEIS: Yes.

4 MR. BUNIN: -- pretty unique.

5 MR. BRAUNEIS: No, that's correct.
6 Somebody's going to have to engage in a lot of
7 custom programming to implement whatever we
8 decide to do. Yes, that is absolutely correct.

9 MR. BUNIN: And is the implication,
10 I guess it's implied with what you said that
11 something is electronically -- your position on
12 electronic signature itself in terms of
13 admissibility.

14 MR. BRAUNEIS: Well, that's -- I
15 mean, that's something I'd liked to discuss and
16 maybe that's a time -- now is the time to do it
17 since we were previously talking about ink
18 signatures and the like.

19 So if we move to a fully electronic
20 system, then we're certainly no longer going to
21 maintain an ink signature requirement because

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1 we're not getting any paper on which there's any
2 ink.

3 And so there's a variety of
4 alternatives, right. And one answer may be that
5 it's up to each remitter to decide the level of
6 security and authentication that that submitter
7 thinks is optimal. So one could imagine you
8 might submit a PDF that is simply an image scan
9 of a paper document along with your cataloging
10 information.

11 In that case, the only thing that
12 we're getting and placing on the public record
13 is an image of a signature, right. Or you might
14 submit a PDF that is a native electronic PDF;
15 it's not an image scan. And it might include
16 just a typed signature, which is accepted under
17 the definition of electronic signature in many
18 cases, or it might be a digital signature that
19 is much more sophisticated and that includes a
20 hash value which ensures that the document
21 cannot be modified without it stopping from

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1 matching the signature anymore.

2 And so one alternative is, well, we
3 leave that up to all of you. We say, look, it's
4 possible to submit these more sophisticated
5 digital signatures to us, and that may help you
6 with authenticating the document and securing
7 it and making sure it's not modified and so on.
8 But we won't require that. That's sort of a
9 matter of your own taste for security and
10 authentication and technology and so on, or we
11 could implement some requirement. We could
12 say, well, we need a certain level of security
13 authentication.

14 And so I pose that question to all
15 of you about, you know, what you would like, what
16 you think is sufficient or not sufficient to
17 protect you in this process.

18 MR. ARROW: Since you can't
19 currently determine whether a signature's
20 authentic or not, doing this wouldn't really
21 change anything. So it's only if people, I

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1 think, want more security than currently
2 exists.

3 Because right now, I mean, other
4 than requiring an original signature or a
5 statement claiming that a photocopy is a
6 photocopy of a true signature, you still have
7 no way of knowing whether the person's name on
8 there is really the person who, you know, the
9 person who signed is really the person. You
10 have no way of knowing, right?

11 MR. BRAUNEIS: That's correct. I
12 mean, these scenarios get rather complicated
13 and so what's actually happening, the remitter
14 is sending in a document with an original
15 signature. The Office is, sort of at least on
16 a cursory level, checking to see that it looks
17 like an ink signature. The Office, then, only
18 keeps an image of the signature, so we certainly
19 don't have anything in our possession which
20 could be examined. We return the original to
21 the remitter and then the remitter, it's up to

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1 the remitter to maintain that in an archive and
2 not let that deteriorate and so forth.

3 And then, you know, when the time
4 comes, what you do, there are different
5 scenarios. I mean, if you want to prove that
6 it is authentic, then I guess you have it in your
7 possession and it still has the ink on it and
8 you could do various tests and so on. If
9 somebody has fraudulently submitted it, then I
10 think it gets more difficult.

11 We only have the image. We can't do
12 any tests on it. And if you're alleging that
13 there's been fraud committed, you certainly
14 don't have the document. You're saying it's not
15 from us, so yes, so then it becomes more
16 difficult.

17 And I don't want to ignore the
18 possibility that the requirement for an ink
19 signature may scare some people away even
20 though, when it comes right down to it, it might
21 not be all that effective. So there may be a

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1 certain deterrence value in requiring that,
2 possibly because people think we can do more
3 than we actually do with regard to examining
4 signatures.

5 So I don't rule out the possibility
6 that you might see an increase in fraud simply
7 because people became more daring when they
8 realized that all that was being submitted was
9 images.

10 MR. BORKOWSKI: I think there's
11 something to that. I think the requirement of
12 a wet ink signature, it requires a certain step
13 in the fraud process that I think we've seen in
14 other instances on the Internet when you can be
15 either more anonymous or less accountable.
16 You're more likely to do bad things, and so I
17 wouldn't be surprised if this might have an
18 uptick in fraudulent filings if you did, you
19 know, no longer required -- or if you allowed
20 the remitter to make his or her own
21 determination as to what is sufficient to

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1 authenticate the signature, as opposed to
2 requiring perhaps an electronic signature that
3 can be verified or something like that.

4 Another possibility that we
5 suggested in our response was, potentially, if
6 you're going to have this type of system to have
7 the remitter actually certify under the false
8 statement statute, 18 U.S.C. 1001(a). Under
9 penalty of perjury and jail time and all of that,
10 that what is being, to the best of this person's
11 knowledge, what is being remitted is in fact,
12 what he says it is and that he or she is the person
13 who's actually signing it or that the
14 signature's an authentic one.

15 I mean, that's a fairly stringent
16 penalty, but it is something that I think would
17 deter a lot of people.

18 MS. MCGUIRE: I think that's an
19 excellent idea. We do it for every single
20 registration. Why shouldn't we do it for a
21 recordation.

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1 I mean, from our own business
2 practices, a lot of the documents that we are
3 recording, we're not -- you know, our company
4 is not executing those documents. We're the
5 recipient of the rights. We're getting the
6 option from another party. We're getting the
7 assignment from another party. So for us to
8 have to go back to the beginning and get digital
9 signatures, you know, from those parties, god
10 knows where they are now, that would be
11 problematic for us. So the idea of the
12 certification by the remitter, I think, is a
13 logical one.

14 MR. ARROW: Or at the very least, you
15 should charge a higher fee for fraudulent
16 signatures. It would be a deterrent, you know.
17 Oh, \$200 is too much.

18 (Laughter.)

19 MS. LOWRY: This comes up a lot in
20 chain of title issues in terms of electronic
21 signature because we require the entire chain

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1 of title for a work to be recorded in addition
2 to the work itself.

3 And we get a lot of complaints from
4 people that, you know, they don't have the
5 original chain of title document. They have a
6 copy of it that they got from someone else and,
7 you know, the chain of title can sometimes go
8 back years. And that actually creates an
9 obstacle because really nobody wants to take the
10 additional step to say well, I'm willing to
11 swear that this is, you know, a viable copy of
12 the original, when you really can't say. So we
13 get a lot of push-back from producers, for
14 example, who say they don't want to record this
15 document because they can't swear that it's a
16 copy of the original.

17 And the other thing is that most of
18 our documents these days in terms of security
19 interest documents, financing documents, all
20 have language in them that says that an
21 electronic copy is deemed authentic and all

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1 parties agree to that, and then it's deemed to
2 be an original.

3 So, you know, for our purposes, and
4 we are mostly engaged in single picture filings,
5 not, you know, mega filings like a lot of the
6 studios are or the music industry. But it would
7 greatly simplify our process overall if
8 electronic signature were accepted, you know.
9 And I mean, I also think over to the UCC financing
10 statement process where, you know, we used to
11 have to have the debtor sign a copy of the
12 financing statement and cut multiple carbons
13 and then get it back and then send in the original
14 signature.

15 And in 2001, that entire system
16 switched over so that whoever's been granted the
17 security interest is granted the right and part
18 of the security and authenticated right to go
19 ahead and file a financing statement to put
20 people on constructive notice.

21 And, you know, obviously there's

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1 potential for fraud in that system also, but,
2 you know, it put the burden on the person filing,
3 you know. And the other side of that is that
4 any set of attorneys is going to be doing
5 constant due diligence to see whether or not
6 something has been fraudulently filed against
7 them and they will take action.

8 But, you know, I have not heard that
9 in the UCC financing statement process, that
10 this has become a huge problem. I mean, people
11 can also terminate filings at will,
12 essentially, under the current UCC system. And
13 again, you know, I haven't heard that this has
14 become a huge issue. So for us, I think it would
15 greatly simplify matters.

16 MR. BRAUNEIS: But let me just focus
17 on one thing you said and sort of contrast it
18 with George's statement. I think you said that
19 there are instances in which you'd like to get
20 something recorded, but there's nobody around
21 who's willing to certify under a False

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1 Statements Act that it is, in fact, an
2 authenticated document because you're
3 recording a document in which you do not have
4 the grantor present anymore. There --

5 MS. LOWRY: And you may not ever be
6 able to find the grantor. You might not even
7 know where the grantor is or even, you know,
8 let's say that it's a turnaround document from
9 a studio from ten years ago, right, there isn't
10 going to be anybody left at the studio who's
11 going to be able to say, oh yes, that's an
12 original, you know.

13 Because, I mean, these things, you
14 know, they stretch back for years, especially
15 when you have movies that are sequels and, you
16 know, prequels and remakes and, you know, which,
17 you know, whether or not that should ever happen
18 is a separate issue completely. But, you know,
19 it poses a problem because we require the chain
20 of title to be recorded. I think banks do as
21 well. And, you know, it puts everyone in a

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1 position when you don't have a copy of the
2 original of being concerned that you may be
3 representing and warranting something that's
4 not true --

5 MR. BRAUNEIS: Right.

6 MS. LOWRY: -- which I think may be
7 as important an issue as potential fraud.

8 MR. BRAUNEIS: Right, okay. So now
9 the question is --

10 MR. BORKOWSKI: Right.

11 MR. BRAUNEIS: -- how do we figure
12 --

13 MR. BORKOWSKI: Well --

14 MR. BRAUNEIS: -- out the --

15 MR. BORKOWSKI: -- but the issue
16 there, though, is that SAG-AFTRA has a
17 requirement that the entire chain of title be
18 registered. And under no circumstances would
19 we support a similar mandatory requirement in
20 the Office that there would need to be the entire
21 chain of title filed for any purpose.

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1 What I was referring to in terms of
2 the statute is the last document that's being
3 recorded. That's what should be the
4 certification that I was referring to, not --
5 I'm not saying that the entire chain of title
6 would be subsumed under this.

7 Because I don't think there should
8 be a mandatory requirement and my industry
9 doesn't think there should be mandatory
10 requirement that the entire chain of title be
11 recorded.

12 MR. BRAUNEIS: Right. But might
13 there be circumstances in which you, as the most
14 recent grantee of some interest, wanted to have
15 on public record not only the most recent link,
16 but you would actually like to have on public
17 record previous links in the chain of title.

18 And yet, you can't -- you can certify
19 as to this present transaction, but as to those
20 previous transactions, you may have the
21 documents, but you don't want to be held

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1 responsible, although you'd like those
2 documents on public record. It's great to have
3 them sort of aired out. Make sure everybody's
4 aware of them, et cetera, but you don't want to
5 be held responsible for their contents.

6 MR. BORKOWSKI: I really can't
7 speak to that because my industry doesn't like
8 to have all of its documents out in public. It's
9 -- a lot of them are very proprietary.

10 MR. BRAUNEIS: Right, okay.

11 MR. BORKOWSKI: So that's not an
12 issue that -- I mean, others can speak to that.
13 I mean, I see your point, but that's not
14 something that concerns my industry.

15 MR. BRAUNEIS: Okay. We need to
16 have a coffee break at some point and I think
17 now would be a good time. So why don't we do
18 that and be back here just a little after 10:45
19 and continue the discussion. Thank you very
20 much.

21 (Whereupon, the foregoing matter

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1 went off the record at 10:34 a.m. and went back
2 on the record at 10:52 a.m.)

3 MR. BRAUNEIS: Okay. If we could
4 get started again, there are a few more topics
5 with regard to electronic recordation models
6 that we haven't even touched on yet. And then
7 we may have more discussion on some of the topics
8 we have already touched on. But let me just,
9 to make sure we've at least covered or touched
10 on the remainder of the topics, let me start with
11 the topic of material returned to remitter.

12 So as you heard, what currently
13 happens is that you send in the original
14 document on paper and then the Office stickers
15 each page of that document and you get back the
16 original paper document with a sticker attached
17 to each of those pages that indicates the
18 document number and the page number of that
19 document.

20 In an entirely electronic system,
21 that's not going to be possible or probably not

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1 even desirable. So the question is, what should
2 be returned to the remitter at time of
3 recordation?

4 And again, drawing on the
5 possibilities afforded by cryptography and the
6 like, one of the things that the Copyright
7 Office could return is a so-called hash value
8 calculated from the electronic file which would
9 say the file, as it was received by us, it was
10 electronically consisted of these ones and
11 zeroes. And if anybody tries to change that,
12 it will no longer match this value that's been
13 calculated from that document. That is a kind
14 of guarantee of integrity of the document as
15 it's been submitted.

16 So that's one way to do it, but maybe
17 there are other things that you want or maybe
18 that doesn't sound as good as I make it sound.
19 So if you have any comments about the kind of
20 thing you'd like to get back in electronic
21 system, that would be very helpful.

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1 MS. MCGUIRE: Are you talking about
2 the immediate receipt or the actual recorded
3 document?

4 MR. BRAUNEIS: Right. Well, we
5 would hope that in an electronic recording
6 system, those two actually might be combined.
7 That is to say, now of course I understand that
8 you would love to get back, you know, an
9 immediate email saying we've got it even though
10 it might take days or weeks or months to get the
11 paper document mailed back to you with the
12 stickers.

13 There still may be an occasion to
14 have a kind of immediate, you know, when you
15 press enter on the last screen of the
16 recordation website, there still might be, for
17 example, a confirmation email that contains the
18 contents of what you submitted. You get that
19 back immediately.

20 Maybe there would still be a delay,
21 before something else was returned back to you.

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1 But the question is what that -- I mean, so I
2 appreciate your question. I understand that,
3 you know, maybe we'd be talking about two
4 different things.

5 I guess I started out thinking about
6 the something else, which is in lieu of the paper
7 original that's returned to you with stickers
8 on each page, when all you're sending in to us
9 is an electronic file, which, you know, to pick
10 one format might be a PDF format file or
11 document. Now, what do you want to get back
12 ultimately from the Copyright Office?

13 MR. ARROW: Well, it could be the
14 document could come back electronically with an
15 electronic identifier on it. Right? The same
16 thing you put on a sticker, but it's --

17 MS. MCGUIRE: Yes.

18 MR. ARROW: -- electronically.

19 MS. MCGUIRE: A bar code with volume
20 number and document number.

21 MR. BORKOWSKI: I mean, if you, you

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1 look in the litigation system, PACER. When you
2 file something on --

3 MR. BRAUNEIS: Yes.

4 MR. BORKOWSKI: -- PACER, you have
5 that electronic caption --

6 MR. BRAUNEIS: Right.

7 MR. BORKOWSKI: -- on top of each --

8 MR. ARROW: Yes.

9 MR. BRAUNEIS: Yes.

10 MR. BORKOWSKI: -- document with a
11 certain -- and that's fairly easy to do. It's
12 a lot easier than hash values.

13 MR. BRAUNEIS: Right.

14 MR. HAWKINS: It's like you could do
15 that and then that's what you post on the website
16 once it becomes available to the public.

17 Well, not only do you send it back
18 to the remitter, but then also that's what's
19 posted so that anybody would be able to get that
20 and see that it's been accepted, for lack of a
21 better word. Because initially, you'll get the

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1 document from this without that stuff --

2 MR. BRAUNEIS: Correct.

3 MR. HAWKINS: -- and then you'd
4 accept it and then put the detail on there.

5 MR. BUNIN: And you'd want some kind
6 of visual cue because, you know, once we get it
7 back, there is going to be a scenario where we're
8 going to need to print that document out again.
9 I mean, whether in litigation or something.

10 MR. HAWKINS: Yes, exactly.

11 MR. BUNIN: It's just going to
12 happen.

13 MR. BRAUNEIS: Yes.

14 MR. BUNIN: Rather than take my word
15 for it this is recorded, to have that out there
16 would save a lot of heartache.

17 MR. BRAUNEIS: Okay. So a visible,
18 for better or worse, electronic sticker on each
19 page is desired, right?

20 MR. BUNIN: Yes.

21 MR. BRAUNEIS: Yes, or needed I

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1 should say. And then maybe something like a
2 hash value as well? I mean, I guess what I'm,
3 you know, what's in the back of my mind is gee,
4 those visible electronic stickers could also be
5 fraudulently pasted on.

6 Anybody who -- if it was just a mere
7 image file, anybody with a, you know, a good
8 knowledge of how to manipulate image files can
9 fake putting a little line across the top saying
10 recorded and copyrighted.

11 MR. BUNIN: Oh, absolutely. And a,
12 you know, a hash value might be a great idea --

13 MR. BRAUNEIS: Yes.

14 MR. BUNIN: -- along with kind of
15 those two working in tandem.

16 MR. BRAUNEIS: Right.

17 MR. BUNIN: Right.

18 MR. BRAUNEIS: Although --

19 MR. HAWKINS: But they wouldn't be
20 able to fraudulently do that in Copyright Office
21 records. In other words, you could go to the

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1 Copyright Office records, it'd be up on the
2 Copyright Office --

3 MR. BRAUNEIS: Where you could see
4 it.

5 MR. BUNIN: Right.

6 MR. HAWKINS: -- website.

7 MR. BRAUNEIS: Right.

8 MR. HAWKINS: There'd be no way
9 somebody could paste it --

10 MR. BRAUNEIS: Right.

11 MR. HAWKINS: -- and put it up there
12 because that's your server.

13 MR. BRAUNEIS: Right. So it
14 matches it. Right. Whatever we returned to
15 you, also we still have a copy on the Copyright
16 Office server that has that same mark-up, right.

17 MR. HAWKINS: And like you're
18 talking about these hash values, like where
19 would the hash values show up in the record that
20 could be seen by the remitter or the public?

21 MR. BRAUNEIS: Right. It wouldn't

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1 be like a visible sticker, but it would -- I don't
2 know. I'm not sure how hash values are --

3 MR. BUNIN: You wouldn't want it to
4 appear visually because it's going to be this
5 long and --

6 MR. BRAUNEIS: Yes.

7 MR. HAWKINS: No, I know, but that's
8 what I mean, but how would you be able to, like
9 you say, match it? What would the remitter
10 receive to even find out that they had that hash
11 value and then how would it show up in the
12 cataloging?

13 In other words, the remitter would
14 receive back that number, perhaps in a
15 certificate like the registration certificate
16 or --

17 MR. BRAUNEIS: It might be a
18 separate little file. So what returns back to
19 you is a PDF and then a separate little file
20 which, you know, and the title of the file might,
21 you know, it might be hash value for such and

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1 such, a document number.

2 And if you opened that up, it would
3 contain a number or, you know, a hexadecimal
4 number that's incredibly long, but it
5 essentially, it would match against the
6 unaltered document and any alteration to that
7 electronic document file would cause it no
8 longer to match with that value.

9 MR. BUNIN: I mean, you'd need
10 separate software to generate that hash so that
11 you could compare it.

12 MR. HAWKINS: I like this other idea
13 of just having them marking them in the public
14 record.

15 MR. BRAUNEIS: Okay.

16 MR. PERKINS: I mean, you know,
17 these are all sort of really ingenious ideas.
18 I think, though, you know, at best these
19 recordations provide rebuttable presumptions.

20 And so I think it's, I mean, I'm not
21 suggesting that we should have no barriers to

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1 entry to fraud, but this is -- I view this a
2 little bit as the tail wagging the dog.

3 This is, you know, I think what
4 people need is to receive something from the
5 Copyright Office that says that their document
6 has been recorded, that there may be some
7 alphanumeric or something that can be keyed to
8 what's on the database so that they have it for
9 their records.

10 And I don't know that spending a lot
11 of time and resources on developing sort of this
12 kind of a secure system is necessarily time or
13 resources well spent. That's just my --

14 MR. BRAUNEIS: Yes --

15 MR. PERKINS: -- reaction.

16 MR. BRAUNEIS: -- that may be. In
17 Ryland's comments, in written, but also verbal
18 comments, you know, he suggested when it comes
19 to litigation, actually judges are impressed
20 when you show them a paper document that has all
21 those stickers on each page. And with an

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1 entirely electronic system, we're not going to
2 be able to provide that anymore. And so the
3 question is, what do we provide that the judge
4 still likes to see. Right, and that's --

5 MR. PERKINS: Well, but I mean, in
6 many ways, you know, that you could go to a hybrid
7 system, you know, to the extent anyone in here
8 has ever used the Patent and Trademark Office
9 website, for example, to obtain trademark
10 registrations.

11 It is all online, it is all, you
12 know, the same kind of XML documents that you've
13 been talking about. And at the end of the
14 process, you receive a paper registration.

15 But you can also go online and print
16 out your registration from the online database.
17 So there are ways to, even if you didn't want
18 to mail something out, and I would discourage
19 mailing out paper, but to the extent that
20 something gets recorded and then is available
21 online to print out, I think that that would be

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1 more than sufficient, it would seem to me.

2 MR. HAWKINS: But it seemed like if
3 the court, like you pointed out, the courts
4 already do that. They print on the PDF and the
5 court filings that this has been, you know,
6 filed or whatever.

7 It seems like, and I am not a
8 software expert by any extreme, I am like
9 Microsoft Word and that's all I can do, but it
10 would seem like there's a process somewhere that
11 exists that's almost automatic.

12 So in other words like as soon as you
13 hit the accept button, you say, okay, this is
14 fine for whatever examining process you decided
15 to do, it goes up on the website, it
16 automatically just has it on there.

17 MR. BRAUNEIS: Right.

18 MR. HAWKINS: It doesn't have to
19 have the -- right now we have the recording, you
20 know, the book number and the -- I forgot what
21 it is now, but these numbers will not have that,

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1 but just simply filed in the Copyright Office.

2 It could be something as simple as that.

3 MR. BRAUNEIS: Right.

4 MR. RUSSELL: Could it --

5 MR. BRAUNEIS: Although --

6 MR. RUSSELL: I'm sorry.

7 MR. BRAUNEIS: Sorry.

8 MR. RUSSELL: You could have a
9 service request number similar to what the eCO
10 currently has. That way, then, at least we'd
11 have something to track.

12 MR. HAWKINS: That's true and then
13 you could just tie it into the cataloging.

14 MR. BRAUNEIS: Yes, or soon enough
15 it could have the actual recorded document
16 number I think, you know, electronically
17 embossed or whatever on each page. I don't
18 think that's actually much of a problem.

19 But the last comment about available
20 on the website that we could print does bring
21 me to the next topic, which is the availability

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1 of recorded documents on the Internet. As
2 Zarifa said at the beginning of the day,
3 currently we do have a copyright imaging system.
4 We do store images of every recorded document.
5 They are available through a web-based platform
6 internally.

7 And so when we want to, inside the
8 Office, view a document, we use a browser. And
9 so the technology is all there to flip the switch
10 and make that system public. But the Office
11 hasn't done so, and I think in part because of
12 worries about exposing information in those
13 documents to the world.

14 Not confidential information about
15 terms of the agreement, which we think most
16 remitters are perfectly aware that they want to
17 file a short form and not include that
18 information, but things like signatures and
19 personal home addresses of remitters and stuff
20 like that. And yet it would be, I think, of
21 value to at least some of you to be able to access

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1 those documents over the Internet and print them
2 whenever you need them.

3 And so what should we be concerned
4 about if we were to make those available? Would
5 it be of sufficient value? What would you be
6 worried about exposing if we suddenly flipped
7 the switch and made that imaging system
8 accessible around the world? So that's the next
9 topic. Yes, Catherine.

10 MS. BRIDGE: You know, I guess, and
11 I'm kind of, you know, not as intimately
12 familiar with what we actually report and how
13 we report it as Gary.

14 But, you know, what would come to my
15 mind, especially with the limitations on
16 redactions that we've been able to make thus
17 far, that we'd be kind of exposing a lot of
18 documentation very widely, all at once. So, you
19 know, I think that that would be a concern.
20 Just, you know, and it's not like everything
21 else that the Copyright Office is essentially

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1 accessible online, right?

2 I mean, for example, if you even want
3 to see -- you can see, you know, get information
4 about copyright registration, but not
5 necessarily about even the material that's
6 registered. And so it seems to me to kind of
7 throw, you know, it would need to be more, you
8 know, a good understanding of underlying, you
9 know, what are the needs. So I'm not actually
10 opposed, but I definitely I think we have some
11 concern about just flipping the switch.

12 MR. BRAUNEIS: Okay.

13 MS. MCGUIRE: Maybe an opt-in, you
14 know, sort of option.

15 MS. SEABROOK: I was wondering if
16 there's a way that you can sort of, if you are
17 an interested party, have access to a document?
18 Is there a way that you can securely prove?

19 Because if you need access to a
20 document that's like, you know, ten years old
21 or something and you no longer have it for some

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1 reason. But you as an interested party can get
2 it without having to go to D.C. and get it kind
3 of thing.

4 MS. MCGUIRE: Yes. I know,
5 selfishly, there are a lot of times when an
6 attorney will come to me and say, okay, well,
7 figure out who owns this property, we're
8 interested in it. And, you know, at this point
9 we're an interested party, but we're not an
10 interested party.

11 So just to be able to look at those
12 summaries isn't enough. I would love to get my
13 hands on that assignment, see exactly what was
14 assigned. Were there any, you know, mitigating
15 factors related to the assignment or, you know,
16 if there was a license or there's a limitation
17 on the territories, the term. So, you know, I
18 guess we sit on both sides of that fence. Maybe
19 some stuff you don't want public, but anybody
20 could go in, pay their money and get a copy of
21 that document for themselves.

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1 MR. BRAUNEIS: Yes, I mean,
2 obviously as it is, all of those documents are
3 open to the public in the sense that anybody who
4 walks into the Copyright Office can access them.
5 But the question is, this is -- obviously,
6 putting something on the Internet does make it
7 more widely available.

8 I'll think about what opt-in systems
9 could be like. Obviously, that would require,
10 you know, a whole other investment in software
11 development to provide identifiable sets of
12 documents with current parties. Even if you've
13 merged or you've changed your name or whatever
14 and then be able to flip a switch for you and
15 say okay, I'd like these available on the
16 Internet. It would be a challenge, I think, to
17 do that.

18 MR. BUNIN: Well, when you say flip
19 the switch, what exactly do you mean in terms
20 of all of it? If like you did that today or could
21 you do it today and what does that mean? Does

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1 that mean people --

2 MR. BRAUNEIS: Well, here's --

3 MR. BUNIN: -- and anywhere does
4 that mean people who just have existing, kind
5 of, log in credentials to certain parts of the
6 site? Just so we have an idea of what.

7 MR. BRAUNEIS: Yes, I mean, the
8 easiest way to flip the switch would be simply
9 to, rather than limit access to essentially
10 internal IP requests or internal network
11 requests inside the Copyright Office, because
12 it is all browser based right now, we could just
13 say, no, just anybody.

14 And we'll maintain a link from the
15 existing Copyright Office website to the
16 copyright imaging system and anybody who has any
17 browser can just click on the link and they could
18 get into it the same way we do.

19 All right. Right now, it's simply
20 set so that only requests from inside our own
21 network are accepted. But --

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1 MR. BUNIN: And there's no separate
2 log in or anything like that that you --

3 MR. BRAUNEIS: There is no separate
4 log in.

5 MR. BUNIN: Yes.

6 MR. BRAUNEIS: We could have a log
7 in with passwords. I could imagine complaints
8 from other sectors of the public that we're
9 somehow only letting industry players log in and
10 not the public log in. But, yes, technically
11 it's possible.

12 MS. MCGUIRE: How far back do the
13 scans go?

14 MR. BRAUNEIS: The scans go back, I
15 want to say to like 1996. I believe that's when
16 the copyright imaging system began. And it
17 actually is marked by a change in the way
18 documents are numbered, too, from VP to VD.
19 That marks the change in the imaging system. If
20 my memory's correct, it's 1996, but.

21 MS. MCGUIRE: Yes, that's fine.

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1 MR. BRAUNEIS: So it would be, you
2 know, about 17 years or 18 years of documents
3 that'd be available.

4 MR. HAWKINS: But that would be
5 right now, because you're in the middle of
6 scanning in all the prior all the way back to
7 the beginning. And at some point-in-time in the
8 future those would be available too, right?

9 MR. BRAUNEIS: Are we?

10 MS. MADYUN: Yes. We're scanning

11 --

12 MR. BRAUNEIS: The documents?

13 MS. MADYUN: We're scanning --

14 MR. BRAUNEIS: Well, I know about
15 the scanning of registration cards. I actually
16 didn't know, until this very moment, about
17 scanning of old paper documents.

18 MS. MADYUN: No, they'll be on this.

19 MS. CORWIN: No, I think --

20 MR. BUNIN: Just registration
21 records?

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1 MS. CORWIN: Yes, the catalog
2 records have not actually done --

3 MR. BRAUNEIS: We're scanning
4 catalog records. So if any of you have actually
5 been to the card catalog of the Office, which
6 contains registrations from, you know, 1870 to
7 1978 or thereabouts, those are actually almost
8 all scanned by now. And I think it's about 36
9 million records that have been scanned.

10 But those are, and those are just
11 catalog records. Those aren't the actual
12 documents or those aren't deposits either for
13 registrations, so.

14 So yes, I think, if we're talking
15 about flipping a switch, it would be 1996 would
16 be the time we'd be talking about. Well, so if
17 we wouldn't want to do that, is there a
18 distinction to be made between retrospective
19 and prospective?

20 So what if we just announced
21 henceforth documents that you record are going

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1 to be made publicly available on the Internet,
2 copies. Would that be a deterrent to recording?
3 Do you think you could accommodate whatever
4 redaction you needed to do to make to --

5 MS. LOWRY: Well, I think, I mean --

6 MR. BRAUNEIS: I'm sorry. Okay.
7 Susan and then --

8 MR. COLITRE: I'm afraid that the
9 conversation just turned there because you said
10 if you don't want to do that. But let me state
11 the case for those who do want to do that.

12 I think we should begin with the
13 principle that these are public records. If I
14 could travel to D.C. and look at them, I could
15 see them.

16 MR. BRAUNEIS: Yes.

17 MR. COLITRE: And why should they
18 not be available to the Internet? We would need
19 a much more compelling set of reasons to make
20 them not available before we'd make a decision
21 on this, so.

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1 MR. BRAUNEIS: Yes. No, I
2 appreciate that comment. I mean, I --

3 MR. COLITRE: In fact we should begin
4 the acceleration of the scanning of previous
5 documents, in fact for all time to the extent
6 that's --

7 MR. BRAUNEIS: Yes.

8 MR. COLITRE: -- technically
9 feasible which could be possible.

10 MR. BRAUNEIS: Right. Well, and in
11 some ways, it seems to me, the older documents
12 present less of a threat in terms of exposing
13 personally identifiable information that might
14 be used to commit fraud or whatever because some
15 document that was entered into 50 years ago,
16 it's unlikely that that person's still around
17 and lives at the same address and et cetera.

18 But then I do think there is some
19 concern, which we do have to justify. That if
20 we're suddenly exposing, you know, people's
21 home addresses and so on to around the world,

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1 that that might cause some potential for
2 trouble. Yes, Susan.

3 MS. LOWRY: I think that on the one
4 hand, changing the system so that anyone can
5 access it, which I agree with the gentleman who
6 said, well, as a matter of strict fact, these
7 are all a matter of public record.

8 I think that on the one hand it might
9 make it less possible when we are looking to see,
10 well, what was that deal and what was that
11 transaction.

12 I think on a going forward basis we
13 would see a proliferation of short form
14 documents being filed with the Copyright Office
15 that don't contain, necessarily, the kind of
16 details that we're interested in finding out
17 when we're trying to pull those documents.

18 But, you know, and I think that
19 lawyers could absolutely, could and would
20 adjust to that very rapidly in terms of creating
21 those short forms. They already do it with a

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1 lot of documents.

2 So, you know, I know that for us we
3 don't have anything that we wouldn't want anyone
4 to see that we would be recording with the
5 Copyright Office because it's a matter of public
6 record.

7 And it would benefit us to be able
8 to go back in and pull records when we were doing
9 things like foreclosures or we're involved with
10 bankruptcies.

11 It would help a lot to be able to get
12 that information rapidly and without paying for
13 it, essentially, page by page. You know, I
14 think that if you're going to submit anything
15 as a matter of public record, you should be
16 thinking about what you're submitting in the
17 first place, so.

18 MR. BRAUNEIS: Yes.

19 MS. CHAVEZ: I know as well with
20 PACER, that before you file something there's
21 a little check box that you have to mark to

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1 basically acknowledge that you have redacted
2 sensitive information like Social Security
3 numbers or something like that.

4 So I think, at least on a going
5 forward basis, if this is implemented that's
6 also an additional measure like the PACER system
7 method.

8 MR. BRAUNEIS: Yes, in the
9 Copyright Office registration system as well,
10 I don't remember there being a check box, but
11 there certainly is a warning, beware that
12 anything you put here is going to be made public.

13 And so, for example, if you don't
14 want your own home address to appear in a public
15 record, you could possibly get an agent or some
16 PO box or whatever, but otherwise it's going to
17 be there, right.

18 MR. LIU: Well, I think that, you
19 know, we echo Disney's concerns and how
20 complicated it could be when you think about
21 redactions.

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1 I mean, allowing for anyone to go
2 onto the Internet and suddenly see what your
3 signature looks like or personal information
4 that we've discussed here, I just think that to
5 the extent that you are able to figure out a way
6 to allow for, you know, each party to have the
7 appropriate redactions so that it doesn't cause
8 the turn effect in terms of the types of
9 documents that are filed.

10 I think we would want to think more
11 about it and talk more about how a process like
12 that would work. Because I think that, you
13 know, right now, everyone can get access, but
14 there's limited access that they'd have to go
15 to D.C. for.

16 And we think that it kind of balances
17 the pros and the cons in allowing for the public
18 access. But I do think that how simple it would
19 be for someone in his or her own home to just
20 print out in PDF format a document and that'll
21 have the signature block that they could easily

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1 crop and throw onto other documents or they have
2 your --

3 MR. ARROW: An electronic file.

4 MR. LIU: -- personal address or
5 Social Security number and can basically
6 execute sort of fraudulent activities against
7 you. I think we would be very concerned that,
8 you know, we have people operating in their
9 capacity as individuals representing our
10 company now having some of their personal
11 information exposed in such a fashion.

12 That's a significant concern of
13 ours. And so if you're going to proceed with
14 any sort of accessible way of getting it over
15 the Internet, I think we would want to make sure
16 that, you know, those concerns are adequately
17 addressed.

18 MR. LIGON: I wanted to add, there
19 are some parallel examples. For example the
20 repertoires of BMI and ASCAP have that kind of
21 information, but they automatically redact

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1 things.

2 And also on the copyright
3 certificate itself, that's a public document,
4 but addresses of the claimants are not available
5 when you get search results online, so there
6 must be something in place that redacts what I
7 would call sensitive information.

8 MR. BRAUNEIS: Okay. So --

9 MS. MCGUIRE: With the eCO the
10 address of the claimant does show up.

11 MR. LIGON: It does show up on the
12 actual copyright forms sent in via U.S. mail or
13 personal delivery --

14 MR. BRAUNEIS: Yes.

15 MS. MCGUIRE: Yes.

16 MR. LIGON: -- and the certificate.
17 Yes.

18 MS. MCGUIRE: And it shows up on the
19 public record. If you go onto the Copyright
20 Office website and you search for, you know,
21 somebody who has filed a document, I'm sorry,

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1 a registration electronically, you're going to
2 see the claimant's address.

3 MR. LIGON: I think it depends on the
4 year because some of those search results
5 acquired online don't list the claimant's
6 address.

7 MR. BRAUNEIS: Well, I mean, and
8 interestingly enough or oddly enough,
9 paradoxically enough, one might say that well,
10 but isn't some of the purpose of having a public
11 record to allow somebody who wants to use the
12 work to actually contact the record owner.

13 And so if you didn't have any contact
14 information that was publicly available, in
15 some ways that would defeat a major purpose of
16 having all this information available. Right?
17 So again, we see two concerns perhaps, you know,
18 rubbing against each other and --

19 MS. BRIDGE: I would just go back to,
20 I think it's about, I mean, I think to Larry's
21 point that if the redaction policies are more

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1 flexible and we have a going forward.

2 And it's really, I think, somewhat
3 about expectations, right? People, as you
4 said, let's say we decide on a going forward
5 basis to do this, then everybody knows what
6 you're putting in and hopefully you would use
7 a more flexible redaction policy to make sure
8 that sensitive information whether it's
9 personally identifiable, obviously still the
10 financial data is redacted.

11 But I think there's an issue when
12 there's been, you know, for the past stuff, for
13 which really redaction ability has been
14 limited.

15 You know, and the expectation has
16 been that this -- it's public record, and people
17 can make requests for it and get it, but it hasn't
18 been available on the Internet in this widely
19 accessible format.

20 I just think it's kind of a
21 disruption of expectations and that's why,

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1 going forward, you could make some changes on
2 the redaction next time. What, you know, melds
3 the, you know, the balance a little bit better.

4 MR. BRAUNEIS: Just to clarify a
5 little bit, explain about what you mean by? You
6 mean the parties could decide to change what
7 went into the short form that then went into the
8 public record?

9 When you say changes and redaction,
10 I'm just curious about do you mean Copyright
11 Office policy as to redaction or do you mean --

12 MS. BRIDGE: Well --

13 MR. BRAUNEIS: -- simply the
14 parties choosing to sort of more carefully look
15 at what's going into the short form because that
16 is going to be made available on the Internet
17 everywhere?

18 MS. BRIDGE: Well, I think the
19 latter can happen no matter what, meaning people
20 looking into the short form to decide what they
21 want to put into it.

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1 But my understanding from, you know,
2 working on the comments of this is that the
3 policy of the Copyright Office as far as
4 redaction, let's just say on the long form, has
5 been that you can remove financial information,
6 but not necessarily more than that.

7 It was my understanding. That
8 might be incorrect. But if we are limiting,
9 others here can chime in, but if it was really
10 limited in terms of, you know, you couldn't
11 really redact for certain person's identifiable
12 information or other sensitive information,
13 then I do think, you know, what we'd put in during
14 that time, you know, might have been under a
15 different, you know, under a different
16 understanding.

17 MR. BRAUNEIS: Maybe I could just
18 ask Zarifa to comment a little bit on redaction
19 policies because I'm not as familiar as I
20 perhaps should be with existing policies of
21 allowing parties to, you know, send in documents

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1 that have had marker all over them, whatever.

2 MS. MADYUN: Well, we ask that at
3 least 80 percent of the document is there. But
4 what is 80 percent of the document? I mean we
5 do allow for redacted information, financial
6 information a lot of the times, the amount that
7 the parties had agreed to, things like that,
8 Social Security numbers.

9 So we do allow for some redaction,
10 but again, if you're submitting a five-page
11 document and only a paragraph is left, then
12 that's going to be difficult for us to do our
13 job and to make sure that the information that
14 needs to be there is there.

15 But we do allow for, currently, some
16 redaction. Some remitters will, you know, do
17 a, I guess, a blackout and then initial it to
18 say that they did agree to have that information
19 removed.

20 Some people just do a line through
21 for the information that they don't want to be

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1 there, although that still shows up in the
2 image.

3 So there is some wiggle room for what
4 you would be allowed to and what you are allowed
5 to remove from documents currently.

6 MR. ARROW: That 80 percent, that's
7 an interesting rule, that 80 percent rule.
8 Because you could have, as you described, a five
9 page or longer document for which only a very
10 small portion is actually an assignment of
11 copyright and the remainder of it is, you know,
12 something completely different.

13 And, you know, so if one didn't have
14 the foresight to use a short form copyright
15 assignment in conjunction with that agreement,
16 that would be all you would have to record.

17 And the other information in it or
18 other than the assignment of copyright, you
19 might not want in the public record. It seems
20 a bit arbitrary.

21 MS. MADYUN: Well, we do receive

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1 calls from remitters that ask about redaction.

2 And then we --

3 MR. ARROW: Yes.

4 MS. MADYUN: -- tell them our
5 policy. But most people just do the option of
6 submitting a short form --

7 MR. ARROW: Right.

8 MS. MADYUN: -- option because they
9 know that the majority of the document --

10 MR. ARROW: Sure.

11 MS. MADYUN: -- that they're going
12 to send in is not going to have any information.
13 It's just going to be a paragraph maybe or a
14 couple lines and a signature page.

15 And because of how our policies
16 stand now, we won't be able to accept that
17 because we need the majority of the document --

18 MR. ARROW: Right.

19 MS. MADYUN: -- just to make sure
20 that everything you're saying is there is
21 actually there.

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1 MR. ARROW: But let's say I wish to
2 record a document that's thirty years old --

3 MS. MADYUN: Yes.

4 MR. ARROW: -- and at that time no
5 one did a short form assignment. So it's not
6 possible to do that now. What would I do,
7 assuming that the document was 20 pages long and
8 only one paragraph was under assignment of
9 copyright and the rest of it were confidential
10 terms?

11 MS. MADYUN: Then that probably, we
12 haven't had anything like that happen. So I
13 would think if something like that came, then
14 that would be a call that the Office of General
15 Counsel would have to make --

16 MR. ARROW: Okay.

17 MS. MADYUN: -- just so that if
18 that's all that you can provide, then they would
19 have to decide whether we'll accept that and
20 then record it and put it into --

21 MR. ARROW: Okay.

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1 MS. MADYUN: -- the public record.

2 MR. ARROW: Yes, I don't think it's
3 ever happened to us. It's just a theoretical
4 argument.

5 MS. MADYUN: Yes.

6 MR. BRAUNEIS: Two final topics in
7 this portion. One is providing notice of
8 recordation to others. George actually
9 already mentioned this in particularly
10 providing notice of recordation to the record
11 owner of a work.

12 In some ways it might be easier to
13 provide an email notification to anyone who
14 signed up for it with regard to a particular work
15 than it would be to provide notice to the record
16 owner because the latter would involve the
17 determination of who the record owner of a
18 particular work is and our records sometimes are
19 not as clear to that, or at least, are
20 complicated as to that.

21 So, while I appreciate the idea of,

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1 you know, making sure that the record owner of
2 a work gets noticed. You know, I'd like
3 comments on more generally do you think it's a
4 good idea?

5 Should anybody be able to sign up and
6 say if a document is recorded with respect to
7 this title or this registration number, send me
8 an email please. Is there some reason to limit
9 that kind of notification?

10 MR. BORKOWSKI: I think first of
11 all, it's a record owner issue. I recognize
12 that. But what I said earlier though is, I think
13 on a going forward basis you have better and
14 better records of the record owner.

15 And we'd encourage people to keep
16 their contact information updated if they knew
17 that they would get notification from the Office
18 if somebody registered against, I mean,
19 recorded against their title.

20 MR. BRAUNEIS: Right.

21 MR. BORKOWSKI: As for a wider

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1 dissemination, I mean, we don't think that, I
2 don't think that, our industry doesn't think
3 that, the Office is really there to actively
4 push information out to people.

5 I think it's very important to have
6 a database that people could access and they
7 could find the documents that are in that
8 database, but we don't think that it's for the
9 Office to kind of solicit the dissemination of
10 information.

11 I don't think that's its function.
12 I think its function is to be an official
13 database of records that people should be able
14 to access as easily as they can.

15 But I think that that's where the
16 Office really, its function kind of stops there.
17 I don't think it has an affirmative duty to push
18 information up.

19 MS. LOWRY: I think we feel the same
20 way about that. You know, I mean, in terms of
21 overall what's important here from our

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1 perspective in terms of what we're discussing
2 is, you know, first and foremost.

3 Before any of the these other
4 things, you know, happen or don't happen, just
5 a shift to an electronic filing process and
6 registration process and whatever material is
7 needed to make sure that things can get filed
8 and reported and processed in a timely manner.

9 Because, you know, we all know that
10 if you file something at the Copyright Office
11 no one's going to know about it for a really long
12 time.

13 And, you know, so I mean, you know,
14 a lot of these other things that we're
15 discussing are things that could be added to an
16 electronic system as time goes on, right, if
17 there's, you know, the right kind of database
18 and processing.

19 But, you know, getting stuff up
20 there, filed, so that everyone who knows it and
21 sees it's there and you can be sure that it's

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1 there, is the turnaround primarily, combined
2 with something we're supposed to talk about in
3 your next session which is linking registration
4 documents to everything else that's been
5 reported in connection with that work.

6 Those two things just all by
7 themselves would make a revolutionary
8 difference from my perspective, having been
9 doing this, you know, for like 20 years,
10 revolutionary in terms of expectations from the
11 Copyright Office.

12 As much as I'd like to get notice
13 about something, then, you know, gets I mean,
14 you know, that's what people pay their lawyers
15 for a due diligence for and, you know, we
16 wouldn't want a bunch of unemployed lawyers.
17 That would be sad.

18 So sad, right? Besides which, you
19 know, if there's a slightly higher incidence of
20 fraud as a result of any of this, well, now that
21 could make up the difference.

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1 But really, it, you know, I mean UCC
2 filing has been electronic for, you know, a very
3 long time, so, you know, filing your corporate
4 documents, filing in the court system, et
5 cetera.

6 You know, all I really wish for when
7 I go to bed at night, among other things is, you
8 know, can the Copyright Office please switch
9 over to an electronic filing system. No
10 pressure. Okay.

11 MR. LIU: Right there, right after
12 world peace.

13 MR. HAWKINS: I agree with those
14 comments and will add that I have over 10,000,
15 maybe 20,000 titles. Like how, just for us, and
16 I'm sure everybody else has a similar library,
17 how you would even be able to implement some sort
18 of software programming to be able to give
19 notice like when a title pops up.

20 But it seemed like the resources
21 would be better put in what we need to do in

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1 regards to recording electronically and
2 bettering the registration process and, you
3 know, better putting the catalog there to handle
4 the orphans works issues and that sort of thing
5 rather than the third party notice.

6 MR. BRAUNEIS: Yes, and I guess, one
7 of the reasons why this topic is in there is that
8 some of the comments to the NOI do suggest a
9 possibility of fraud or of mistaken recordation
10 and raised the issue of could we get notice if
11 a document was recorded against a title that we
12 own or more generally, titles.

13 So that's why it's there, but I do
14 appreciate that the Office has very limited
15 resources and that this might not be the first
16 place to put them.

17 Interim steps, okay. Even if we
18 decided tomorrow to build this wonderful
19 electronic recordation system, it's going to
20 take a while.

21 And there's a question about what we

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1 can do in the meantime to reduce some of the
2 backlog perhaps and to reduce the labor involved
3 in the current system.

4 And one of those ideas is to allow
5 in a more structured way for electronic
6 submission of titles and registration of and
7 electronic submission of identifiers for works
8 in multi-work documents.

9 We have, in fact, begun a kind of
10 unofficial pilot program. We have accepted
11 lists of titles in electronic format on USB keys
12 that are mailed in. And Zarifa, maybe you could
13 say a little bit about how that's worked?

14 MS. MADYUN: Yes, so we have some
15 remitters who have large lists of titles. And
16 they'll send in those works on a USB and an Excel
17 spreadsheet form.

18 I'll cut and paste them and upload
19 them to the system once the record is created.
20 And it's a lot faster. It's still time
21 consuming if you have, again, 10,000 titles, but

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1 it's not as time consuming as someone actually
2 sitting there and keying each title in.

3 And it's been successful. We have
4 a PO Box that we ask that those flash drives get
5 sent to. And it's traveled word of mouth. It
6 really just started with one remitter and I
7 think that remitter told someone else and then
8 told someone else.

9 And so we started to get those in
10 more frequently. It's not something that, of
11 course, we can require. But if you have them
12 and you are willing to send that in, that would
13 be helpful.

14 MR. ARROW: If you would accept on
15 a USB, why not accept an attachment on an email
16 or would you?

17 MS. MADYUN: Because just for
18 security reasons we're not always able to access
19 attachments from external --

20 MR. ARROW: Yes.

21 MS. MADYUN: -- users. Because we

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1 just don't know if, you know. You could be
2 saying you're sending something, but there
3 could be something attached to that and then
4 maybe a virus or something and then that could
5 just give us a lot of issues. So we just ask
6 for a flash drive. But again, it's unofficial,
7 it's a --

8 MR. ARROW: Okay.

9 MS. MADYUN: -- pilot program that
10 we just asked one remitter if they could do it
11 because they had literally 50,000 titles and
12 there was just no way that we could get it done
13 in the time that they wanted us to.

14 And so we just asked, well, if you
15 have an electronic copy of it, could you send
16 it to us. So, but we have, I will say in some
17 cases, asked if there is a Word document or
18 something that can be sent that we can cut and
19 paste from. We will ask that sometimes, but if
20 you're going to send it in, flash drive.

21 MR. BUNIN: Is that

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1 programmatically blocked at your office or is
2 that just policy?

3 MS. MADYUN: What? The --

4 MR. BUNIN: Meaning that you can't
5 get an attachment and do it from there.

6 MS. MADYUN: It's just sometimes
7 it's just policy.

8 MR. BUNIN: Okay.

9 MS. MADYUN: Like if you were to send
10 me something let's just say, just well, Zarifa,
11 I sent in a document a month ago, here are my
12 electronic titles.

13 I wouldn't be able to open that, but
14 if I ask you to send it to me, then I would be
15 more likely able to open it if that makes sense.
16 We just want to --

17 MR. BUNIN: Really to open it as
18 opposed to --

19 MR. BRAUNEIS: It is policy rather
20 than technology.

21 MR. BUNIN: Oh, okay. I --

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1 MS. MADYUN: Technology, yes.

2 MR. BUNIN: -- was trying to make the
3 distinction --

4 MS. MADYUN: Oh yes, I'm sorry.

5 MR. BUNIN: -- between like --

6 MS. MADYUN: It's policy rather
7 than --

8 MR. BUNIN: -- you can --

9 MS. MADYUN: -- technology.

10 MR. BUNIN: -- click away and
11 nothing would happen.

12 MR. ARROW: For security.

13 MR. BRAUNEIS: We can open --

14 MS. MADYUN: Yes.

15 MR. BRAUNEIS: -- attachments.

16 MS. MADYUN: Yes. It's policy more
17 than technology.

18 MR. ARROW: Sure. I get it.

19 MR. BRAUNEIS: The Office is
20 subject to attacks of various kinds.

21 MR. BUNIN: Oh, I'm sure.

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1 MR. BRAUNEIS: And a month after I
2 arrived at the Copyright Office they had to
3 switch out my computer because, we're not sure
4 how, but some virus had gotten onto it.

5 And so, you know, being in
6 government offices, you do think twice about
7 opening attachments --

8 MR. BUNIN: Okay.

9 MR. BRAUNEIS: -- even if it comes
10 from what appears to be a reliable source.
11 Unless you have a communication where if she
12 just asked you and you sent it back, although
13 yes, you can have, you know, man in the middle
14 attacks that result in problems there too, but,
15 you know, we're more likely to be able to accept
16 that kind of file.

17 MS. MCGUIRE: And there's also the
18 administrative problem. You know, we're
19 sending in by, you know, UPS or Fedex and how
20 are you going to match up my email that came in
21 a couple weeks later with --

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1 MS. MADYUN: Exactly.

2 MS. MCGUIRE: -- you know, how many
3 hundreds that have come in --

4 MS. MADYUN: Exactly.

5 MS. MCGUIRE: -- in that time. So,
6 yes, we've done the where we've put our
7 spreadsheet on a disk and just attached that
8 with the paper documentation when we know we've
9 had a lot of titles.

10 MS. MADYUN: And that's part of the
11 interim steps that we're taking just to process
12 these documents faster. We are in the process
13 of maybe contacting some remitters who have
14 filed documents that have large titles and just
15 see if they're willing to provide us with an
16 electronic copy of those titles so that they can
17 be entered in a lot faster.

18 It's just, you know, because of the
19 amount of staff that I have currently, trying
20 to do all of that in a reasonable amount of time
21 is just sometimes near impossible.

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1 So if someone is willing to do that,
2 that information can be uploaded rather fast
3 and, you know, your record would be online
4 quickly, so. Well, faster than it has been,
5 let's just say, yes.

6 MR. BRAUNEIS: Are there any other
7 interim steps that from your experience would
8 be worth considering if more, you know, sooner
9 than a completion of an electronic system?

10 MR. HAWKINS: I think --

11 MR. BRAUNEIS: Yes.

12 MR. HAWKINS: -- if you already have
13 this in the background, the inputting of the
14 information, cataloging, if you have it almost
15 close, then you can sort of bring it just with
16 another step close to the registration form and
17 just have that part where the remitter can
18 submit the titles, you know, put in the
19 information and then submit a PDF of the
20 document.

21 I think, for me anyway, that would

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1 be extremely useful as an interim step. And it
2 doesn't seem like it would require that much of
3 a step. It would speed your process of
4 cataloging and then it would also do away with
5 having to submit.

6 And I think you have to change the
7 regulations with regards to the original
8 signature, but that would probably be fairly
9 quick.

10 MR. BRAUNEIS: Yes, I mean, I guess
11 I'm not thinking of that as an interim a step.
12 I'm thinking of that as a completion of a major
13 stage in the conversion to electronics, so.

14 MR. HAWKINS: All right.

15 MR. BRAUNEIS: If we get to the part
16 or the point where we have web-based input by
17 remitters who then just submit a PDF and their
18 title file as an uploaded attachment, that's a
19 major part of the way there.

20 So we would love to get that done,
21 but as I say, I think that is going to take a

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1 couple of years to be done and ready and go and
2 up. Yes.

3 MR. COLITRE: What about just a web
4 upload for a replacement of the USB key system,
5 just something that makes it easier than the
6 actual transfer of physical device? And only
7 in those cases where Zarifa's team decides to
8 ask for it?

9 MR. BRAUNEIS: Yes, I think we could
10 consider that, you know. And some kind of
11 system that scans for viruses, et cetera, before
12 anything is opened.

13 MR. COLITRE: Just a route around.

14 MR. BRAUNEIS: Yes.

15 MS. MADYUN: Yes.

16 MR. BRAUNEIS: No, I appreciate
17 that. Thanks.

18 MS. MADYUN: Okay. I have one
19 thing.

20 MR. RUSSELL: I wonder --

21 MS. MADYUN: Oh sorry. Go ahead.

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1 MR. RUSSELL: -- would there need to
2 be some type of reference number assigned to
3 that, so that way when we send in our document,
4 it's properly identified?

5 MR. BRAUNEIS: Yes. I mean, I'm
6 sure that that is informally done now. When you
7 send in the USB key that you also have an
8 in-process number or something which is linked
9 to that. So you know where --

10 MS. MCGUIRE: Oh, we're sending it
11 in with the document.

12 MR. BRAUNEIS: I see. Okay. So --

13 MS. MCGUIRE: It's all in the same
14 --

15 MR. BRAUNEIS: -- it's in the --

16 MS. MCGUIRE: -- package.

17 MR. BRAUNEIS: -- same package.
18 Right.

19 MS. MADYUN: So you'd get that and
20 the document cover sheet and you've got the --

21 MR. BRAUNEIS: But you said, you

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1 know, on occasion you've requested it after the
2 document's been submitted.

3 MS. MADYUN: Yes.

4 MR. BRAUNEIS: And so in that case,
5 then you need like an in-process number to match
6 the two.

7 MS. MADYUN: Yes. So if we get a
8 document and let's say it's hard to read or the
9 titles are extremely long, we'll call a remitter
10 and just see if they have it.

11 We'll give them their tracking
12 number and then they'll just send that back with
13 the copy of the titles that we're requesting.

14 And we'll make sure that we're
15 matching what you send to what's on the paper,
16 so that, you know, you may have inadvertently
17 sent a, you know, an electronic file for another
18 document thinking it was for that document.

19 We do make sure that they are
20 matching. So we're not just going to upload the
21 title that you sent automatically to that

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1 without double checking to make sure that those
2 are the correct ones.

3 And if they're not, then we'll call
4 you back and say, hey, there's some
5 discrepancies here, are you sure you sent in the
6 right file.

7 MR. BRAUNEIS: And did you have
8 another comment to make about the --

9 MS. MADYUN: Oh, yes. Another
10 interim solution that we're thinking of, we do
11 get a lot of calls because we do have a backlog,
12 as to whether or not your document has even been
13 received.

14 So when I return we're going to start
15 a process where in the front end someone's
16 actually going to go and look through all of the
17 documents that come in, get the contact
18 information and then send you just a little
19 email that's a hello, we've received your
20 information on this date, this is your document
21 on this date.

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1 Just so you can have that assurance
2 that we did receive your document in there. We
3 have an additional support specialist that's
4 going to do that.

5 We're just trying to learn how to do
6 more with less and make sure that you're all
7 happy and have some confirmation that we did
8 receive it.

9 And so that's going to be our one
10 solution. And if there's a short fee on the
11 front end, hopefully we'll be able to catch that
12 too, so that you don't get a call maybe six,
13 seven, eight months down the road say hey, you
14 didn't send in enough, we need additional money.
15 So we're going to try to take care of all those
16 things on the front end.

17 MS. SEABROOK: That would
18 definitely make us happy.

19 MS. MADYUN: Okay. Okay. Yes,
20 we're going to start that as soon as I get back,
21 so.

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1 MR. BRAUNEIS: Okay. Before we
2 finish the electronic recordation model topic,
3 are there any other comments that have come to
4 any of your minds about guided remitter
5 responsibility, electronic signatures,
6 structured electronic documents, XML schemas,
7 whatever, anything else that we've left open or
8 unsaid that you'd like to contribute?

9 MS. LOWRY: Yes, I don't know that
10 I really spoke to the whole idea of remitters
11 being responsible for the information that
12 they're inputting as opposed to the document
13 specialists being responsible.

14 For us, I think that's actually
15 probably better. It may be a little bit more
16 time consuming for people on our end, but if we
17 were in an electronic filing system, I think the
18 time spent packaging stuff and filling out
19 document cover sheets and all that, you know,
20 all that kind of stuff, and the money saved with
21 the postage would all make up for that.

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1 And as long as there would be an
2 ability to revise inadvertent errors,
3 consistent with your second question here, I
4 think that that would be fine.

5 And the constructive notice could be
6 deemed based on the record instead of what's in
7 the document. Because I think that is
8 essentially our responsibility. And that, I
9 feel that it sort of gets out of our hands when
10 it goes through yet another set of hands who
11 takes out the information and puts it in.

12 And I think, you know, I'm far less
13 concerned with the examination of the documents
14 than I am with the movement of the documents to
15 recorded status and notification. So I just
16 don't know if I made that clear before.

17 MR. LIU: You know, on that topic I
18 did have a question about how constructive
19 notice would work when you're dealing with a
20 dual system of guided remittance as well as
21 paper filing.

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1 Would you then have different
2 standards with respect to recordations that
3 come in via paper? Would constructive notice
4 be based off of, you know, the information in
5 the document with respect to paper filings or
6 how would you be able to reconcile those two
7 systems?

8 MR. BRAUNEIS: Yes, it's a very
9 interesting question. If recordation was
10 really frequently litigated so that we had, you
11 know, even a sense of how that would work out
12 now, I might have a better answer to your
13 question.

14 To my knowledge, you know, there
15 hasn't been a single litigated recordation case
16 about some discrepancy between what's in the
17 Copyright Office catalog and what was in the
18 document and a court trying to figure out, you
19 know, the issue of constructive notice in that
20 circumstance.

21 So I don't know, I guess is the

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1 answer. It's certainly something I appreciate
2 you bringing up. It's something that we would
3 need to consider if we're maintaining
4 essentially a dual system.

5 And sometimes information is
6 entered by specialists in the Office and
7 sometimes it's entered by the remitter.
8 There's no question that we would know when the
9 information was entered by one or the other.

10 In fact, we can track right now,
11 which recordation specialist entered in the
12 information. We have that information in the
13 records. But we have to, I appreciate that
14 question, but it's something to which we'd have
15 to give more thought.

16 MR. LIU: Because I think in terms
17 of constructive notice, it would be good if
18 we're reviewing the database, you know, of what
19 we can rely on.

20 If the rules change, assuming the
21 rules can change, it would be good for us to know

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1 if we were doing our own evaluation for chain
2 of title or whatever purposes to know what we
3 can rely on versus what we can't.

4 And it just seems like it would add
5 an extreme complexity to the issue if we did
6 retain a paper system, which, I think, we're
7 very much in favor of, just simply because with
8 any sort of transition there are all different
9 policy reasons to preserve access, you know --

10 MR. BRAUNEIS: Right.

11 MR. LIU: -- for the folks who may
12 not have the ability or the resources to be able
13 to, you know, follow through on a guided
14 remitter system.

15 And so I just think that from our
16 perspective, it's just a trickier question to
17 answer in terms of moving to the cataloging
18 information as the, you know, the information,
19 not constructive --

20 MR. BRAUNEIS: Yes, I appreciate
21 that.

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1 MR. LIU: -- notice.

2 MR. BRAUNEIS: I think I have two
3 comments here which --

4 MR. BORKOWSKI: I agree with Susan
5 that there should be an easy way to fix
6 inadvertent mistakes. I mean, I think that
7 would be very important for having an account
8 that a user account system could help move that
9 forward.

10 I do have a concern, though, on
11 basing constructive notice on a document that's
12 almost by definition inferior to the original.

13 It's kind of for evidentiary
14 purposes, I look at everything as a litigator
15 anyway, but it's almost like a best evidence
16 rule kind of thing.

17 The best evidence of what the
18 document is is the document. It's not
19 somebody's summary of the document or
20 somebody's taking out certain information of
21 the document.

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1 So I would be concerned with
2 allowing the constructive notice to be off of
3 the secondary form rather than the original
4 document.

5 MR. BRAUNEIS: Yes, appreciate
6 that.

7 MR. COLITRE: I just wanted to
8 observe, and this may shed some light on this
9 whole question, is that when you're running a
10 giant database you cannot simply make
11 responsibility a binary choice between the
12 uploader and the manager of the database.

13 There has to be a balance between
14 those two things. If you just accept anything
15 anybody says, then it's going to be a garbage
16 database, but if you want to balance costs, you
17 can push a lot of the responsibility toward the
18 uploader.

19 And so finding that balance and
20 especially in a system where there's two things
21 going on, paper records and electronic records

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1 happening, I think there has to be a conscious
2 evaluation of where that balance lies. And I
3 think that speaks to the evidentiary question.
4 I agree that the document is really the thing
5 that matters.

6 MR. BRAUNEIS: Okay. We have
7 reached about 12:49 according to my -- 11:49
8 according to my, sorry about that, according to
9 my clock. And that means time for lunch.

10 So I'm going to postpone the
11 beginning of what are really two linked
12 conversations about recordation and
13 registration and then about standard
14 identifiers and metadata standards until
15 immediately after lunch. But why don't we say
16 that we're all back here by ten to 1:00 or 12:50
17 and I wish you a good lunch. Thanks very much.

18 (Whereupon, the foregoing matter
19 went off the record at 11:50 a.m. and went back
20 on the record at 12:51 p.m.)

21 MR. BRAUNEIS: Okay. I think we're

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1 ready to get started again. Welcome back
2 already. I hope you all had good lunches. And
3 I'd like to kind of do the next two sessions,
4 since we're running a little behind, combined.

5 And although I may find out
6 otherwise from you, it does seem to me that they
7 are linked in a number of ways. So this is all
8 about the use of registration numbers in
9 recordation documents or recorded documents and
10 the use of standard identifiers, of which one
11 could consider registration number as being
12 kind of one of those, and of metadata standards
13 more generally.

14 And although narrowly speaking, the
15 questions that we ask in the Notice of Inquiry
16 are about registration numbers and linking the
17 registration, excuse me, recorded documents
18 records to registration records and about
19 standard identifiers, other standard
20 identifiers.

21 It seems to me that more broadly both

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1 of these are directed to the place or the role
2 of the recordation database of the Copyright
3 Office catalog in the entire ecosystem of
4 copyright information about works.

5 So asking about the use of
6 registration numbers in recorded documents
7 records is asking about the relationship of
8 information in recorded documents records to
9 the greater Copyright Office catalog.

10 And asking about other standard
11 identifiers like ISBNs and ISWCs and so forth,
12 is asking, sort of, about the relationship of
13 the entire Copyright Office catalog to other
14 sources of information outside the catalog.

15 And so you'll see that by the end of
16 the second topic of the standard identifiers
17 topic, we're asking some rather broad questions
18 about is there a specialized role for the
19 Copyright Office catalog to play that's
20 different from roles that privately maintained
21 databases play.

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1 And does the Copyright Office have
2 some core field of expertise that should guide
3 its role versus other roles. And so, you know,
4 at the very broadest level this is about how
5 should we best improve the entire system of
6 copyright information about works and what's
7 the Office's role in doing that?

8 That having been said, just to start
9 this off, there are a couple of additional
10 pieces of information I want to give you about
11 the use of registration numbers and other
12 standard identifiers in document records.

13 So just to guide the discussion,
14 between 1978 and 2009 about eight million works
15 are represented in recorded documents. About
16 3.7 million of those are identified not only
17 with titles, but with registration numbers. So
18 that's about 46 percent of the recorded document
19 works.

20 And recorded documents do contain
21 some kind of registration number. If we'd take

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1 a look at, over time, the percentages of works
2 in assignments and in financing documents that
3 have registration numbers, the line is a little
4 squiggly, particularly at the beginning there.

5 And I don't know whether some of that
6 may be due to one-off transactions that either
7 did or didn't have registration numbers and it
8 skew the figures.

9 Some of it may be due to changes in
10 policies of maintaining the Copyright Office
11 catalog back to the 1980s that I know very little
12 bit about.

13 Obviously, the one major trend you
14 see is that the financing documents start to
15 have higher percentages of registration numbers
16 than the assignment documents.

17 And recall in that regard, the two
18 cases I mentioned this morning, in re Peregrine
19 Entertainment which says in 1990, gee, all
20 financing documents involving copyrighted
21 works as security should be recorded. And then

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1 in the early 2000s you get in re World Auxiliary
2 Power that says actually no, only those of
3 registered works.

4 And this is the kind of secondary or
5 indirect information I was talking about that
6 may lead us to think that it is that change in
7 judicially stated policy that's giving rise to
8 one, an increase in the number of works in
9 financing documents, but particularly an
10 increase in the percentage of those with
11 registration numbers since we've seen much
12 higher percentages come in with registration
13 numbers in the last ten years or so.

14 You know, just to give you a sense
15 of the issues that we have with the inclusion
16 or lack of inclusion of registration numbers in
17 recorded documents and how we might or might not
18 choose to use those to link the information.

19 Currently information's not
20 linked. So if I search for a particular
21 registration number, this happens to be a

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1 registration number for a novel by Robert Stone
2 called Damascus Gate, it only turns up the
3 registration.

4 It does not turn up any recorded
5 documents. In fact, there are some recorded
6 documents that for which that registration
7 number was entered.

8 And so here's one of the recorded
9 documents in which we do have that information
10 about the registration number, but the records
11 are not linked so that you could immediately
12 pull up the recorded document information with
13 the registration number.

14 But then there are other documents
15 that came in later which did not have the
16 registration number. And, in fact, the very
17 right that was granted in 2000 which did have
18 the registration number, which was a grant of
19 motion picture rights, was later terminated
20 without the registration number.

21 So if we didn't have that

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1 information, we wouldn't be able to link that.
2 And then you get later grants that also don't
3 have registration numbers in it.

4 And there's no one place where we
5 can, and as the database is currently
6 structured, where you could pick up this entire
7 history in one go, as it were. And since I know
8 we have a lot of motion picture folks in this
9 room, they're saying oh, Columbia Pictures,
10 Paramount.

11 But, so that's sort of the nature of
12 the problem and from the search side. Just one
13 more piece of information about other standard
14 identifiers.

15 Recorded document records
16 currently don't store other standard
17 identifiers. There is no place to include an
18 ISBN or ISRC or ISWC number.

19 Registration records can store
20 certain identifiers. Currently, they can
21 store three types of standard identifiers,

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1 namely ISBNs, ISSNs and ISRCs.

2 But when we look at the number and
3 percentage of registration records that
4 actually contain those, it's quite low. So only
5 about three percent of registration records
6 contain either ISBNs or ISSNs and only
7 three-tenths of one percent contain or is that
8 three-one-hundredths of one percent contain
9 ISRCs.

10 And then there are other standard
11 identifiers which simply aren't accommodated.
12 We currently have a request pending to include
13 a standard identifier for sheet music, for
14 printed music, but not for musical works, not
15 the ISWC.

16 So that's, you know, further into
17 the future even with regard to registration
18 records, let alone recordation of recorded
19 documents records.

20 So I guess, sort of, what we're
21 interested in knowing is from your perspective.

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1 More particularly, how do you think that it
2 would be helpful or not helpful to link the
3 databases to request the provision of
4 registrations, numbers and to accommodate the
5 provision of other standard identifiers?

6 So that's the kind of narrow
7 question. The broader question is how does the
8 Copyright Office fit into the entire system of
9 copyright information about works? Is there
10 some specialized role that we should be playing
11 and if so, what is it?

12 MR. BORKOWSKI: Bob, can I ask a
13 question?

14 MR. BRAUNEIS: Yes.

15 MR. BORKOWSKI: On your Robert
16 Stone example --

17 MR. BRAUNEIS: Yes.

18 MR. BORKOWSKI: -- isn't it the
19 case, though, if you went up to the online
20 catalog now when you put in Damascus Gate you
21 get all that stuff?

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1 MR. BRAUNEIS: If you put in
2 Damascus Gate, yes. Okay. So that's correct
3 and if you put in Damascus Gate, then, I of
4 course, can't do that right here, I wish I could,
5 it's probably true that, you know, Damascus Gate
6 is a sufficiently unique title, that it probably
7 only pulls up that work and you don't have to
8 go through sorting out, gee, what Damascus Gate.

9 I mean, I could tell you with, and
10 it's also probably true that it's not a
11 sufficiently popular title that you don't have
12 like Cliffs Notes and other sorts of works
13 that'll come up for it.

14 I know if you pull up, for example,
15 any title by F. Scott Fitzgerald or Ernest
16 Hemingway, you'll get dozens of responses that
17 are not actually the work you're looking for,
18 but they're some other, you know, auxiliary
19 work.

20 So yes, you can do some with title
21 searching, assuming that the title is

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1 sufficiently unique that you bring up those
2 records.

3 You don't get them in any sort of
4 order that would indicate how they relate to
5 each other necessarily. But, I guess, to answer
6 your question, yes, if you can do title searches
7 and if the title is sufficiently unique then it
8 will pull up both registration and recorded
9 documents records.

10 MS. LOWRY: So you know, though,
11 it's true that right now you can do key word
12 searching, you can search by author, by title.
13 I mean, you can search by all kinds of things
14 and with date modifiers.

15 It would be useful to be able to have
16 everything linked to the original registration
17 number, but I think that that would require that
18 anybody who's filing something identify the
19 registration number of the original work, you
20 know.

21 Because, as you pointed out, the

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1 longer things go in the process of documents
2 being recorded, you know, after the screenplay
3 and it passes down a few lines, nobody is
4 referencing the Form PA registration number,
5 you know, that it harks back to.

6 But if that were required, which is
7 not required now, I think, unless it's a
8 derivative work on the document cover sheet.
9 But if it were required for every filer, then,
10 you know, they would be responsible for looking
11 up that number, filling it in and including that
12 in what they're sending in to the Copyright
13 Office.

14 But I think that's the only way you
15 would be able to get -- that's the only way I
16 can think of you being able to get that to work.

17 MR. ARROW: Yes, but it should not
18 be required.

19 MR. BRAUNEIS: But it should not be
20 required.

21 MR. ARROW: It's way too onerous and

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1 difficult for us to do that. In some cases, we
2 have old catalogs that we acquired, we don't
3 have the copyright registrations, we don't
4 know.

5 If it's a pre-'78, we can't even look
6 it up. We'd have to pay someone to go to the
7 Copyright Office and find it for us, or pay the
8 Copyright Office to find it for us.

9 In some cases, we record assignments
10 for works that haven't yet been registered.
11 Right? We sign a rider and they provide you with
12 a schedule of existing works and we record that
13 assignment to us, but they may not have been
14 registered. If they're later registered,
15 there may never be any connection between that
16 assignment and the registrations we later
17 filed.

18 So I think this all very nice to have
19 stuff. I get it, and I don't know that it's
20 necessary. Again, particularly in our
21 industry, music publishing, I think that the

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1 ownership data is extremely easy for people to
2 come by through other sources, like ASCAP, BMI,
3 Harry Fox, and in the future the GRD and possibly
4 DDEX will provide that information on a global
5 basis.

6 So, and it may be the case with other
7 industries as well. So, it's nice, but I don't
8 see that the benefit would be worth the effort
9 in constructing this.

10 MR. BRAUNEIS: So it's nice to have
11 the capacity, but not to mandate it.

12 MS. KOSSOWICZ: Yeah, I would think
13 -- I want to chime in here, as well, from the
14 recorded music side. This gets complicated
15 because most of our transfer and assignment
16 documents don't contain registration numbers.
17 So it would be nearly impossible for us to have
18 to go back and come up with any sort of list.

19 Also, the inclusion of registration
20 numbers, you know, could be construed to limit,
21 you know, protections that we rely on, for

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1 example, specific ISRCs. Not every specific
2 ISRC is registered.

3 We rely on registrations, for
4 example, for the best edition version of it. So
5 all of the ISRCs wouldn't have their own
6 registration number anyway. So we're dealing
7 with more on a general level there.

8 MR. BRAUNEIS: Okay. Other
9 comments? Yes.

10 MS. MCGUIRE: On the motion picture
11 side, we will frequently be getting rights to
12 foreign works that won't have registrations.
13 We still want to be able to record those rights.

14 MR. RUSSELL: Or they're still in
15 process, they're still writing the work but
16 we're just getting the rights to them. So those
17 haven't even been registered yet.

18 MR. BRAUNEIS: Right. Right.

19 MR. LIU: We'll also deal with
20 documents that, you know, the option agreements
21 to unpublished works that may never be

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1 registered.

2 We may deal with large, like,
3 library acquisitions or licenses where it just
4 would be incredibly burdensome to try to, you
5 know, associate registration numbers with
6 thousands of different titles, many of which may
7 not have had a registration number issued yet.

8 And so I think it really would affect
9 our work flow if that became a mandatory
10 requirement. So we definitely don't think that
11 that would be helpful for us.

12 MR. LIGON: If I may speak from the
13 standpoint of the writer, I've heard it
14 mentioned that someone else, like the PROs, will
15 have that sort of thing. Those people are not
16 in this room, that I know of. And from the
17 standpoint of writers, we depend on copyright
18 records -- Ed and I have been in court on a case
19 where some PRO or somebody in the process of
20 registrations didn't put in the correct
21 information and so in that case, we relied on

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1 the copyright registration as definitive
2 information for determining the case.

3 So, I don't mean to sound silly, I
4 understand it is a big thing to track all those
5 things. But from the person who is the creator,
6 who has the right based on the Constitutional
7 protection, your office is assigned to document
8 those things.

9 So I think, from the writer's
10 standpoint, it would be very helpful to have
11 such database connectivity so that you can make
12 certain things are synched accurately, because
13 we can't rely on the PROs and other people to
14 make sure that all of that is accurate.

15 MR. BORKOWSKI: Well, I agree that
16 it would be helpful to have information and I
17 think that the Office can encourage that kind
18 of linkage. Whenever a recorded document is
19 filed, the filer should be encouraged that, if
20 they have the registration number available,
21 they should provide it.

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1 But the reality is, as Tegan and
2 others have said, in our industries, it is
3 virtually impossible in many instances to go
4 back and figure out what the registrations are.

5 If you buy a large catalog, if it's
6 an old catalog, you might not know what the
7 registration numbers are. In other instances,
8 many of the works are not registered yet, may
9 never be. So making that a mandate of some kind
10 would be unworkable for some of the content
11 industries.

12 MS. MCGUIRE: But, yes, you're
13 right. To the extent that we have the
14 information, I mean, we put in registration
15 numbers when we know that they exist.

16 And we're happy to continue doing
17 so. It certainly makes searching a lot easier.
18 But, yeah, mandatory would be very difficult.

19 MR. BRAUNEIS: Okay. Other
20 comments on that aspect? There's a little
21 topic, sort of, tagged on to the bottom of

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1 linking recordation registration records,
2 which has to do with having some way to maintain
3 up-to-date contact information for either
4 parties to a document, or for a licensing agent
5 for a work, whatever, which doesn't involve a
6 full-blown registration or recording a new
7 document.

8 As we said in this question, the
9 Copyright Office currently recommends that if
10 the contact information has changed that the
11 owner either record a document to that effect
12 or file a supplementary registration.

13 Is there some room for another
14 database or a linked database or a method of
15 maintaining updated contact information that is
16 not limited to the two models of, well, you
17 should just record a document that says your
18 address has changed or you should file a
19 registration to that effect? And how useful
20 would it be to make an effort to have more easily
21 updateable contact information?

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1 MS. MCGUIRE: Well, isn't that a
2 loaded question. From my own experience, my
3 name is on the copyright applications, our
4 department email's on there, my phone number is
5 on there, same thing with document
6 recordations.

7 I'm not the person who issues clip
8 and licensing rights. I'm not the person who
9 issues remake and sequel rights. You know,
10 people who want that information, I'm not the
11 one who's going to be able to give it to them.

12 So, if that's what the information
13 is used for, I'd be inclined to ask for a
14 different venue rather than registration or
15 recordations, only because there would be too
16 many inquiries coming, you know, into my one
17 account.

18 MR. BRAUNEIS: Okay. I guess, I'm
19 not sure what that -- so, you're saying about
20 licensing information in particular, it would
21 be nice to have a different database altogether

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1 or --

2 MS. MCGUIRE: Well, the discussion
3 seems to be going towards if somebody in the
4 public wants to know who owns the copyright to
5 this particular work, and the reason that they
6 want to know is because they want to have rights
7 to, you know, clip or still photos and, you know,
8 it's like opening up an entire can of worms if
9 the person who's on that, you know, certificate
10 or registration is not the point person for
11 those inquiries.

12 MR. BRAUNEIS: Okay. All right.
13 Well, and that may lead to, you know, another
14 part of the discussion about what role should
15 the Copyright Office play.

16 Because one answer to that question
17 could be, you know, the Copyright Office is
18 really about major transactions like
19 assignments and grants and release of security
20 interests.

21 If we looked at the information

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1 earlier about the percentage of documents that
2 are recorded that fall into those two
3 categories, it's very large.

4 And so that gives us a sense of where
5 the Office should target its efforts. It should
6 target its efforts towards making information
7 available that's useful when you're entering
8 into those kinds of transactions. And other
9 licensing transactions -- that's not us, that's
10 somebody else.

11 MR. COLITRE: Well, that's the
12 Licensing Division in the Copyright Office,
13 right?

14 MR. BRAUNEIS: Well, Licensing
15 Division in the Copyright Office deals with
16 compulsory licenses, to tell you the truth. It
17 does not currently deal with voluntary
18 licensing of any kind.

19 And it turns out that that's quite
20 specialized, because the compulsory licenses
21 are, you know, quite limited in scope. So, the

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1 Licensing Division, you know, is a place where
2 if for some reason you don't go to Harry Fox,
3 but you're interested in getting a license to
4 record a work or a musical work or whatever, or
5 you were dealing with cable and satellite
6 license, whatever, you go to the Licensing
7 Division.

8 But it's certainly not if you wanted
9 to get rights to use a still photograph from a
10 motion picture, the Licensing Division has
11 nothing to do with that.

12 MR. COLITRE: But the point I'm
13 making though is one of the challenges of this
14 process is to find a way to create a
15 one-size-fits-all solution where there's such
16 a huge variety of different works that are being
17 administered through the Copyright Office.

18 Clearly, a motion picture is a huge
19 work with an enormous economic, sort of,
20 profile, and licensing is always a different
21 division than ownership, et cetera.

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1 But with music publishing, for
2 instance, there is a huge range of music
3 publishers in the United States, from a guy in
4 his bedroom all the way up to major, you know,
5 international corporations.

6 And where an international
7 corporation may have multiple divisions, you
8 need a separate field for a licensing person to
9 have in the records at the Copyright Office so
10 that they can be tracked down. The copyright
11 owner, you know, that's in his bedroom is the
12 same person for licensing, administration,
13 recordation, whatever process.

14 So to take use of the notice of
15 intention to obtain a compulsory license under
16 Section 115, which is a very important license
17 now representing the underpinning of all the
18 major music services, which are essentially the
19 future of the music business, there needs to be
20 an efficient system to find the name, address
21 and -- well, primarily the name and address of

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1 the copyright owner, or their authorized agent
2 for licensing purposes.

3 So a system that provides that data
4 in a findable way is really important.

5 MR. BRAUNEIS: Okay. Then I guess
6 the question, is should it be the Copyright
7 Office that's trying to build that system or
8 somebody else?

9 MR. ARROW: That's being handled
10 privately now, and, in fact, the private efforts
11 to build these databases will probably be online
12 before anything the Copyright Office would be
13 able to do, at least in a complete way.

14 Between GRD and DDEX will both
15 provide that. It'll be long before the
16 Copyright Office can do it. And they would be
17 global.

18 MR. COLITRE: I think one of the
19 challenges currently is that in the current
20 system, you can look up by title the records of
21 a work. And you can find there whatever name

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1 and address were recorded by the registrant at
2 the time it was filed.

3 But to trace from there through any
4 later file of recordations which has changed the
5 name or the address of the owner is so far
6 impossible through any electronic means and
7 would require huge amounts of leg work getting
8 the Copyright Office to run down on the records.

9 MR. ARROW: Right, but GRD and DDEX
10 will have up-to-date information as rights
11 change hands. And they register those changes
12 either directly with those bodies or with their
13 local societies. Those databases will be
14 updated.

15 MR. BORKOWSKI: Well, one other
16 possibility, I suppose, as this process moves
17 along, I don't think you could do it now, but
18 as the electronic conversion moves forward, in
19 going back to my earlier point about user
20 accounts, if people had user accounts.

21 And then, if they had a different

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1 address or contact information for a company and
2 they entered that into their user account.

3 There might be a way in the future
4 to populate all of the other documents that have
5 been previously associated with that remitter
6 to make those changes in those documents. Maybe
7 it's a supplementation or something like that.
8 I mean, something that could happen in the
9 future.

10 MR. BRAUNEIS: Well, or at least
11 link those documents and say click here for
12 current user account information associated
13 with this document.

14 MR. BORKOWSKI: Right, yes.

15 MR. BRAUNEIS: Well, that sort of
16 idea of a separate user account database is, in
17 some ways, the idea of being able to maintain
18 this sort of separate contact information
19 database and keep it up-to-date.

20 MR. HAWKINS: I have sort of a
21 comment and sort of question, because I don't

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1 know exactly how it works. When you file a
2 registration, like she points out, her contact
3 information is on there because she fills out
4 the registration. But there's a separate
5 portion for the owner.

6 And that owner information, the way
7 I've changed the address for the owner, is by
8 recording the document. But it doesn't seem to
9 show up in the catalog. Like when you get a
10 record, that document to record the change of
11 address, like, what happens with it
12 catalog-wise?

13 That sort of answers the question,
14 to some degree, because if it shows up in the
15 catalog, then a person finds that they're the
16 owner and then it is easily tracked.

17 I have never been able to find it and
18 I've never been able find the link. And it was
19 one of the comments I did initially when you
20 started the re-engineering points, is that if
21 you just have that there and then somebody

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1 records that information, that would solve
2 probably a lot of the problem because it's the
3 owner that you want, not necessarily the person
4 that filed.

5 Because even if you changed your
6 information in your user account, that's still
7 the person who's filing the registration
8 application, it's not necessarily the owner of
9 the copyright.

10 MR. BRAUNEIS: Right. Well,
11 there's a couple of question in there. One,
12 what happens when you record a document that is
13 a change of address document, does that change
14 of address show up in the electronic catalog?
15 I think the answer is no.

16 MR. HAWKINS: It doesn't. But I
17 don't know why.

18 MR. BRAUNEIS: Well, addresses,
19 actually, contact information generally, is not
20 part of the current catalog of recorded
21 documents. If you titled the document "change

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1 of address," that title would show up in the
2 catalog and then you would know to go look at
3 the document itself to find the new address.

4 But, as you know from this morning,
5 those documents aren't currently available on
6 the internet, so you need to then send somebody
7 to the Copyright Office to go look at the
8 document and see what the change of address
9 actually was. And that, of course, is a very
10 cumbersome way to figure out somebody's contact
11 information.

12 MR. HAWKINS: So, that being the
13 case, then it would be useful to have some easier
14 means of changing the contact information with
15 the Copyright Office.

16 It also goes to the point of trying
17 to make it easier on researchers with regards
18 to the orphan works issue. You know, there are
19 a lot of complaints from the copyright left, so
20 to speak. Well, that would help that issue as
21 well.

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1 MR. BRAUNEIS: Other comments on
2 change of contact information?

3 Okay. Standard identifiers. So,
4 should the use of standard work identifiers be
5 encouraged as well as registration numbers?

6 I guess what I've heard so far is
7 "encouraged but not required," or something
8 like that. Or, as I say, currently, the
9 recordation part of the database simply doesn't
10 currently have fields that are available to
11 accept work identifiers alongside registration
12 numbers. It does have a field for registration
13 numbers. So I think that, you know, we could
14 add a field for standard work identifiers.

15 What about standard party
16 identifiers? Well, there's a number of the
17 written comments mention various standard
18 identifiers for entities rather than works.

19 The ISNIs and ORCID's and the like,
20 and I recently got an ORCID because a publisher
21 requested me to get an ORCID, an Open Research

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1 Contributor ID.

2 Is that useful to have a capacity to
3 accept those? Do any of you use name
4 identifiers or anyway?

5 MR. ARROW: We do.

6 MR. BRAUNEIS: Pardon me? You do?

7 MR. ARROW: In the music publishing
8 industry we do for both authors, composers and
9 corporations and publishers.

10 MR. BRAUNEIS: Okay.

11 MR. ARROW: And it's a pretty good
12 system and I don't know that we'd object to the
13 notion that we, you know, could provide them.

14 Again, we don't want it to be
15 mandatory, but if we have them and then we're
16 able to provide them, I don't see of any reason
17 why we wouldn't.

18 MR. BRAUNEIS: And can you envision
19 any utility in having them available --

20 MR. ARROW: No.

21 MR. BRAUNEIS: -- that would

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1 justify, you know, the expenditure of money? If
2 we have to ask for a little extra budget item,
3 do we say, well, here's why actually this could
4 be useful in some circumstances?

5 MR. ARROW: Only if you need some way
6 to uniquely identify one John Doe versus another
7 John Doe.

8 MR. BRAUNEIS: And does that mean to
9 suggest that happens often or that happens
10 rarely or --

11 MR. ARROW: You know, many, you
12 know, we have many writers in our system that
13 have the same name --

14 MR. BRAUNEIS: Yes.

15 MR. ARROW: -- but aren't the same
16 person.

17 MR. BRAUNEIS: Okay. So in those
18 circumstances it would be useful.

19 MR. ARROW: Yes, that's what I meant
20 by one John Doe.

21 MR. BRAUNEIS: Yes --

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1 MR. ARROW: Literally one --

2 MR. BRAUNEIS: -- yes. No --

3 MR. ARROW: -- John Doe.

4 MR. BRAUNEIS: -- no, no, I got it,
5 but I wasn't sure --

6 MR. ARROW: Yes.

7 MR. BRAUNEIS: -- you know, you
8 meant how often does that happen and the answer
9 is --

10 MR. ARROW: Yes, I don't know. It
11 does happen though.

12 MR. BRAUNEIS: Yes. Okay. All
13 right. Other comments on standard party
14 identifiers?

15 MS. LOWRY: No, I don't think that
16 comes up at all for us.

17 MR. BRAUNEIS: Okay. So rarely --

18 MS. LOWRY: So --

19 MR. BRAUNEIS: -- if ever.

20 MS. LOWRY: -- no. No.

21 MS. MCGUIRE: Yes, it's not

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1 non-negotiable just side re --

2 MS. LOWRY: No.

3 MR. BRAUNEIS: It doesn't happen?

4 MS. MCGUIRE: No.

5 MR. BRAUNEIS: Okay. Okay.

6 That's good to know. A number of the comments
7 talk about various kinds of possible linkage
8 between the Copyright Office database and other
9 databases.

10 It's not clear to what kind of
11 linkage that means necessarily, of the kinds of
12 interoperability. And I'm just curious about
13 what advantages you see of that, what kinds of
14 interoperability or linkages would be useful to
15 have between the Copyright Office database and
16 other databases. Thoughts?

17 MS. MCGUIRE: Any databases in
18 particular --

19 MR. ARROW: Yes, and were there any
20 specific --

21 MS. MCGUIRE: -- that you're

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1 talking about?

2 MR. ARROW: -- examples?

3 MR. BRAUNEIS: Oh, I mean, there are
4 certainly in the music industry there are, ASCAP
5 and BMI and SESAC maintain large databases, the
6 Copyright Clearance Center has a large database
7 for textual works there.

8 MR. PERKINS: And what would the
9 Copyright Office do with those? In other words,
10 what --

11 MR. BRAUNEIS: Well, I think --

12 MR. PERKINS: -- is it that you're
13 suggesting would happen with the ASCAP
14 database?

15 MR. BRAUNEIS: I think it's more, at
16 least most of the comments I see, you know, are
17 more from a searching perspective that it would
18 be nice to be able to find something in the ASCAP
19 database and then be able to go into the
20 Copyright Office records and research the
21 history of a work or the documents pertaining

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1 to a work more.

2 Or vice versa, you find some work in
3 the Copyright Office database, but for
4 licensing purposes you don't. That's not going
5 to help you to be inside the Copyright Office
6 database.

7 So you want to go to ASCAP to see,
8 oh, is it in the ASCAP repertoire or where is
9 it, right? And so it's that kind of, I think,
10 it's mostly that kind of back and forth that
11 folks are talking about.

12 MR. CATE: Hi, thank you. Yes, I
13 think interoperability is what we're going to
14 see a lot of in the future, especially with
15 environments like YouTube, where we have mass
16 synchronization occurring, you know, hundreds
17 of synchronizations occurring every minute.

18 Interoperability is extremely
19 important with our own industry databases in
20 music, for example, but also with the Copyright
21 Office as sort of the, as the final backstop for

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1 that kind of reconciliation process that goes
2 on between authors, between titles, et cetera.
3 I think that's going to become very, very
4 important, more important than it is now.

5 MR. BRAUNEIS: Okay. And is there,
6 I mean, I guess this gets into some, maybe some
7 technical details. But when we speak of
8 interoperability, obviously, you know, at a
9 very deep level we talk about the possibility
10 of exchanging information and that and so forth.

11 Is there something short of that,
12 which I think, that's way far off, is there
13 something short of that that one could imagine
14 that would be useful?

15 I mean, for example, suppose that we
16 enabled at least a certain number of registered
17 users with user accounts to populate a field in
18 the Copyright Office database with links.

19 Links to whatever they wanted to,
20 but the idea would be you could link out to what
21 that registered user thought was a related

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1 record in another database. Would something
2 like that be useful or are there other kinds of
3 thoughts you might have about?

4 I mean, I'm just trying to envision
5 what it means. I hear a lot in the comments
6 about interoperability and linkage and so on and
7 I'm trying to imagine, concretely, what it means
8 to have interoperability or --

9 MR. CATE: What I was meaning was
10 more searchability as opposed to creating
11 static fields, rather searchability so that
12 another set of data could be created from that
13 data which is available in the Copyright
14 Office's database.

15 MR. BRAUNEIS: Okay.

16 MR. CATE: So it's less about
17 creating more fields than making the fields that
18 exist available so that they can be searched and
19 included elsewhere.

20 MR. BRAUNEIS: Yes. Go ahead,
21 Patrick.

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1 MR. PERKINS: I would just have two
2 responses to what you just said with regard to
3 the notion of users populating information.
4 That could be interesting on a certain level.
5 I think you then get into, however, the
6 reliability issues. It becomes like
7 Wikipedia, effectively.

8 And there's nobody there to really
9 determine whether or not it's factual or what's
10 been put in to that.

11 The example that comes to mind is,
12 you know, my wife does a lot of genealogy and
13 so she's on Ancestry.com frequently. And there
14 are abilities for people to fill in other
15 people's family trees with the information that
16 they have.

17 And what ends up happening is you
18 have disputes. I mean, it's all friendly,
19 they're genealogists. It's not, they're not
20 warriors or anything. But I mean --

21 MR. BRAUNEIS: Knock down, drag out

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1 --

2 MR. PERKINS: Right. So it becomes
3 interesting and it's a nice academic forum, but
4 in terms of getting, you know, what it is that,
5 you know, what you're looking for, which I think
6 people are looking for is, kind of, I think I
7 heard one person say one stop shop. I mean, I
8 think it's virtually impossible to have that
9 happen, particularly out of the Copyright
10 Office.

11 The only thing that comes to mind in
12 terms of database interoperability, I think,
13 has to do with something that was mentioned
14 earlier today which is the notion that there are
15 certain entities that have all of their
16 copyright information in their own database.

17 MR. BRAUNEIS: Yes.

18 MR. PERKINS: And they do that as a
19 matter of course. And that to the extent the
20 Copyright Office system were compatible with
21 those companies that would allow them to upload

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1 directly from their systems --

2 MR. BRAUNEIS: Yes.

3 MR. PERKINS: -- I think that that's
4 something that would be of great interest to,
5 you know, to virtually every industry.

6 But the sort of the reverse, the
7 notion that you would go to the Copyright Office
8 website and from there be linked to other
9 resources, I think is probably a bridge too far.

10 MR. BRAUNEIS: Okay. So here's
11 another way of imagining the architecture and
12 again, several comments mention this. And I
13 think that the Microsoft's comment called it an
14 API first approach.

15 And that was that the Office should
16 build in an API or application programming
17 interface so that others could build search
18 tools that would pull Copyright Office
19 information in a variety of ways that, you know,
20 would be up to the builder of the search tool.

21 And the Copyright Office would be

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1 the sort of, necessarily, the creator of the
2 hub.

3 But it would provide a queryable
4 database, not just from typing in information
5 to a web form, but through a computer program
6 that could be built by whomever that would be
7 able to query the Copyright Office database
8 real-time in a variety of complicated or complex
9 ways and might aggregate Copyright Office
10 information with information from other
11 databases.

12 So the idea is, sort of, now we're
13 not putting the Copyright Office in the middle,
14 but we're providing an API, an application
15 programming interface, that allows others to
16 build applications or search interfaces on top
17 of whatever data that the Office has. So how
18 does that sound?

19 MR. LIM: Sounds great.

20 MR. BRAUNEIS: You like that idea?

21 MS. LOWRY: Sounds like a

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1 money-making proposition for a lot of people,
2 really.

3 MR. BRAUNEIS: Okay. Well, that's
4 not a bad thing. I don't think the Copyright
5 Office opposed to people making money.

6 MS. LOWRY: No. I want to say from
7 a secured transaction standpoint and this is
8 probably futile to say, but I'm just going to
9 say it anyway, that really the best thing that
10 could happen would be some kind of effective
11 arrangement between the Secretaries of State
12 and UCC financing system filings which are only
13 done by debtor and the Copyright Office search
14 which is done by everything but debtor, pretty
15 much. Although, you can find a debtor in there
16 somewhere.

17 I mean, in terms of secure
18 transactions practiced all over the country,
19 and I know lawyers have been trying to address
20 this for years, but any ability to work with
21 those systems, and I know every state has its

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1 own system, et cetera, et cetera.

2 But really, in terms of day to day
3 legal transactional practice in the area of
4 financing and that has to do with copyright and
5 intellectual property, that's one of the issues
6 that is completely unsynchronized.

7 MR. BRAUNEIS: Yes.

8 MS. LOWRY: As in never the twain
9 shall meet. And it's a problem that people have
10 been attempting to work around for years. The
11 work-arounds are well established but that will
12 change the face of the transactional work that
13 involves secured interests and intellectual
14 property which is the order of the day and
15 growing, so.

16 MR. BRAUNEIS: Right. Well, I
17 appreciate that comment. I must admit that I,
18 myself until I, you know, looked into what was
19 in the recordation database, did not understand
20 the extent to which secured transactions, in
21 fact, is in some ways more about what the

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1 Copyright Office does in document recordation
2 than anything else, right.

3 That is to say there are more works
4 involved on a year-to-year basis in secured
5 transactions documents than even in
6 assignments. So I appreciate that very much.
7 Now, I know that there've been, you know,
8 legislative movements, for a decade or two, to
9 try to adjust the current division of labor
10 between, you know, registered and unregistered
11 works and to understand how secured, excuse me,
12 how security interests should be perfected in
13 copyrighted works.

14 But short of that, you think that
15 there's even some way even assuming that we
16 continue to have this divided world of sometimes
17 UCC, sometimes Copyright Office that from a
18 searching perspective there could be some way
19 to coordinate the Copyright Office database
20 with UCC --

21 MS. LOWRY: Well, I think it --

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1 MR. BRAUNEIS: -- databases.

2 MS. LOWRY: -- might take somebody
3 like Microsoft or someone like that to figure
4 that out. I mean, I don't know, but, you know,
5 the simple split between where one you search
6 by title, the other you search by debtor.

7 But in the body of the financing
8 statement, you're going to identify the title
9 of the work in which you're taking a secured
10 interest if in fact there is a specific work.
11 And that's not searchable right now at the
12 Secretary of State level.

13 MR. BRAUNEIS: Right.

14 MS. LOWRY: So, I mean, that, just
15 any ability to whether it's a change in the
16 Secretary of State's system that's mandated by
17 the Federal Government --

18 MR. BRAUNEIS: Yes.

19 MS. LOWRY: -- maybe. I don't know.
20 But it's just a huge area of asynchronization.

21 MR. BRAUNEIS: Okay. Yes, I

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1 appreciate that. Other comments? So what
2 about the role of the Copyright Office as in the
3 formulation of metadata standards?

4 We had a little bit of discussion
5 earlier about how the Copyright Office might
6 promulgate an XML schema or a document-type
7 definition that would allow remitters who could
8 easily format or follow that schema to submit
9 information could do it that way.

10 That's only one example of, you
11 know, many standards that are being developed
12 now. Is there any role for the Copyright Office
13 to play in the development of other standards?

14 MR. BUNIN: When you say standards,
15 are you talking about the actual formulation of
16 the data elements themselves or the actual
17 schemas, like XML versus some other type of
18 delivery services?

19 MR. BRAUNEIS: I guess, I think the
20 answer's both, which is to say, yes, it's --

21 MR. BUNIN: Because ultimately, you

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1 know, other than the model of us going and typing
2 in the website, you're going to need to tell us
3 what your database can accept.

4 So in that respect, yes. I mean,
5 you're going to have a very strong role in that
6 because you are building the system which is
7 going to be the target of whatever we're going
8 to point at it. How that process will work, I
9 assume, is yet to be defined.

10 MR. BRAUNEIS: Right. That I
11 understand. And with respect, sort of,
12 narrowly to recorded documents and to
13 developing whatever standard there might be for
14 submitting data electronically, for sure the
15 Copyright Office is going to have to be at the
16 center of that.

17 There are a number of comments that
18 have suggested, oh, you know, it would be useful
19 to have the Copyright Office, for example,
20 accept some of these standard work identifiers
21 because that will help promote them.

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1 And maybe the Copyright Office
2 should even be involved or sitting at the table
3 when certain standards are discussed. Because
4 the Office might provide a different voice or
5 might become part of that conversation.

6 And so that's, you know, beyond
7 simply providing standards for data that's to
8 be submitted to the Office for a particular
9 purpose, is there a role for the Office in other
10 metadata standard development. Yes.

11 MS. BRIDGE: Can you just clarify
12 what, so the metadata for what types of files
13 are we talking about? I mean, we're talking
14 about recordation, right?

15 MR. BRAUNEIS: Right. I mean, I
16 think the question of metadata standards
17 certainly goes beyond recordation. But
18 recordation may be a part of it, but, you know,
19 if you've got one of these standard identifiers,
20 the adoption of by the record or by the Copyright
21 Office or the capacity by the Copyright Office

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1 to accept these may also promote their use in
2 other circumstances that do not involve
3 recorded documents.

4 So I think that although, obviously,
5 we're here, we're focused on what are we doing
6 about document recordation. I think that this
7 issue goes, it may start with document
8 recordation, but it may go beyond that.

9 MS. BRIDGE: To like to file copies?
10 Is that what you're talking about?

11 MR. BRAUNEIS: Yes, right. So, I
12 mean, you know, and this goes also back to the
13 question of search capabilities and linking
14 recorded documents back to registrations.

15 And then of course, the question is
16 whether there's something in the registration
17 that actually ties that to a unique work.
18 That's the metadata question, right? And --

19 MS. BRIDGE: So, you know, so I just
20 wanted to understand if we were talking more
21 broadly. Because I think my colleagues would

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1 actually go to the broader, which are, you know,
2 if we're talking about, you know, for us,
3 registering a work whether that's a television
4 show, a copy of a movie, a publication, an image,
5 something like that, that work has been created,
6 you know, for a different purpose than a
7 registration. Right? And the --

8 MR. BRAUNEIS: Right.

9 MS. BRIDGE: -- registration's
10 something we need to do and we do do. But it
11 was created for all kinds of different purposes
12 including the distribution of that particular
13 work --

14 MR. BRAUNEIS: Yes.

15 MS. LOWRY: -- is, you know, is part
16 of what happens with that work, that file. So,
17 and this is something, you know, we've actually
18 been talking with you guys a little bit in the
19 context of another project.

20 But what, I guess what, I think what
21 we said in our comments that we provided to you

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1 the other day. Yes, yes, if something like this
2 is voluntary, not mandatory, you know, I think
3 it would be fine.

4 I would just kind of say, kind of
5 caution if we were kind of looking at
6 requirements for metadata is just to, again, to
7 remember this stuff is created for information
8 purposes.

9 There is metadata in these files
10 already for different purposes, whether it's
11 for, you know, let's talk about television shows
12 or something, you know, that are electronically
13 distributed.

14 There are identifiers that have a
15 relevance to business, you know. They're not
16 meant to match up exactly with copyright
17 registration data.

18 You know, it's rather that bundle of
19 information goes to our group that does that and
20 then makes sure that we accurately provide that
21 information to the Copyright Office. If we were

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1 to have to make the metadata on the file --

2 MR. BRAUNEIS: Yes.

3 MS. BRIDGE: -- match the
4 documentation that we're kind of inputting or
5 maybe even one day supersede maybe one day the
6 goal is you don't have to input because it's all
7 in the metadata.

8 I mean, I think these are things, you
9 know, to think about, but it, for us, it would
10 be a little bit like the tail wagging the dog.

11 It would actually create, I think,
12 a lot of burden to try to make the metadata that
13 already often exists in a file, to have it
14 actually be kind of pointed or create additional
15 metadata or replacement metadata created for
16 the purposes of registration or other purposes
17 than the purposes for which the, you know, the
18 file exists, you know, proliferates.

19 And so that's all I would say is I
20 think you have to kind of marry what are kind
21 of the business uses of the information.

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1 MR. BRAUNEIS: Yes.

2 MS. BRIDGE: And those are not going
3 to automatically align with copyright
4 registration details.

5 MR. BORKOWSKI: Yes, I mean, I'd
6 like to kind of echo that in a somewhat different
7 way. I mean, I think the Office should avoid
8 trying to feel that it should be creating
9 metadata standards.

10 Those standards are being created
11 out there by stakeholders and by others in the
12 marketplace whether it's DDEX or something
13 else.

14 But at the same time, I mean, DDEX
15 is a standard that is actually pretty robust.
16 At the same time, my industry doesn't really use
17 it to communicate within the copyright world.

18 It may use it to communicate when it
19 distributes music in a digital stream or
20 something of that nature, but it doesn't use it
21 for copyright purposes.

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1 And it would require many of the
2 record companies to entirely revamp the way they
3 do what they do internally just to meet this kind
4 of standard. What I would suggest is that the
5 Office allow various forms of metadata to be
6 accepted by the Office, but not one or one
7 particular type because there are going to be
8 several different types and several different
9 industries use different types.

10 It's not going to be a huge variety.
11 It's going to be a finite number, but I think
12 it's important that the Office doesn't feel that
13 it needs to be at the forefront of developing
14 those standards. But it should receive those
15 standards --

16 MR. BRAUNEIS: Yes.

17 MR. BORKOWSKI: -- once those
18 standards have been generally accepted in the
19 communities in which they're used.

20 MS. BRIDGE: But I would add that I
21 don't think that it should also require that the

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1 metadata itself communicate copyright
2 registration information.

3 MR. BRAUNEIS: Yes. No, I
4 understand what you mean. So the metadata that
5 might be embedded in a digital file about a work,
6 that need not necessarily contain copyright
7 information. That that is developed for
8 business purposes and not necessarily for
9 communicating copyright --

10 MS. BRIDGE: Right.

11 MR. BRAUNEIS: -- information.
12 Yes. Others?

13 MR. COLITRE: Maybe this is an
14 obvious observation, but metadata is data about
15 the file, right?

16 MR. BRAUNEIS: Yes.

17 MR. COLITRE: And her point is we
18 shouldn't require the extension of metadata
19 about a particular asset by promulgation from
20 the Copyright Office where that's just going to
21 make everyone's business process harder.

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1 Rather, you have a different
2 metadata problem, which is you need metadata
3 about a recorded document, for instance in this
4 case, right?

5 So, there are many other reasons why
6 you might want metadata status for different
7 purposes, right? In this case you need a row
8 of data about the recorded document, which I
9 think you should promulgate effectively, that's
10 what the structured input set of data is.
11 That's the row of fields that are necessary to
12 define a recorded document.

13 There is a completely different set
14 of metadata relevant to the distribution of a
15 television show. Another completely different
16 metadata row necessary for the technical
17 standards related to that television show like
18 to that AV person who's going to use it.

19 What you need is pivot points
20 between those separate rows of data that allow
21 you to tie a particular television show asset

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1 to a particular recorded document or a
2 particular registered document.

3 It's those pivot points that are
4 relevant and the more pivot points you have, the
5 better. Because of course, there are multiple
6 writers that have the same name. There are
7 multiple iterations of ISRC that refer to
8 different recorded works unfortunately.

9 So the more pivots you have, the more
10 likely you can intelligently relate between
11 different metadata records about the same
12 asset.

13 MR. BRAUNEIS: And many cases it may
14 be actually a combination of those that works.
15 Like in the simplest case, it's the author plus
16 the title that enables you to uniquely identify
17 the work. Yes. Others? Any?

18 MR. LIU: I think --

19 MR. BRAUNEIS: Yes.

20 MR. LIU: -- just for film and
21 television I think I'd like to just echo the

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1 RIAA's comments on that I do think there are a
2 lot of voluntary efforts out there in the
3 marketplace in terms of, you know, getting the
4 synchronization of work identifier registries
5 and information.

6 You know, the ones that are
7 appropriate to, you know, the industry in the
8 marketplace and the purpose which we're trying
9 to, you know, support those efforts.

10 I mean, our studio is quite
11 involved, you know, through our technology arm
12 and working in that standardization process.
13 And so it's quite complicated.

14 And I think we kind of agree that,
15 to the extent that folks within our industry
16 kind of settle upon or migrate toward a
17 particular identifier registry system with
18 metadata or other types of information.

19 It would be helpful, you know, for
20 the Copyright Office to just be aware of it and
21 keep up to speed and whether it makes sense to

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1 allow for that information or some of that
2 information to be provided.

3 But really, I think, having sort of
4 like a static system or a choice of a particular
5 kind of identifier registry for each type of
6 work just might be a little bit too limiting for
7 the USCO.

8 MR. BRAUNEIS: Yes. No, that makes
9 sense. I mean, one of the things, just thinking
10 off the top of my head, right now, for example,
11 because of the way that the records are set up,
12 we only have the capability of accepting these
13 three types of standard identifiers with regard
14 to registrations.

15 We have no capability with regard to
16 recorded documents. Is there some way that we
17 can keep a field open, so that once an industry
18 has put together a new standard, we, at the
19 Copyright Office, don't have to change anything
20 to start accepting an ISWC.

21 We just have a field that says, you

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1 know, here you put whatever the agreed upon name
2 is of your stamped identifier. That, you know,
3 it seems, right now, it seems to be that a four
4 letter combination starting with I.S. is what
5 everybody's using.

6 And then you put the number after
7 that and so that the Copyright Office database
8 doesn't lag years behind whatever the industry
9 standards are.

10 So that, for example, now I don't
11 think there's even any plans in sight to adopt
12 ISWCs even though they, in the musical
13 publication industry, are widely used. I don't
14 know. Just --

15 MR. LIU: Yes, I just think that, you
16 know, it doesn't seem like the Copyright Office
17 is that far behind. I know our industry, we're
18 busy at work like through EIDR and a few of the
19 other efforts that we're involved with, you
20 know, in connection with kind of the digital
21 sort of world of creating identifiers and

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1 metadata and information relating to all of that
2 to assist in digital licensing and things of
3 that nature. All that work is, you know, is
4 happening right now.

5 MR. BRAUNEIS: Yes.

6 MR. LIU: And we've got, kind of, the
7 various executives within the company and
8 through movie labs working on that right now.
9 So at least for our industry I think that
10 currently is evolving.

11 And so to the extent that the
12 flexibility can be built in here, that would be
13 great. But, you know, to me it doesn't seem
14 like, you know, there is a particular standard.

15 You know, I mean, obviously, there's
16 ISBN, but there isn't a particular standard that
17 I think that we would necessarily support that
18 the Copyright Office can choose and implement,
19 you know, in connection with this effort at
20 least at the moment.

21 MR. BUNIN: Absolutely. And by the

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1 way you design the system, you don't even
2 necessarily have to make that choice. I mean
3 --

4 MR. BRAUNEIS: Right.

5 MR. BUNIN: -- you could design such
6 that to be scalable that as new standards emerge
7 you're just adding new values to a multi-value
8 table where any one of those could be associated
9 with a particular record. And --

10 MR. BRAUNEIS: Yes, and I think
11 that's the, well, I was trying to say and you
12 said better is that one, could we possibility
13 build in a flexibility so that we don't need,
14 not only do we need to decide, but we don't need
15 to go through reengineering anytime we want to
16 accept a new --

17 MR. BUNIN: Absolutely.

18 MR. BRAUNEIS: -- standard.

19 MR. BUNIN: It becomes purely a data
20 issue, you'd rather start adding those values
21 or not. You don't have to like go back and

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1 create specific fields just for those.

2 MR. BRAUNEIS: Yes. I mean, we can
3 get into a discussion outside this about how it
4 actually is done now, but it is a --

5 MR. BUNIN: We'll do that over a
6 drink.

7 MR. BRAUNEIS: -- an interesting
8 process to say the least or an interesting data
9 format that the Copyright -- just one aside, you
10 know, the Copyright Office decided in 2006 to
11 adopt what the Library of Congress uses for
12 cataloging generally.

13 And the format was designed in the
14 1960s to aid in the printing of paper catalog
15 cards by machine. And that is the native format
16 in which all copyright of this information is
17 stored.

18 And so for standard identifiers, for
19 example, there's a separate little indicator,
20 a number that you could number one through
21 eight, which would identify the number that's

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1 in a different field which would be the ISBN,
2 ISN number. And that's how it's done.

3 So you have to assign ISBN equals one
4 in order to accept an ISBN number versus ISSN
5 or ISRC whatever. But that could be changed.
6 That could be changed.

7 The last question here, does the
8 Copyright Office have a core field of expertise
9 that should guide its role in collecting and
10 providing copyright information about works?

11 Reactions to that? Does the
12 Office, should it stick to what it knows best?
13 And if so, what does it know best and what should
14 it leave to others?

15 MR. HAWKINS: I think it does. It's
16 relied upon, you know, quite a lot. In other
17 words, have your registration practice, for
18 example, and how that's done like to continue.
19 I know that it's being redone, thankfully.

20 In some respects it's antiquated,
21 but The Compendium is even used quite a lot too,

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1 just in regards to how do you register. And then
2 later on when you're defending your
3 registration, like why did you fill out the
4 registration that way.

5 And then you could point to The
6 Compendium or some sort of form of practices to
7 why you did and thus defend your registration
8 or why it was filled out that, you know,
9 particular way.

10 So the Copyright Office does need to
11 provide that type of information and stay on the
12 cutting edge of, you know, notices and various
13 things like that.

14 Like the current notice is unclear.
15 It doesn't cover an eBook say for example, but
16 probably it should. What is the proper place
17 for a notice in an eBook?

18 The notice right now in an eBook, I
19 think, is probably the metadata, but it doesn't
20 say that. But it would be useful because then
21 it would guide people that don't know,

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1 particularly, or people who rely upon that issue
2 and the proper way to do it.

3 MR. ARROW: Yes, I mean --

4 MR. BRAUNEIS: Okay.

5 MR. ARROW: -- other than the --

6 MR. BRAUNEIS: Yes.

7 MR. ARROW: -- Copyright Office, I
8 can't think of any other place where one might
9 go to determine whether a pre-1978 work is in
10 the public domain in the United States.

11 Not that we acknowledge that there
12 is any such thing, you know. But in case that
13 there is --

14 MR. LIU: They're just words that --

15 MR. ARROW: Yes, right. The
16 Copyright Office would be the place to go.

17 MR. BRAUNEIS: Okay. I appreciate
18 that. I think one of the comments said it's the
19 only place that maintains a repository of
20 registration and transactional documents. And
21 that's its core competency is maintaining that

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1 repository. No other database does that.

2 So that may be a way of looking at
3 what's the Copyright Office's role. That's a
4 more limited role than some of the, sort of, more
5 expansive roles we've talked about. But it's
6 one way of thinking about what the Office should
7 be doing, what should be focusing on.

8 MR. PERKINS: I think --

9 MR. BRAUNEIS: Yes.

10 MR. PERKINS: -- I mean, I'm sure at
11 the risk of beating a dead horse, I agree with
12 the statements that have been made about the
13 Office.

14 I mean, the Office already does a lot
15 and a lot that's of enormous value to all the
16 stakeholders in the, sort of, the content
17 ecosystem.

18 And I would think that as a first
19 step the very best thing that the Office could
20 do is to make that information more easily
21 accessible, more useable, more user friendly.

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1 You know, everybody knows that the
2 searchability of the database is limited. It's
3 very clunky, it's not very good. Putting up the
4 pre-'78 records should be a priority. Those
5 should be put up like yesterday, ten years ago.

6 And because, you know, Ed is right,
7 you know when you're dealing with pre-'78 works,
8 it's the only way to figure out whether
9 something is available for use.

10 So, you know, a lot of the stuff
11 we've been talking about today is really great,
12 but as in the first instance, you know, this
13 unleashing sort of all of this repository of
14 knowledge that is sitting, you know, and
15 gathering dust and is not really available to
16 people, I think is, you know, should be job one,
17 particularly with regard to the registrations.

18 You know, I think the policy
19 surrounding recordation of transactions is a
20 little murkier.

21 And I agree with the reticence that

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1 Disney and Universal showed about just not
2 flipping the switch on the transactional
3 documents necessarily.

4 Because I don't think it was, at
5 least for years and years, the expectation that
6 those would be made available in electronic
7 format to the entire world.

8 But certainly with regard to
9 registration information, you know, making that
10 stuff available and in a useable way is really,
11 I think, should be job one.

12 MR. BRAUNEIS: Okay. And in some
13 ways, that's outside of the scope of this
14 particular discussion we've been tasked with.
15 I just will say, as an aside, that that is an
16 enormous task, which is to say the Copyright
17 Office has basically finished imaging those 36
18 million records in the pre-1978 paper records.

19 But between having those images and
20 having an electronic database that contains the
21 information in those images is an incredible

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1 gulf.

2 As you go back in time, many of those
3 records are handwritten. And, you know,
4 figuring out some way of getting that
5 information in an accurate form into an
6 electronic database is a very big task, so.
7 Yes.

8 MS. MCGUIRE: I'd just like to tag
9 team on what Patrick had alluded to earlier
10 about getting the pre-'78 records on there. If
11 we're going to go through this wonderful
12 exercise and we're going to be able to
13 electronically submit documents. And we're
14 going to rock and roll the search engine --

15 MR. BRAUNEIS: Yes.

16 MS. MCGUIRE: -- where the
17 Copyright Office records are currently married
18 --

19 MR. BRAUNEIS: Yes.

20 MS. MCGUIRE: -- to the Library
21 search engine, there needs to be a divorce

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1 there. Right now, there's an extreme amount of
2 frustration if you're going to conduct any sort
3 of a search that bring back more than 26 records
4 --

5 MR. BRAUNEIS: Oh yes, right.

6 MS. MCGUIRE: -- it times out.

7 MR. BRAUNEIS: I know.

8 MS. MCGUIRE: You lose the link to
9 the site altogether.

10 MR. BRAUNEIS: Yes.

11 MS. MCGUIRE: You have to close to
12 come out. It's just it's --

13 MR. BRAUNEIS: Yes.

14 MS. MCGUIRE: And I know it's
15 because it's, you know, currently tied to the
16 Library's very limited catalog.

17 MR. BRAUNEIS: Well, so then, I
18 mean, there are two approaches to that, right?
19 One is let's try to build a better search engine.
20 The other is let's provide an API and see if
21 somebody else builds a better search engine. I

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1 don't know.

2 MS. MCGUIRE: Whichever is faster
3 I'm in favor for.

4 MR. BRAUNEIS: Yes, well the API
5 route is, I think, is less under the Office's
6 control, right? And it says you can build, come
7 get it. You've got to come here and build it,
8 but we don't know.

9 MS. MCGUIRE: Right. But there's
10 something to be said for if I'm reporting back
11 to an attorney and I would say look, this is the
12 official record, this is what I found and it's
13 got the U.S. Copyright Office, you know, URL up
14 at the top, so you know that I'm not just making
15 this up as I go along.

16 MR. BRAUNEIS: Yes.

17 MS. MCGUIRE: There's a lot to be
18 said for that, so.

19 MR. BRAUNEIS: Okay. Other
20 comments? Well, if not, let's go on to the last
21 topic for the day which is incentives to record

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1 documents.

2 So, I guess I want to start this
3 conversation off by suggesting that I don't know
4 that we have all the information we need to
5 understand whether additional incentives are
6 needed.

7 And the first question that I've put
8 in the agenda is: are there, in fact, large
9 numbers of significant copyright transactions
10 that are not being recorded? Do we know what's
11 happening in that regard?

12 Now, we have a couple of data points.
13 There are actually a couple of written comments
14 that say, from the point of view of certain
15 industries, most of our members or many of our
16 members don't record transactions.

17 Sometimes that may be because, you
18 know, individual works are of too small a value
19 to be recorded, particularly given current fees
20 and so on.

21 In terms of sort of big system-wide

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1 information about how to figure out whether
2 we've got significant percentages of unrecorded
3 transactions, it would help, we talked earlier
4 in the morning about comparing recorded
5 documents data to assignment, excuse me, to
6 registration data. And I haven't done that yet.
7 That might help.

8 Remember that we, I think, that we
9 can see examples of incentives that have worked
10 and that have little effect or removing them
11 have little effect.

12 I think with regard to financing
13 documents, you know, if you say to perfect a
14 security interest you need to record the
15 document at the Copyright Office, you will get
16 a lot of documents coming from financing
17 transactions.

18 On the other hand, some folks have
19 talked about reinstating the requirement of
20 recording any documents in the chain of title
21 before filing an infringement lawsuit.

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1 And I look at the timeline of
2 recorded documents and then the place of when
3 we dropped that requirement on March 1st of 1989
4 and I don't see that that caused any particular
5 long-term decline.

6 There is a decline, but it happens
7 eleven years after the Berne Convention
8 Implementation Act. And that eleven year delay
9 leads me to suggest that there's no causation
10 there.

11 So it's not clear to me that
12 reinstating a requirement of recording before
13 filing an infringement lawsuit would result in
14 any significant increase in the availability of
15 recorded document data.

16 Here's one other chart that I
17 prepared and one other set of data for which I
18 prepared a chart. And that is comparing the
19 recorded documents, putting aside financing
20 documents and the 508 and Notice of Intent to
21 Enforce documents, and charting them against

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1 the increase in the basic recording fee.

2 And the green bars there are the
3 actual dollar increase in recording fee. The
4 red bars are the increase in 1978 constant
5 dollars under the Consumer Price Index.

6 So they're there, at least
7 anecdotally, and we'd have to do more looking
8 into this, it seems to me there might be some
9 correlation that when the Office increased, and
10 even in 1978 dollars, tripled the fee from 1978,
11 starting in about 1998, that we saw a serious
12 drop.

13 And so it may be that the most
14 important incentive would be don't make the fee
15 so high. Right? Lower the fee and they will
16 come.

17 And so that's, you know, that's an
18 important lesson. And maybe that's true. We'd
19 have to do other, you know, research to sort of
20 tie this together more concretely.

21 And it would be great, and I don't

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1 have it yet, but I will, to have corresponding
2 information about registrations and the changes
3 in fee structure and how they may or may not have
4 influenced registrations.

5 And so before we get to talking
6 about, sort of, legal incentives in terms of
7 sticks or in terms of legal disabilities that
8 would be placed on people if they didn't record,
9 I'd like to ask whether you think that there are
10 sort of carrots that would increase
11 recordation.

12 One of the comments does suggest
13 that making the documents at least available
14 electronically around the world to remitters
15 would make recording more likely.

16 Because remitters would sort of see
17 that as not only a public record, but their own
18 personal, you know, Cloud drive for storing
19 documents.

20 And that they'd be more likely to do
21 that if they could access those documents

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1 whenever they wanted to and they would be
2 securely stored somewhere, namely at the
3 Copyright Office.

4 So that's sort of one possibility
5 for saying if this provided a somewhat different
6 service that it would incentivize or give an
7 incentive to recording.

8 Are there other kinds of changes in
9 service you think that you think would result
10 in an increase in remitting documents for
11 recordation?

12 MS. LOWRY: Other than an
13 electronic filing system overall?

14 MR. BRAUNEIS: Well, yes. I mean,
15 I guess, yes. Since we have talked about that,
16 we're going to try to do that in some way or
17 another. But we can add that, sort of, to the
18 record.

19 But if you have others then that
20 would be great too. Or even, you know,
21 particular features of an electronic recording

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1 system that you think would make recording more
2 attractive, like the feature of being able to
3 access your own documents whenever you wanted
4 to. Maybe there are others, though.

5 MS. LOWRY: Well, for right now I'm
6 going to stick with an electronic filing system
7 and consequently and relatedly reduced fees as
8 being the two prime movers, I think, in terms
9 of offering incentives and carrots without
10 requiring people to do things.

11 MR. BORKOWSKI: I agree with that.
12 You're going to invest a lot of resources in
13 modernizing the system. And to the extent you
14 could make it easy to use, intuitive and
15 valuable in terms of providing the kinds of
16 information that people want. And if you could
17 lower fees at the same time, which you should,
18 I mean, that is your goal.

19 MR. BRAUNEIS: That is.

20 MR. BORKOWSKI: That I think is
21 going to be the best positive incentive you can

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1 have to have people record. And I would suggest
2 that you should at least see how that goes before
3 you start considering punitive incentives like
4 some of the ones that have been bandied about
5 in this NOI which some of them I think are
6 downright frightening.

7 So I would suggest that you use your
8 resources to make the best electronic system you
9 can make and I bet you that recordations are
10 going to go up.

11 MR. BRAUNEIS: Okay. Other
12 thoughts about --

13 MS. BRIDGE: I was just going to say
14 I think the current incentive is also pretty
15 strong. The, you know, the priority if those
16 completely transfer, so.

17 MR. BORKOWSKI: Yes.

18 MR. HAWKINS: Yes, I would say and
19 maintaining the current incentives because part
20 of that's constructive notice, right?

21 MR. BRAUNEIS: Yes.

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1 MR. HAWKINS: And you were talking
2 earlier about making the constructive notice
3 either off the catalog or off the document,
4 those might be deciding factors as well as to
5 maintaining that current incentive.

6 MR. BRAUNEIS: Yes. That's right.
7 That's important to not to somehow weaken or
8 unnecessarily confuse the constructive notice
9 advantage which is given by --

10 MR. HAWKINS: That's right.

11 MR. BRAUNEIS: -- recordation which
12 is a, and possibly, the most important incentive
13 to record documents. Okay. Well, sort of
14 getting on to the other ones because we need to
15 discuss those.

16 So, and I mentioned already the
17 requirement that was dropped as part of the
18 Berne Convention Implementation Act. Prior to
19 March 1st, 1989, if an infringement action was
20 filed, then the plaintiff had to not only
21 register the work if it was unregistered, but

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1 if the plaintiff was not the original author,
2 also had to record any documents in the chain
3 of title that led to the plaintiff being the
4 current owner of copyright.

5 I suggested that, I'm not sure that
6 the dropping of that requirement resulted in any
7 sort of large permanent change in the number.

8 On the other hand, I have to say,
9 obviously, of all the works, those eight million
10 works that about which we have information in
11 the recorded works database, a relatively small
12 percentage of them are works of value.

13 And any work that's being litigated
14 in an infringement lawsuit is probably a work
15 of substantial value. It's worth investing in
16 that lawsuit.

17 And so it may be that that incentive
18 did result in the recording of documents about
19 relatively small numbers of works of relatively
20 high value that would not otherwise have been
21 available in the database. And so --

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1 MR. BORKOWSKI: Okay. Can I just --

2 MR. BRAUNEIS: Yes.

3 MR. BORKOWSKI: I'm sorry to
4 interrupt, but I need to interrupt because --

5 MR. BRAUNEIS: Great.

6 MR. BORKOWSKI: -- that was never
7 the requirement. That was never the
8 requirement.

9 MR. BRAUNEIS: Okay.

10 MR. BORKOWSKI: It was never the
11 requirement that the entire chain of title or
12 all the documents in chain of title be filed
13 before lawsuit could be filed.

14 The language read that you couldn't
15 file suit until the instrument of transfer under
16 which such person claims has been recorded. It
17 was the last instrument --

18 MR. BRAUNEIS: Okay. So the last --

19 MR. BORKOWSKI: -- of transfer.

20 MR. BRAUNEIS: It was the last --

21 MR. BORKOWSKI: Yes. There was --

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1 MR. BRAUNEIS: -- link.

2 MR. BORKOWSKI: Nobody has ever
3 suggested that the --

4 MR. BRAUNEIS: Okay.

5 MR. BORKOWSKI: -- entire chain of
6 title be recorded.

7 MR. ARROW: No, and also that, I
8 mean, even if you don't file this, if you filed
9 a registration and you are not the original
10 owner of the work, not the author, but you're
11 claiming ownership as a corporation or some
12 other entity, the copyright registration asks
13 you how did you obtain rights in that?

14 And you say I obtained it by
15 assignment. So the fact that the assignment
16 isn't recorded doesn't mean that you have not
17 disclosed that it exists. It seems unnecessary
18 to have this additional burden.

19 MR. BRAUNEIS: Okay. I mean that I
20 thank you for the clarification that it's about
21 the last link not the entire chain. And it's

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1 true that when you register a work and you're
2 not the author that it does ask that question.

3 But the answer that you get back, the
4 answer that gets into the database is a, sort
5 of, vague, not vague, but very high level
6 abstract answer. It's I obtained this by
7 assignment.

8 MR. ARROW: Well, obviously,
9 assignment by the author. You know, if you
10 could say assignment by the author, right?

11 MR. BRAUNEIS: Well --

12 MS. MCGUIRE: No.

13 MR. HAWKINS: Not necessarily.

14 MR. BRAUNEIS: -- to link these two
15 --

16 MR. ARROW: No, no, but I mean --

17 MR. BRAUNEIS: -- conversations --

18 MR. ARROW: -- you could --

19 MR. BRAUNEIS: -- I think it's --

20 MR. ARROW: -- be required to say
21 something --

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1 MR. BRAUNEIS: -- last link --

2 MR. ARROW: -- like that.

3 MR. BRAUNEIS: -- in the chain that
4 you're --

5 MS. MCGUIRE: Right.

6 MR. BRAUNEIS: -- with. If I'm
7 registering a work and there were many owners
8 in between the author and me, when I say in the
9 registration it's by assignment that I got it
10 --

11 MR. ARROW: Okay.

12 MR. BRAUNEIS: -- I'm just talking
13 about that last link --

14 MR. ARROW: Fair enough.

15 MR. BRAUNEIS: -- not about, you
16 know, whether the son of the author might have
17 inherited it before that son transferred it to
18 me.

19 MS. MCGUIRE: Right.

20 MR. BRAUNEIS: So the only
21 information we're getting then is about that

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1 last link.

2 MR. ARROW: Right.

3 MR. BRAUNEIS: Okay.

4 MR. ARROW: I guess I'm just
5 thinking of our case where it's almost always
6 an assignment by the author.

7 MR. BRAUNEIS: Okay.

8 MR. PERKINS: But --

9 MR. BRAUNEIS: Yes.

10 MR. PERKINS: -- the notion of
11 requiring the current owner to effectively take
12 on some kind of curatorial role in order to show,
13 you know, the chain of title at ab initio.

14 I mean, in many cases that kind of
15 work takes place within a company when they
16 decide to --

17 MR. BRAUNEIS: Sure.

18 MR. PERKINS: -- make an
19 acquisition --

20 MR. BRAUNEIS: Due diligence.

21 MR. PERKINS: -- when they do due

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1 diligence.

2 MR. BRAUNEIS: Yes.

3 MR. PERKINS: Although --

4 MR. BRAUNEIS: Right.

5 MR. PERKINS: -- you know,
6 oftentimes, things are, at least in the motion
7 picture industry, are done by means of a quit
8 claim, for example, where, you know, people will
9 give you what they have, but they're not
10 warranting what it is.

11 MR. BRAUNEIS: Yes.

12 MR. PERKINS: And so it's of, you
13 know, for this kind of exercise, of limited
14 value. I would sort of posit the alternate
15 scenario that some studios have which is that
16 a number of motion pictures are now created
17 under fairly complicated tax incentive schemes.

18 That engenders a number of
19 assignments for the same project amongst
20 various entities that are owned by the parent.
21 It'll go to a Louisiana company that will then

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1 assign it to another Louisiana company that will
2 then come, they will all come back.

3 And it's not clear to me, first of
4 all, that, you know, laying bare that chain of
5 title advances any of the policy interests
6 related to recordation to begin with.

7 And second of all, you know, that
8 these are somewhat proprietary in the way that
9 some of these entities do business. And so it's
10 just it's kind of puzzling really, the notion
11 that you would voice this requirement on the
12 last known owner to be able to kind of lay bare
13 back to Adam, who created the --

14 MR. BRAUNEIS: The author, yes.
15 Right.

16 MR. PERKINS: Yes, who created the
17 particular work.

18 MR. BRAUNEIS: Did you, Susan?

19 MS. LOWRY: Yes, and, you know, not
20 to leave also the independent film maker out of
21 the mix here in terms of transactions that

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1 involve long chain of title.

2 Many times the company that
3 originally recorded or B we have copies of
4 documents done by a particular independent
5 company which has since gone bankrupt or
6 disappeared from the face of the earth, you
7 know.

8 And so, I mean, for those producers,
9 let alone for us, requiring a chain of title to
10 be recorded, to ask them to go back and find,
11 you know, the people at Destination Films that
12 signed, you know, signed those documents and
13 make sure that all those things are recorded,
14 you know, also ties to their representation and
15 warranty issue.

16 You know, it's just it's unduly
17 burdensome. And, I mean, and we know this
18 because, you know, we hear this all the time from
19 producers of whom we are requiring the recording
20 of the entire chain of title --

21 MR. BRAUNEIS: Yes.

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1 MS. LOWRY: -- with, you know, very
2 few exceptions. So I definitely think it's
3 unduly burdensome at all levels.

4 MR. BRAUNEIS: Okay.

5 MR. ARROW: We're also making it
6 more difficult to sell catalogs of works or
7 maybe possibly lower the price --

8 MS. LOWRY: Yes.

9 MR. ARROW: -- that one would pay for
10 a catalog. Right. If you do your due
11 diligence. If this was a requirement and you
12 did your due diligence and found that there were
13 assignments that were not recorded when they
14 should have been and that was a requirement,
15 then you would pay less for the catalog or maybe
16 not buy it at all.

17 MR. BORKOWSKI: Currently the way
18 this is dealt with, especially in the
19 marketplace, if you're looking through, you're
20 thinking of buying an asset and you're doing
21 your due diligence and you see there's a problem

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1 in the chain of title, there's a gap or
2 something's unclear, then you have a decision
3 to make.

4 Am I going to go through with this
5 transaction or not? If you go through with the
6 transaction, you'll get reps, warranties and
7 indemnities from the person you're buying from.

8 In case there's a problem, you look
9 to that person and you say, you're on the hook
10 for this. Because if you have that requirement
11 also, somebody may well not buy the catalog
12 because that entity's not going to be able to
13 sue for infringement. You're depriving that
14 entity of an extremely valuable right --

15 MR. BRAUNEIS: Yes.

16 MR. BORKOWSKI: -- the right to sue,
17 the right to enforce. And in some instances,
18 if there's a gap in the title, you'll never going
19 to be able to sue for infringement under this
20 scenario. That's such a radical upending of the
21 copyright system that there's no public benefit

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1 of that whatsoever.

2 MS. MCGUIRE: Right. And if you're
3 a small company who, you know, can't afford to
4 pay exuberant salaries like Brad and I make,
5 you're going to be at a disadvantage.

6 MR. BRAUNEIS: Okay. Just to give
7 some additional information, we talked about
8 transfer statements in the registrations, that
9 is to say, statements that identify the claimant
10 as not the original author and then provide a
11 statement as to how that claimant obtained
12 title.

13 About three percent of the
14 registrations in the Copyright Office catalog
15 contain those statements. It's 500,000
16 registrations, which seems like a big number,
17 but it's a relatively small percentage of the
18 total registrations in the catalog.

19 Let's see. So the next proposal,
20 it's the second bullet point here, is the idea
21 of conditioning additional or certain kinds of

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1 remedies. All right. The same remedies that
2 are now conditioned on registration of the work
3 before infringement.

4 What about conditioning those kinds
5 of remedies on recordation of transfers? Maybe
6 not the whole chain of title, maybe just the
7 particular transfer by which the current owner
8 obtained the ownership and the work? Thoughts
9 about such a --

10 MS. LOWRY: Well --

11 MR. BRAUNEIS: -- incentive?

12 MS. LOWRY: -- yes. You know, in
13 terms of the, I'm harking back to what George
14 said about the public benefit of copyright, you
15 know, I mean, a lot of these, there are people
16 using this system at all levels of
17 sophistication.

18 And it just seems to go against the
19 principle of who should be able to have the right
20 to benefit if you're going to penalize those
21 people. You know, they didn't record a

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1 transfer, they sold something to somebody.
2 And, you know, I just don't think that benefits
3 the public either.

4 MR. ARROW: In an era of vast
5 copyright infringement on the Internet in which
6 sometimes the services infringing are earning
7 very little money from the infringers, but
8 they're still a problem for the owners, the
9 ability to sue for statutory damages is
10 incredibly important.

11 And I think that it is not a good idea
12 to create yet another hurdle for copyright
13 owners to obtain those damages or sue for those
14 damages.

15 MS. BRIDGE: And, like you said,
16 there already is a hurdle because, you know,
17 it's registration.

18 MR. ARROW: Right. Right.

19 MS. BRIDGE: And you don't
20 automatically get to sue for those statutes
21 or bring suit at all without the registration

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1 essentially.

2 And so it seems like there would just
3 be adding, just kind of adding an additional
4 administrative burden, hurdle burden.

5 MR. ARROW: Burden.

6 MS. BRIDGE: Burden hurdle.

7 MR. PERKINS: I agree with that. I
8 would just add that the only people who would
9 be benefitted by this kind of requirement would
10 be large companies.

11 The large company because the large
12 companies would adjust. They would do it. It
13 would be individual plaintiffs. You know,
14 having done copyright litigation in my career
15 before I got to Warner Bros., I can tell you that
16 attacking formalities is the most fertile
17 ground in defending against individual
18 plaintiffs. It just is.

19 And so it would be a pain, it would
20 be more expensive, you know, but at the end of
21 the day, it would be the large companies who

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1 would benefit the most from that kind of
2 requirement.

3 MS. BRIDGE: Or would at least have
4 the --

5 MR. ARROW: Good point.

6 MS. BRIDGE: -- least to lose.

7 MR. PERKINS: And have the least to
8 lose.

9 MR. ARROW: Yes.

10 MS. BRIDGE: Probably the least to
11 lose.

12 MR. ARROW: Yes, good point.

13 MS. BRIDGE: The people who benefit
14 most are probably the people who somehow get
15 off, you know, who are engaged in some type of
16 infringement.

17 And at the end of the day there's
18 some sort of defect in the second administrative
19 requirement that then, you know, they kind of
20 get a free pass.

21 MR. PERKINS: Yes, but Catherine,

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1 by and large, I mean, if you think about the
2 registration requirement, you know, the content
3 companies are usually pretty good about
4 registering within the three months and making
5 sure that they have their, you know, their
6 advantage.

7 That, you know, time and time again
8 you see individual plaintiffs who find out that
9 their work's being infringed. And the first
10 question the lawyer asks them is well, where's
11 your registration certificate.

12 And they say, well, I didn't know I
13 had to register. And so, you know, that's why
14 I term it as not just the least to lose, but as
15 the one that is likely to benefit.

16 MS. BRIDGE: Yes, and I agree on the
17 cost benefit. But, you know, if you're making
18 a motion picture or a television show, you know,
19 the cost of filing either the original
20 registration or an additional recordation,
21 whether it's voluntary or necessary, but for

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1 this purpose is somewhat minimal. But with
2 individual photographers or other types of
3 content writers, it could mean that there's a
4 substantial burden.

5 MR. ARROW: Well, it's unfortunate
6 that any formality is required, but that's not
7 the purpose of this meeting. I just thought I
8 would say it.

9 MR. BRAUNEIS: Just to round out the
10 proposals, I think there are two more that had
11 been mentioned. The last bullet point on this
12 slide is to allow judges to consider recordation
13 as a factor in granting injunctive relief.

14 So this would be the idea that judges
15 who are weighing whether to grant injunctive
16 relief are able to weigh various factors and,
17 perhaps, diligent recordation would be one of
18 those factors.

19 MR. BORKOWSKI: I guess I just don't
20 understand how a copyright plaintiff's
21 decision, or maybe not a decision because it

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1 didn't know, failure to record should somehow
2 protect an infringer from continuing to
3 infringe without an injunction being granted.
4 I just don't even understand what possible
5 public benefit can come from that.

6 MR. BRAUNEIS: Gee, well, I wonder
7 whether I can play devil's advocate here because
8 somebody has to. I mean, the idea is that, one,
9 we want to have a robust public record of current
10 ownership of copyrighted works.

11 And to the extent to which a
12 defendant had troubles in locating the current
13 owner of the work because a transfer document
14 was not recorded.

15 I mean, I think that this proposal
16 probably grows out of or is inspired by some of
17 the proposed orphan works legislation in which
18 the idea would be to limit remedies in cases in
19 which defendants were unable to locate.

20 MR. BORKOWSKI: But this sweeps
21 everybody. This --

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1 MR. BRAUNEIS: Yes.

2 MR. BORKOWSKI: -- sweeps everybody
3 under with one broom. So if a plaintiff doesn't
4 do a recordation some, really, let's agree,
5 really bad infringer out there, I can't get an
6 injunction against that person because there's
7 a public policy that we want to encourage
8 recordation? I didn't record, so this guy can
9 continue to infringe my work and I can't stop
10 him. What --

11 MS. MCGUIRE: Despite the fact that
12 you have a copyright certificate.

13 MR. BORKOWSKI: Despite the fact
14 that I have a copyright which is a right granted
15 to me by the Constitution. How is that good
16 public policy? It isn't.

17 MR. COLITRE: It's just a factor.

18 MR. BORKOWSKI: What?

19 MR. COLITRE: It's only suggested
20 that it be a factor if the judge considers how
21 egregious the infringer --

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1 MR. BORKOWSKI: I understand,
2 though. But why should it even be a factor
3 whether the plaintiff did or didn't file a
4 recordation?

5 Why should that make any difference
6 as to whether an injunction should issue
7 against, let's say, a blatant infringer? You'd
8 have to explain to me why that is a factor that
9 actually makes any sense.

10 MR. COLITRE: Well, to just play
11 devil's advocate, if it wasn't a blatant
12 infringement case and it was on the line and the
13 defendant had spent a huge amount of money
14 investing in, for instance, in derivative work
15 that is a public good, why punish him?

16 MR. BORKOWSKI: The judge takes the
17 equities into account in any injunction. And
18 whatever factors the judge thinks are
19 appropriate and the defendant's lawyer can make
20 that argument.

21 And that's part of the equities that

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1 are balanced, that's part of the public interest
2 that's taken into account by a judge. This
3 gives an additional --

4 MR. COLITRE: Oh, I see. So you're
5 saying this is already a factor. The kind of
6 --

7 MR. BORKOWSKI: All I'm saying is
8 that the judge takes the equities into account.
9 We don't need to specify this particular factor
10 which I think is an inordinate amount of tools
11 to infringers to continue to infringe.

12 I'm not talking about the person who
13 did due diligence and tried to find that. The
14 judge will take that into account, any good
15 judge will.

16 MR. BRAUNEIS: All right. Let's
17 move on to the last proposal. This is a proposal
18 that I think Jane Ginsburg has made in an
19 article.

20 She will actually be at the Columbia
21 roundtable, so I'll get to be corrected by her

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1 if this isn't exactly the form of her proposal.

2 But --

3 MR. HAWKINS: I think her proposal
4 is a little bit stronger than that. In other
5 words, you don't get your copyright if you don't
6 record.

7 MR. BRAUNEIS: Well --

8 MR. HAWKINS: That's what I recall.
9 Sorry.

10 MR. BRAUNEIS: Maybe. I mean, one
11 formulation of her proposal is that she says
12 that well, transfers just won't be effective if
13 they are not recorded.

14 On the other hand, I think it's
15 possible that when, that in another part of her
16 article she suggests that, well, what that means
17 is that a recordation would be treated somewhat
18 as the requirement of a writing for transfers
19 of copyright ownership is now.

20 And the way that's judicially been
21 interpreted, although the statute itself

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1 doesn't say this, but the way it's been
2 judicially interpreted is that well, since
3 non-exclusive licenses can be granted orally,
4 we'll effectuate the intent of the parties as
5 much as 204 allows us.

6 And so the intent of the parties,
7 obviously, was to try to effectuate some kind
8 of grant. We can't effectuate the grant of
9 exclusive rights because 204 says we can't, but
10 we'll still treat it as a non-exclusive license.

11 So it's not as though a grantor
12 having granted an oral transfer of copyright
13 could then actually sue the grantee for
14 infringement because it was not in writing.

15 We would say no, the grantor has
16 still managed to grant a non-exclusive license,
17 but cannot enforce. The grantee can't enforce
18 this as an exclusive license or a transfer.

19 And so one way of framing this is
20 saying, well, we should do that with respect to
21 recordation. That we should say that just as

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1 204 now requires a writing for to effectuate a
2 transfer of exclusive rights, we should require
3 recordation in order to make transfers of
4 copyright ownership or of exclusive rights
5 effective and otherwise they'll be treated, at
6 most, as non-exclusive licenses.

7 MR. HAWKINS: I think it goes with
8 what they've already said. The more burden you
9 put there in front of a copyright owner, the more
10 trouble.

11 According to this age of digital
12 infringements, it just makes it tougher. And
13 I just think we already have the incentives and
14 everything's good, just need electronic.

15 MS. BRIDGE: I think it's an
16 intrusion into the private market and to, you
17 know, expectations of people who are doing
18 negotiation.

19 I mean, if two entities sit down and
20 decide, you know, I'm going to buy these rights
21 from you, this is the value that I am willing

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1 to pay for what was created, enough to get a full
2 assignment of those rights. And they do it in
3 consistent with the writing requirement.

4 That shouldn't be later upended so
5 you could pay, you know, any, you know, fill in
6 the blank on how much that those two parties
7 decide the price should be.

8 And then later through another, you
9 know, kind of administrative formality, no,
10 we're going to change that deal. That doesn't
11 seem appropriate.

12 MR. BORKOWSKI: And not only that,
13 look at the windfall the grantor gets.

14 MS. BRIDGE: Yes.

15 MR. BORKOWSKI: The grantor got a
16 lot of money to sell an exclusive right. I mean,
17 the grantee paid a lot of money for the --

18 MR. BRAUNEIS: Yes.

19 MR. BORKOWSKI: -- exclusive right
20 which all of a sudden it doesn't have. Now the
21 grantor can go around, who got a lot of money,

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1 that he would get a lot less if it was
2 non-exclusive and he starts licensing others?
3 Oh, that won't lead to litigation at all.

4 MR. BRAUNEIS: Of course, as it is
5 right now, the requirement of writing is a kind
6 of intrusion of the private market, right? It
7 means that if you entered into an oral
8 agreement, it will not be enforced.

9 MS. BRIDGE: But that it's, you
10 know, invalid at the time that it was created.
11 I mean, that and we know that there's certain
12 contracts that essentially cannot be entered
13 into lawfully at the time, including a copyright
14 assignment that's not in writing.

15 But to come back later with a
16 requirement that says, oh, and also there's this
17 thing you have to do after the fact and if that
18 doesn't get done, we're going to go back and
19 change this whole deal. And yes, and that just
20 seems part of the problem.

21 MR. PERKINS: I guess the other

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1 thing if you think about it, I mean, I sort of
2 take issue with George's formulation because I
3 think that, to be fair, I think that even
4 notwithstanding this kind of requirement you
5 would still probably have a breach of contract
6 action against your original grantor.

7 I think the windfall really goes to
8 the third party who effectively is able to go
9 out and exploit without the fear of reprisal,
10 not only from the grantee, but potentially from
11 the grantor.

12 So if you have a situation, for
13 example, where an author of a work has granted
14 specified cabined rights to somebody on an
15 exclusive basis and through no failing of the
16 grantors at all, the grantee has failed to
17 record, the grantor could have had, among other
18 things, the expectation of the grantee or
19 contractually imposed the obligation on the
20 grantee to enforce that copyright consistent
21 with the exclusive grant.

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1 That then goes away through no fault
2 of the grantor. And so query whether the
3 grantor at that point with the rights that she
4 retains would even be able to enforce against
5 the third party.

6 Because on the one hand, he will
7 have, I mean, there's a potential for a whipsaw
8 to the grantor. On the one hand, being, you
9 know, being told --

10 MR. BRAUNEIS: I see. So the
11 grantor is the author of a novel and grants
12 motion picture rights to a motion picture
13 company, but says, and motion picture company,
14 if somebody else makes a motion picture, then
15 you need to go after them.

16 And now, you've been put in kind of
17 a limbo situation. If it turns out that because
18 the document wasn't recorded it can't be
19 enforced.

20 And you're thinking maybe that means
21 that also the individual author of the novel,

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1 who's in no position to bring an infringement
2 lawsuit or less of a position to bring an
3 infringement lawsuit, then the motion picture
4 company can no longer count on the motion
5 picture company --

6 MR. PERKINS: Right.

7 MR. BRAUNEIS: -- bringing it.

8 MR. PERKINS: Because pursuant to
9 the document the, you know, the author doesn't
10 have those rights anymore. He's granted them
11 exclusively to somebody else. And so, I mean,
12 it creates a high level of uncertainty.

13 MR. BRAUNEIS: Yes.

14 MR. PERKINS: And, you know, again,
15 it's one thing to punish the grantee. The
16 notion being you had a requirement to do that.
17 Again, I would posit that large companies are
18 the ones with the least to lose on something like
19 that.

20 It's going to be the small owner, the
21 small licensor who's going to suffer from this

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1 every time or the small licensee who suffers
2 from this every time.

3 But at the end of the day, there's
4 at least some logical connection as to why you
5 would punish that individual. They had a
6 statutory requirement, they didn't fulfill it.

7 But the grantor is not the one who
8 has that requirement to do it. And so then, you
9 know, effectively it's a complete loss of
10 control.

11 When you think you're assigning
12 exclusively the rights to the thing that you
13 love to a company that you trust and by virtue
14 of that company having failed to do that, that
15 the ability to enforcing as third parties is
16 gone. And it's a problem.

17 MR. BRAUNEIS: Let me just go back,
18 as a kind of last topic for a discussion, to what
19 I think motivates all these proposals, which is
20 a sense that there are significant gaps in the
21 information available about works under

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1 copyrights, significant gaps as to the identity
2 and location of the owners of copyrights and
3 perhaps some significant gaps or difficulties
4 in determining whether the work is still under
5 copyright or not.

6 And ask in your view, are there such
7 gaps? Where are they? And that may sort of help
8 us in our efforts to target where they need to
9 be filled and whether such incentives would
10 contribute to filling the gaps or not.

11 So are there significant gaps in
12 information about works under copyright that we
13 need to be worried about?

14 MR. BUNIN: Well, I --

15 MR. BRAUNEIS: I'm not sure I
16 expected that answer.

17 MR. BUNIN: -- think, part of it, you
18 know, everybody has their own, you know, based
19 on our own experience, what we've had to go
20 after. You know, we know that, but we have no
21 insight into getting back to, you know, with the

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1 problems of just kind of mining the data --

2 MR. BRAUNEIS: Yes.

3 MR. BUNIN: -- with the copyright to
4 what that larger world is. I mean that would
5 be a great thing to have, but we're kind of
6 looking through little peep holes of what --

7 MR. BRAUNEIS: Yes, okay. Well,
8 then, given that you're, you know, you're
9 looking with the blinders of your experience,
10 what does that experience say? I mean, if you
11 can say, well, I can only speak to this
12 particular type of problem.

13 So have you found a problem in your
14 own experience whether or not you, I mean, even
15 if you don't know whether or not that amounts
16 to a large systemic problem that, you know,
17 needs some systemic remedy to, are there things
18 you've come across that you'd like to know, gee,
19 is this a problem that a lot of people might have
20 or is it just something I came across and that
21 was a one off?

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1 MR. ARROW: Well, I had for pre-'78
2 works, as I talked about before. If you want
3 to know if it's in the public domain, right, you
4 can determine that by the copyright year, but
5 I can't do that online.

6 Right. As you pointed out, those
7 registrations haven't been indexed. So the
8 only way to do that is to actually either travel
9 to Washington D.C. or hire someone to go to
10 Washington D.C. for you or ask the Copyright
11 Office to do a search for you and pay a pretty
12 significant sum of money to determine that,
13 especially if you're looking for more than one
14 work. So the good news is you have those records
15 and the bad news is they're not easily
16 accessible.

17 MR. BRAUNEIS: Okay. So reducing
18 the cost of accessing pre-'78 registrations
19 records --

20 MR. ARROW: Yes.

21 MR. BRAUNEIS: -- would be useful.

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1 MR. ARROW: I think that would be a
2 good thing.

3 MR. BRAUNEIS: Yes, okay. I get
4 that.

5 MS. CHAVEZ: Well, I think
6 something that comes up for us is that we file
7 a security agreement and there's no way to
8 identify what exactly was filed. We have
9 financiers who just want to close a loan --

10 MR. BRAUNEIS: Yes.

11 MS. CHAVEZ: -- and part of the
12 requirements of closing a loan is then they come
13 to us because they can't otherwise get a copy
14 of this file, right.

15 So it kind of goes to the whole
16 electronic thing, like if something were
17 accessible or some snapshot of what, in fact,
18 was filed, then the financiers wouldn't be
19 coming back to us and creating more work for us
20 to basically make a copy of what we filed.

21 MS. MCGUIRE: Are you talking about

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1 something that's in process, that's has not --

2 MS. CHAVEZ: Yes, right.

3 MS. MCGUIRE: -- yet, right, right.

4 Because I know we, a lot of times we'll get the

5 emergency call from the --

6 MS. CHAVEZ: Right.

7 MS. MCGUIRE: -- project attorney.

8 Oh my God, send us a copy of the --

9 MS. CHAVEZ: Yes.

10 MS. MCGUIRE: -- application.

11 MS. CHAVEZ: Yes.

12 MS. MCGUIRE: And --

13 MR. BRAUNEIS: And that goes back,

14 among other things, just to the delay between

15 filing and entry in the catalog.

16 MS. MCGUIRE: Right.

17 MR. BRAUNEIS: The more we can

18 tighten up that, the less that's going to --

19 MS. CHAVEZ: Right.

20 MR. BRAUNEIS: -- be a problem.

21 MS. CHAVEZ: Because then you have

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1 to stop everything you're doing and they're in
2 a panic and you appreciate they're trying for
3 the loan and all you've got is basically your
4 cover sheet and you have to redact everything
5 else that's not relevant to their inquiry to
6 show that this is all we've got as far as what
7 we sent to try and help you.

8 MR. BRAUNEIS: I see. And one of
9 the things that is, right, you have to go back
10 and re-redact things when you've already
11 redacted them to submit them.

12 But you don't have that submitted
13 copy left and so now you have to go back to the
14 underlying document and try to do the same
15 redaction. Okay. That I understand. Yes.

16 MR. COLITRE: From our perspective,
17 there's a gap in the fact that we cannot tell
18 the name and address of the current copyright
19 owner necessarily, of the recent work.

20 But I am permitted to file an NOI on
21 the Copyright Office where the records of the

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1 Copyright Office do not show the name and
2 address of the current copyright owner.

3 But I can't definitively tell that
4 without a huge amount of manual research in the
5 Office because there's no clear linkage between
6 registration records and recordation records
7 and searching recordation records is
8 significantly impaired.

9 MR. BRAUNEIS: Yes. And that's for
10 purposes of making a recording of a musical
11 work?

12 MR. COLITRE: Usually, it is, but
13 the use of Section 115 mostly is now where we
14 obtain licenses for the digital distribution of
15 on demand streams and downloads.

16 MR. BRAUNEIS: Okay. Right.

17 MR. ARROW: Is this for works for
18 which you cannot find that information in other
19 public records?

20 MR. COLITRE: Well, the rule is if
21 you cannot find the name and address in the

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1 records at the Copyright Office, you're
2 permitted to file on the Copyright Office.

3 If we had their name and address
4 separately and we're comfortable with relying
5 on it and we believe that we have a --

6 MR. ARROW: Right.

7 MR. COLITRE: -- good name and
8 address, we --

9 MR. ARROW: Because I think --

10 MR. COLITRE: -- are permitted to
11 file --

12 MR. ARROW: Yes.

13 MR. COLITRE: -- on that name and
14 address, but at our own peril.

15 MR. ARROW: Sure, but you do use
16 other public records, right, like ASCAP, BMI?

17 MR. BRAUNEIS: Okay. Other
18 comments? Okay. Well, if not, I'm going to let
19 you all go home early. Not that early, but, you
20 know, an extra 12 minutes to your day.

21 And I just want to thank you on

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1 behalf of Joanna and Zarifa and Maria Pallante
2 and everybody at the Copyright Office. Thanks
3 so much for taking out this time. You've given
4 us a lot to think about. I have learned a great
5 deal during this day.

6 It will take me some time to process
7 it all and organize it and go back and look at
8 the transcript, but I really appreciate your
9 participation and thanks very much and keep in
10 touch. Please don't view this as the end of the
11 conversation by any means, so thank you.

12 (Whereupon, the meeting in the
13 above-entitled matter was concluded at 2:49
14 p.m.)

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