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RECORDATION REENGINEERING  
ROUNDTABLE

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WEDNESDAY  
MARCH 26, 2014

+ + + + +

The Roundtable met in the Stanford Law School, 559 Nathan Abbott Way, Stanford, California, at 9:00 a.m.

PRESENT

ROBERT BRAUNEIS, United States Copyright Office

GEORGE BORKOWSKI, Recording Industry Association of America

JOANNA CORWIN, United States Copyright Office

PAUL GOLDSTEIN, Stanford Law School

LUCIANA HERMAN, Stanford Law School

PETER HOLM, Stanford Law School

TEGAN KOSSOWICZ, Universal Music Group

ZARIFA MADYUN, Unites States Copyright Office

MARY MINOW, Dominican University, Stanford University

KEVIN MONTLER, Google

SUSANNE MORALES, Fenwick & West LLP

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Adjourn

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

2 The court reporter was delayed by traffic and  
3 joined the meeting at 9:50. Welcome Remarks,  
4 Introduction of Participants and initial  
5 presentations are not captured in this  
6 transcript.

7 (9:55 a.m.)

8 MR. BRAUNEIS: Okay. I'd like to  
9 go on to the first discussion topic which is  
10 Electronic Recordation Models and give you a  
11 sense of what we're thinking about and then sort  
12 of get your reactions to it.

13 So the NOI, the Notice of Inquiry,  
14 that we published in January 15 talks about a  
15 guided remitter responsibility model, and so  
16 what do we mean by guided and what do we mean  
17 by remitter responsibility?

18 Well, by "guided" we mean that we  
19 take advantage of the kinds of interactivity

1 that you can have with a web site or with  
2 electronic, other kinds of electronic  
3 submission of information that will minimize  
4 mistakes in a way that we could not do that with  
5 the paper cover sheets that we have now.

6 So we follow a structured submission  
7 process where we lay out different stages of  
8 information that is requested as you submit a  
9 document and some of these examples are going  
10 to be drawn from the existing electronic  
11 registration system that the copyright office  
12 has in place.

13 We use enumeration whenever  
14 possible so these drop down boxes or fields that  
15 only accept certain values in order to  
16 categorize works, for example, types of  
17 international standards numbers.

18 We use various validation  
19 mechanisms so that if we enter a year, like the  
20 year 19,785 which doesn't make much sense, we  
21 return an error and explain with an error

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1 message that the year has to follow a certain  
2 format and be within a certain range.

3 We could do that with other sorts of  
4 information as well, possibly address and zip  
5 code validation, possibly ensuring that repeat  
6 remitters maintain consistency in name and  
7 contact info or prompt them if their contact  
8 info has changed. To make sure that it's  
9 changed we can require remitters to repeat  
10 certain key information to make sure that it's  
11 likely correct and not mistyped.

12 We can provide definitions and other  
13 help so if folks don't understand or are  
14 confused a little bit about what citizenship or  
15 domicile means, they can click on a help button  
16 and get some additional definitions and  
17 information.

18 We can have a capacity to save  
19 templates or more generally, save repeated  
20 information that a remitter is likely to use in  
21 many filings, and we can use review streams to

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1 present the information back to the remitter at  
2 the end in total and ask for review.

3 And then, conceivably, we can send  
4 out a confirmation that includes the copy of all  
5 the data submitted; that's something that the  
6 current electronic registration system does not  
7 do but that's possible.

8 And we might even allow a limited  
9 time for post-submission corrections before  
10 publication, perhaps at the option of the  
11 remitter so that if you want to check the box  
12 that said please don't publish this for two  
13 days, and I want the opportunity to circulate  
14 this confirmation email to a variety of parties  
15 and then get back to you and validate that all  
16 of them decree that this is the right  
17 information, we could go back in that capacity  
18 as well.

19 So those are sort of the kinds of  
20 guidance that we might be able to provide.

21 But now let's get to the remitter

1 responsibility part and I think this really  
2 covers three different kinds of  
3 responsibilities that could be placed on  
4 remitters.

5 The first is just that the remitter  
6 rather than a copy read off a staff member is  
7 responsible for submitting the cataloguing  
8 information. And so one of the things I want  
9 to ask is are remitters ready and willing to do  
10 that assuming that the recordation fee goes down  
11 somewhat to reflect the change in labor?

12 The second, however, is sort of more  
13 legal in nature. What happens if there's a  
14 discrepancy between the cataloguing  
15 information and the remitted document?

16 And imagine a serious instance in  
17 which the remitter might have submitted the  
18 wrong titles of the document concerned so that  
19 somebody searching for a particular title would  
20 never find the document which has been  
21 submitted, and the document contains that title

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1 for which the searcher is looking. But that  
2 title never shows up in the catalogue and  
3 therefore the document can't be found.

4 One possibility here is that it's  
5 the cataloguing information then of which the  
6 public is deemed to have constructive notice.  
7 And when that matters, when there's a conflict  
8 between different assignments or exclusive  
9 licenses, or when there's a question about  
10 whether a security interest in a particular work  
11 has been perfected, a mistake in submitting  
12 cataloguing information might have legal  
13 consequences which would then flow back to the  
14 remitter who had made that mistake.

15 And then, lastly, remitter  
16 responsibility means that possibly the  
17 document's not going to be examined in the same  
18 way.

19 And so another topic that we'd like  
20 to discuss is to what degree do we drop the  
21 traditional examination for completeness and



1 for legibility and for presence of any wet ink  
2 signature and leave that up to again the  
3 responsibility of the remitter. If the  
4 document's not legible then that's a problem  
5 which might have legal consequences but would  
6 not be examined for during the process of  
7 cataloguing.

8 So that's the kind of basic idea and  
9 a basic implementation of guided remitter  
10 responsibility. It would likely involve a  
11 series of screens that could be accessed through  
12 a browser just as the electronic registration  
13 system works now with probably the possibility  
14 when it comes to entering titles of uploading  
15 a documentary list of titles in a pre-defined  
16 format rather than typing in individual titles,  
17 especially when you've got a multi-work  
18 document with many, many titles.

19 The next level kind of or a next  
20 level, not the only next level, of automation  
21 and of computerization of recordation would

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1       involve so-called structured electronic  
2 documents and those are documents that are in  
3 a native electronic format and they contain  
4 their own indexing information, they're sort of  
5 self-indexing.

6                       So to give an example of one  
7 implementation of that, although certainly not  
8 the only possible implementation, you might  
9 have a document or a short form which is drafted  
10 using a fillable pdf form that could be locked  
11 at the end when you're done drafting and  
12 electronically signed and it would end up  
13 looking like you had selected the short form for  
14 assignment as a title not for security interest  
15 or for something else.

16                      When you fill in the names you've got  
17 parties, you've got the titles of works and  
18 their registration numbers, you've got an  
19 execution date and those on the surface do look  
20 like they are part of a narrative textual  
21 transactional document.

1           But underneath, each of those  
2 filled-in boxes is another layer of the document  
3 in which each of those filled-in boxes populates  
4 these tagged fields and when the document is  
5 submitted, the information from those tagged  
6 fields can be pulled and can be used to create  
7 a record in the catalogue.

8           Some advantages of doing it that  
9 way: It's possible to have that information  
10 reviewed by the parties during the negotiation  
11 and drafting process so that instead of having  
12 the information entered into the copyright  
13 catalogue after the transaction is done by  
14 somebody -- one of the parties probably or a  
15 service provider who has not been involved in  
16 the transaction -- you can have the cataloguing  
17 information in sort of an integrated way  
18 reviewed by the parties as the electronic  
19 document is passed back and forth during the  
20 negotiation and drafting process. And barring  
21 some kind of radical computer failure there's

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1 no possibility of discrepancies between this  
2 document and the submitted cataloguing  
3 information because the cataloguing  
4 information is embedded in the document.

5 On the other hand, parties and  
6 attorneys would have to get used to using  
7 electronic documents while we would have to set  
8 up a set of standards about how these documents  
9 would be produced and how we would accept them  
10 and then parties and attorneys would have to get  
11 used to using electronic documents during the  
12 course of negotiation and drafting.

13 I will say that in the real property  
14 recording world there are many recorder's  
15 offices that accept electronic documents,  
16 standards have been formulated, this stuff is  
17 in use.

18 On the other hand, the recorder's  
19 offices in major metropolitan areas in the  
20 United States accept one or two million  
21 documents a year, not 11,000, and there are very

1 few, there's sort of a small number of repeat  
2 players, title companies and banks, that are  
3 involved in a large number of transactions every  
4 year and it's much easier to come to agreement  
5 about standards and to implement them in that  
6 environment than I suspect it would be in the  
7 present environment.

8 All right. So that's the sort of  
9 beginnings of our thoughts about electronic  
10 recordation but I want to start hearing your  
11 thoughts.

12 So the first set of topics is about  
13 this guided remitter responsibility model and  
14 the first question is well are remitters ready,  
15 willing and able to start using this? If we build  
16 it will remitters come?

17 We had several questions yesterday  
18 about will we continue the paper route even with  
19 a new electronic model. And I think the answer  
20 is we're decades away probably from dropping,  
21 refusing to accept paper documents for

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1 recordation. So for the foreseeable future I  
2 think the paper route is open but if we build  
3 an electronic system we'd like to build one that  
4 the remitters want to use. So any thoughts  
5 about that?

6 MS. MORALES: I would love an  
7 electronic system. We record lots of documents.  
8 We have to wait about a year for recordation to  
9 go through and the volume that you the Copyright  
10 Office is handling is extraordinary. I don't see  
11 any other way that we're going to lighten that  
12 load other than to go with e-filing.

13 Now as far as our responsibilities,  
14 we already have those with eCO registration.  
15 We're already inputting all the data there.

16 MR. BRAUNEIS: Right.

17 MS. MORALES: I understand that  
18 constructive notice can pose an extra problem  
19 with recordation. So I don't know what the  
20 attorneys foresee for that.

21 But I don't see that there's any

1 other way to go. And I think we would feel  
2 comfortable with taking responsibility of  
3 inputting that data.

4 MR. BRAUNEIS: Okay.

5 MS. KOSSOWICZ: We're already  
6 filling out the cover sheet. We're already  
7 entering some of the information.

8 MS. MORALES: Right. Not as much,

9 MS. KOSSOWICZ: Right. Not as much,  
10 but have you done any kind of study on how many  
11 more fields or things that a remitter would have  
12 to enter you know on top of what's already in  
13 the document cover sheet? How much additional  
14 planning was made? I mean it is probably the  
15 logical way to go.

16 MR. BRAUNEIS: Yes, I mean Zarifa  
17 can talk a little bit about the current use of  
18 cover sheets. My sense is that under current  
19 policy even though a cover sheet can be  
20 submitted, that the recordation specialist  
21 still does look at the actual document when

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1 cataloguing.

2           And so it's not -- you can talk about  
3 whether it's a time saver to have those cover  
4 sheets and the cover sheets, and I don't have  
5 an image of one right here in front of me, they  
6 certainly don't have space for all of the titles  
7 in a large document things like that. So there  
8 would be extra information that would be  
9 submitted under an electronic recordation  
10 system.

11           MS. MADYUN: I mean, there was talk  
12 at one point to add additional fields to the  
13 document cover sheet and then maybe use that as  
14 the actual document itself. But there's some  
15 pushback with that just because it doesn't  
16 reflect all the information that you probably  
17 want it to reflect.

18           We don't take much information from  
19 the document cover sheet, you know: data  
20 certification, if it was a photo copied  
21 document. If you're indicating that you're



1 submitting an incomplete document and you've  
2 checked the document is incomplete, record as  
3 is, then we take that information off of there.

4

5 But other than that it's just more  
6 for reference to make sure that the document you  
7 submitted is the actual document you want to  
8 have recorded.

9 MS. KOSSOWICZ: I was going to say  
10 and you anticipate that with the remitter model  
11 the turnaround would be much quicker?

12 MS. MADYUN: That would be yes.

13 MR. BRAUNEIS: Yes. I think part  
14 of that would definitely be much quicker. Part  
15 of that does depend upon the degree to which  
16 there should or not should still be some kind  
17 of examination.

18 I mean, we could run this as  
19 essentially an entirely automated process,  
20 right, where you fill out the cataloguing  
21 information, you upload an electronic version

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1 of the actual document and, assuming that  
2 there's no formal errors that we discover  
3 through an electronic validation process, that  
4 all goes directly into the catalogue, the pdf  
5 or other format of the document is added to the  
6 document repository and that's it.

7 That leads to the question though  
8 about what the value may or may not be of the  
9 existing examination for the elements of  
10 completeness and of legibility.

11 MR. BORKOWSKI: Someone suggested  
12 yesterday, and I don't remember who it was and  
13 I hadn't thought of this before, related to does  
14 a hybrid model makes sense which is the remitter  
15 entering real-time information but  
16 nevertheless the document specialist still  
17 checks. And I don't know if you thought as to  
18 whether -- it obviously wouldn't be as fast as  
19 a purely automated system but it would be faster  
20 than the current system.

21 And the question I guess is: would

1 it be substantially faster? Faster enough that  
2 it might make sense to think about doing that.  
3 I don't know. I mean the first time I heard this  
4 was yesterday and I've been thinking about it  
5 since then.

6 MR. BRAUNEIS: Yes. I mean -- yes.

7 MS. MORALES: Well that brings to  
8 mind when we went over to eCO for registration  
9 and that we, of course, submit our application  
10 online and it's examined afterwards.

11 Now the time for the examination  
12 process really sped up after we did that so they  
13 still are being looked at and the examiner is  
14 still looking at the application and all that.  
15 But it did speed it up the process.

16 Now why, I don't know because why  
17 receiving a physical package was slower than  
18 what they're doing online. I don't know on your  
19 end what the process is that made it faster.

20 MR. BRAUNEIS: Well, again the  
21 difference between somebody having to, for the

1 cataloguing purposes on the registration side,  
2 somebody having to manually key into an  
3 electronic data base all the information about  
4 the title of the work and the author and the  
5 claimant and the type of work, etc., versus  
6 having that information already available  
7 because in this case the claimant -- the  
8 registration claimant -- has already filled  
9 that information and it's available  
10 electronically. There's no question that that  
11 speeds up the process.

12 Examination as concerns  
13 registration is perhaps a little different  
14 because the registration certificate stands for  
15 something. There's a presumption, a legal  
16 presumption, that all facts stated in the  
17 registration certificate are true and that  
18 copyright is valid. And the examiner has  
19 actually taken a look at the deposit and  
20 determined that it contains copyrightable  
21 subject matter.

1                   And although for many types of works  
2                   that examination is rather simple and basic, you  
3                   know, you open up a book and if it contains a  
4                   lot of text, okay copyrightable subject matter.  
5                   In other areas like useful articles it actually  
6                   is a more involved process and there are a  
7                   substantial number of rejections.

8                   So that's what examination stands  
9                   for in registration and although it's not part  
10                  of this inquiry, you know, an inquiry about  
11                  examination and the registration process would  
12                  have to be an inquiry about what's the value of  
13                  having a certificate from the copyright office  
14                  that gives you a presumption that's good in  
15                  court that the work contains copyrightable  
16                  subject matter and that the facts stated in the  
17                  registration certificate as to authorship and  
18                  ownership are true.

19                  In the case of a recorded document  
20                  it's slightly different I think.        The  
21                  recordation certification stands for the fact

1 that this document has been submitted at a  
2 particular time.

3 The question is, and it is a kind of  
4 cost-benefit question of well, what benefit is  
5 it to maintain something of a quality assurance  
6 that the document, when its subject contains a  
7 certain number of appendices or schedules or  
8 attachments, actually contains those? How  
9 important is it that we check the legibility as  
10 against how much time does that take and  
11 therefore implicitly how much recordation is  
12 going to cost?

13 And you know we'll have to think  
14 through some of that. I mean, I can't imagine  
15 either with the remitter input of information  
16 into the catalogue, if a document specialist has  
17 to read for completeness and look for  
18 legibility, I think it's going to take at least  
19 a couple of minutes per document, right?

20 You have to look through the  
21 document and see if it mentions any appendices

1 or schedules that are not there. And that's a  
2 process that requires interpretation and an  
3 understanding of the document.

4 MR. BORKOWSKI: Well, of course  
5 it's going to take longer than if it's purely  
6 automatic. It's a question of how much longer.

7 MR. BRAUNEIS: Yes. Yes. And I  
8 mean I think we'd have to do some kind of testing.

9 MS. MADYUN: I just wanted to add  
10 something. You know if the basic document made  
11 a hybrid situation it could be something more  
12 of a verification so you input that information  
13 and we're looking at your document to make sure  
14 that we're verifying that the information that  
15 you input is actually there in the document.

16 I think it may be that a higher level  
17 of examination may come with maybe documents  
18 such as notices of termination where, you know,  
19 there are certain things that need be there --  
20 that have to be there -- and you may put that  
21 information in but because you may have

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1 misinterpreted something it's not there, and  
2 then we have to do maybe a deeper level of  
3 analysis.

4           So maybe that hybrid process is more  
5 like a verification just to make sure that what  
6 you put in the system is actually there in the  
7 document.

8           MR. HOLM: If you look at the PTO,  
9 they currently only check for legibility and the  
10 information on the cover sheet. They don't  
11 claim to give any legal effects to their  
12 preparation so it's just viewer's information  
13 that we put up online. Are they arguing well  
14 these are cursory analyses so you can look and  
15 see how much time they're taking to get all these  
16 things done?

17           MR. BORKOWSKI: Do you know offhand  
18 if there's any constructive notice?

19           MR. HOLM: I don't think there's a  
20 legal constructive notice. The regulators if  
21 you include the PTO regulation as to whether or

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1 not -- .

2 MR. BORKOWSKI: I thought I saw in  
3 the -- that one of the things that was mentioned  
4 was that there would be spot checks. The  
5 possibility to have spot checks. How would  
6 those work? I mean how do you make this work?  
7 Every document there will be spot checked or  
8 there would be a spot check with each document  
9 with regards to the verification process?

10 MR. BRAUNEIS: I mean, you know, at  
11 this point it could be both of those and other  
12 things. So one could imagine a random spot check  
13 where you're just checking one out of every ten  
14 documents.

15 I guess I had in mind more of a sort  
16 of a targeted quality assurance program where  
17 you'd look and see whether there were particular  
18 kinds of mistakes that were being made more  
19 often.

20 So if you see a mistake then you go  
21 and look and see is this an area in which you

1 know maybe we need to do more validation than  
2 we're doing on the input side because we're  
3 seeing a higher error rate with this particular  
4 kind of information than we would like.

5 So more kind of a systemic  
6 understanding. I mean, to tell you the truth,  
7 this came out of my own construction of the  
8 recorded documents database and once I have all  
9 450,000 documents and all the information about  
10 them in a table format, if I just scroll down  
11 I can see certain kinds, at least formatting  
12 errors where you're looking at a line of type,  
13 and then all of a sudden there's a bump out  
14 because there's people who have entered it in  
15 the wrong format and it's looking differently  
16 than the records above and below it.

17 And so, you know, those kinds of  
18 checks where you can quickly scan over a large  
19 number of documents and things pop out at you  
20 as having been wrongly formatted or wrongly  
21 entered and so on, and you can also imagine, you

1 know, running through a basic spell- checker and  
2 seeing that you're coming out with stuff that's  
3 misspelled frequently. So things like that.

4 MR. HOLM: Do you have information  
5 about the error rates in the registration  
6 process before and after eCO?

7 MR. BRAUNEIS: I'd be very  
8 surprised. I mean I certainly haven't seen that  
9 and I'd be very surprised if we had it. But it's  
10 something to think about. I don't know, Joanna,  
11 do you know --

12 MS. CORWIN: I don't know offhand if  
13 we track -- I can say that initially I think that  
14 you want to toss out the first few years of  
15 implementation because there were huge error  
16 rates with the ingested applications -- the  
17 paper applications that were put into the  
18 electronic system by you know contracted data  
19 entry.

20 So there's probably temporarily a  
21 higher error rate but I mean at this point now

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1 everything's leveled out and we're actually  
2 dealing with a similar remitter responsibility  
3 model, it's probably fairly level.

4 MR. HOLM: My thought was that we're  
5 assuming that the remitter model inherently is  
6 going to result in more errors. I don't know if  
7 that's --

8 MR. BRAUNEIS: Well, I'm not  
9 assuming that at all. I think it's quite likely  
10 it'll even, you know, without any error tracking  
11 it'll result in fewer errors because the folks  
12 that are doing the entry are likely to be more  
13 familiar with the transaction than the  
14 recordation specialist is.

15 And so you know especially if it's  
16 a document that involves relatively few number  
17 of titles of works, it's much more likely that  
18 when you see a misspelling of a title and you've  
19 been involved in that transaction you know that  
20 that's not the correct title of the work whereas  
21 the recordation specialist who is not familiar

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1 with it wouldn't know that.

2 MR. BRAUNEIS: And I'm sure also  
3 that's a selling point for people who are doing  
4 recordation.

5 MR. HOLM: Right. Yes.

6 MS. MORALES: And I think also  
7 that the user should be offered the confirmation  
8 page that you mentioned. It would be in a holding  
9 pattern so you can go back and look at it or have  
10 others look at it.

11 MR. BRAUNEIS: Well, that's an  
12 idea. I mean, that's part of the --

13 MS. MORALES: I think that's really  
14 great. I think that will cut down errors a lot  
15 having something like that.

16 MR. BRAUNEIS: Okay. Well, that  
17 is a nice positive feedback because I don't know  
18 whether that will be built or not but that's an  
19 idea and if we hear that you would like that then  
20 it's more likely to become a feature that we  
21 implement.

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1                   MR. BORKOWSKI:    Can I ask one other  
2                   thing?

3                   MR. BRAUNEIS:    Yes.

4                   MR. BORKOWSKI:    I've been thinking  
5                   about this a little bit more since yesterday  
6                   when you mentioned it -- the constructive notice  
7                   -- what the constructive notice would be based  
8                   on.  I still have a concern like I said yesterday  
9                   that constructive notice should be based on the  
10                  underlying document because that's the best  
11                  evidence of what a document says rather than a  
12                  secondary source.

13                  And I still think that but the main  
14                  thing is the more it gets -- I think that saying  
15                  the opposite of that, saying that it's the data  
16                  entry or the electronic entry that would serve  
17                  as constructive notice, not the underlying  
18                  document, is particularly bad because then  
19                  you're saying that constructive notice is taken  
20                  of the facts of the document you know are not  
21                  accurate.

1           So I mean we're going to have this  
2 situation, you're saying that this discrepancy  
3 -- and then I don't see how you can take  
4 constructive notice off of a document that you  
5 know is not accurate. And I think that's just  
6 fundamentally problematic.

7           The most I think you could do here  
8 is to say that in such an instance there is no  
9 constructive notice of anything if there's a  
10 discrepancy.

11           MR. BRAUNEIS: Yes. Right. In  
12 other words, say that the wrong list of titles  
13 is entered and so the catalogue, the electronic  
14 catalogue, shows a transaction that in fact  
15 never took place because those titles were never  
16 transferred.

17           And in that instance I think it makes  
18 sense to say there simply is no constructive  
19 notice. But we'd have to, you know, we'd have  
20 to think about that more and David [Nimmer]  
21 confirmed yesterday that he did not know of any

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1 litigation involving possible discrepancies  
2 under the current system because there are  
3 possible discrepancies if the Office has  
4 entered the wrong information. What happens if  
5 somebody is searching for a document and never  
6 finds it because the wrong information has been  
7 entered into the catalogue, you know, if that's  
8 a financing document has the security interest  
9 been effective if nobody can find it?

10 It's never been litigated and so we  
11 don't know but perhaps Professor Goldstein  
12 would know.

13 MR. GOLDSTEIN: So long as your  
14 question -- I think that encompasses the  
15 question that George just raised and some others  
16 raised that has been and that is whether any  
17 office, whether in connection with guided  
18 remitter recordation or not, do an examination  
19 after the effect rather than before.

20 What I have in mind specifically is  
21 this: you can separate out certain kinds of



1 recordation, recordation of notice of  
2 termination. That's a special category. But  
3 looking at your earlier presentation of the  
4 numbers, it looks like the large numbers are  
5 pure conveyancing transactions, either  
6 transfers or a security interest.

7 So, take those as the body of  
8 recorded documents and instead of looking at  
9 each document as it comes into the office -- I'm  
10 thinking maybe a year or two to record -- just  
11 record everything that comes in whether guided  
12 remitter or not, without any examination at all.  
13 Postpone the examination to the -- I'm just  
14 guessing at a number -- the one in a thousand  
15 recorded documents that is then going to become  
16 the subject of a later transaction where people  
17 have a specific interest in knowing who owns  
18 this property, who owns the copyright, you know,  
19 10, 20 years after the recordation.

20 My hunch is that the vast bulk of  
21 recordations that you have never become the

1 basis for subsequent transactions. It's been  
2 assigned and that's a security interest has been  
3 assigned and that's it.

4 And that lets you, you know, do real  
5 quick recordations, automatic recordations,  
6 and leaves staff free at some later point to  
7 respond to an inquiry from a purchaser, a  
8 potential mortgagee, you know, what is the state  
9 of this work.

10 I mean let's focus on -- well we want  
11 to make sure that George's question, we want to  
12 make sure that there is sufficient indexing;  
13 that there is no error that will keep somebody  
14 from finding the relevant document, you know,  
15 the title of the work or the name of the grant.  
16 So if I can do a really limited examination for  
17 that to make sure that's right. But then as to  
18 whether the recordation and the cataloguing  
19 recordation tracks the document itself, you can  
20 examine the document.

21 You know, also as a statutory matter

1 this is what happens with property: put the  
2 burden on getting the grantor and the title  
3 information correct on the recipient of the  
4 interest, and that's the guided recordation  
5 saying, you know, we're the ones who have an  
6 economic stake in this and so we're going to make  
7 sure that we've got the names of the grantor and  
8 the grantee right, the name of the work right  
9 and the like, so that if we were wrong about this  
10 we're going to suffer the consequences at some  
11 later transaction.

12 But it seems to me that, you know,  
13 putting examination guidelines, putting the  
14 examination to the point at which it's really  
15 important to know who owns this work and what  
16 the terms of the transfer are, rather than  
17 giving every work "the 999," because no one's  
18 ever going to think about it, giving every one  
19 of them the same degree of examination enables  
20 this office to give a more precise examination  
21 to those that really matter.

1           MR. BORKOWSKI: Do you think there  
2 would be a problem though if let's say the  
3 subsequent transaction was 10, 20 years later  
4 and if there are issues with the underlying  
5 documentation, maybe the people involved in the  
6 transaction are no longer there and that kind  
7 of thing or memories fade, wouldn't that be a  
8 problem?

9           MR. GOLDSTEIN: No. It certainly  
10 isn't in the case of real property transfer.  
11 What you rely on is the Copyright Act. As long  
12 as it says, you know, this has got to be a written  
13 instrument; we're not going to rely on faded  
14 memories or dead people. It's all got to be --

15           MR. BRAUNEIS: I guess what I'd be  
16 worried about is that once you know the document  
17 and the record are -- at the point of initial  
18 entry into the system -- are matched regardless  
19 of whether there's information discrepancies  
20 between them simply because the system is  
21 presenting them to you at the same time as a

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1 remitter enters the information and uploads the  
2 document, okay, that at one point when I was  
3 getting into this we can see those side by side  
4 even if there are discrepancies between them.

5           Once they're released into the  
6 catalogue it's like having a warehouse of  
7 450,000 things and you don't have a finder  
8 necessarily that will let you know where that  
9 thing is in your warehouse if there's a  
10 discrepancy. Right?

11           And so if the party's name is wrong,  
12 then a search under the name of the party is not  
13 going to find that document. If the title's  
14 wrong, the search is not going to find the title.  
15 And so I'm a little worried. I don't know  
16 whether we need examination at all, but if we  
17 do, I'm a little worried that postponing the  
18 examination may lead to a lost document and an  
19 inability to examine.

20           MR. GOLDSTEIN: I understand your  
21 point and that's why I said there are two

1 possible ways of dealing with that. One is to  
2 limit the examination to those critical items  
3 that if you get them wrong, people are never  
4 going to get into the system correctly to begin  
5 with, i.e. the name of the grantor, the grantee  
6 and the name of the work. And just stop there  
7 and not, you know, look at every page of the  
8 document. That's one approach, which still  
9 puts a burden on the recordation staff.

10 A second approach which could be  
11 done in tandem with that or not is to say yes,  
12 we know that that's a possibility, there's not  
13 going to be any examination for it, and we place  
14 the burden of getting it right on the party who  
15 is going to suffer if some later transaction  
16 can't go through and that's going to be the  
17 mortgagee or the grantee. And just crank up the  
18 incentives for them to get it right.

19 MR. BRAUNEIS: Well, it may be  
20 either party because if the -- you know, if --  
21 well, I guess it's most likely to be the

1 recipient of the interest.

2 MR. GOLDSTEIN: And this is how the  
3 Real Property System does it; I'm not making --

4 MR. BRAUNEIS: Yes, but I think that  
5 is the idea of remitter responsibility and you  
6 know once it is known that the Office is not doing  
7 an examination then, yes, the counsel to the  
8 recipient of the interest should say you really  
9 need to be aware of this.

10 And that is one reason for having a  
11 confirmation email that could be circulated  
12 around parties so that no matter who has been  
13 delegated among the parties to do the  
14 recordation, that every party can see the  
15 document and have an opportunity to confirm that  
16 it's accurate.

17 MR. BORKOWSKI: But Paul, wouldn't  
18 the burden always be on the recipient because  
19 that's the person who did the recordation  
20 anyway?

21 MR. GOLDSTEIN: Yes. Absolutely.

1                   MR. HOLM:     You said you were  
2 worried about losing documents in the  
3 warehouse. Some of that is mitigated by better  
4 search functionality and better linking of  
5 numbers or using the (inaudible) linking  
6 ability. If a name is misspelled, your search  
7 function can account for that and give you a list  
8 of all the names that are one letter away from  
9 the name you're searching for.

10                  MR. BRAUNEIS: Right. And frankly  
11 to use a completely different model, if we had  
12 full text searching of the documents rather than  
13 relying on this catalogue, then we have a  
14 complete workaround for inaccuracies in the  
15 catalogue.

16                   And right now, just to let you know  
17 what's happening, the document entering system  
18 is purely an image file. It does not contain any  
19 optical character recognition text data; it is  
20 not searchable textually. Once we start  
21 allowing or receiving electronic documents,



1 there's no reason that we couldn't start  
2 receiving documents in, you know, an electronic  
3 format that contains text information, there's  
4 no reason that we couldn't start allowing full  
5 text searching of documents.

6 And then that, you know, in some  
7 ways, I thought that kind of muddies the  
8 question of constructive notice because okay  
9 what happens to a constructive notice if the  
10 catalogue entry was incorrect? Well, if you did  
11 a full-text search, you'd have pulled that  
12 document. But practically speaking, I think  
13 having full text searching in addition to a  
14 catalogue would alleviate many of the potential  
15 problems.

16 MR. HOLM: Has there been any  
17 discussion of going back and re-scanning the  
18 older stuff so that is machine-readable?

19 MR. BRAUNEIS: No. And I'm not  
20 saying that it couldn't be done, I'm just saying  
21 that there hasn't been a lot of discussion.

1                   We have digital images of documents  
2 going back to 1996. Before that, it's  
3 microfilm. For microfilm from 1996 back I think  
4 to the 1950s, at which point beyond that it's  
5 actual paper-bound volumes. It would be a  
6 relatively easy process to do OCR on digital  
7 images. Relatively. Beyond that, it would be  
8 a much more difficult process. It would be the  
9 Google book project all over again to scan in  
10 all those paper volumes and then, you know --  
11 okay. Yes?

12                   MR. MONTLER: May I make a comment?

13                   MR. BRAUNEIS: Yes.

14                   MR. MONTLER: This is great, by the  
15 way, and I appreciate all the comments. And  
16 I think this is an effort that should be fully  
17 supported.

18                   One of the results of having an  
19 automated input system, I think, is the sort of  
20 democratization of usage. So less  
21 sophisticated parties, just like in content

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1 creation certainly on YouTube, for example, you  
2 see a lot of sort of non-professionals creating.  
3 And this kind of thing will give them access.

4 I mean, I'm a lawyer so I love the  
5 fact that lawyers can be involved in this  
6 process, but I think if you automate it, you may  
7 not need a lawyer. So you may see an uptick in  
8 usage and in final recordation.

9 MR. BRAUNEIS: Absolutely hope for  
10 that, yes.

11 MR. MONTLER: And I think because  
12 of that and sort of the punitive nature of errors  
13 over time, I think it's worth supporting a  
14 review -- some level of review for the uploads.  
15 It may slow down. I think that George pointed  
16 out it may actually slow things down in a way  
17 that's perhaps unacceptable for the short term,  
18 but I think it's worth doing because you're  
19 going to have a less sophisticated group of  
20 filers, basically, and it's worth kind of  
21 helping them out. You've lowered the bar to

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1 filing, which I think is really a good thing,  
2 and might as well make sure they're doing it the  
3 right way.

4 MR. BRAUNEIS: Yes. I appreciate  
5 that, and all the better if we can sort of figure  
6 out what areas are more likely for the new filers  
7 to make mistakes in and sort of focus efforts  
8 on.

9 MR. MONTLER: Yes, and I think it's  
10 interesting and I think you'll be able to figure  
11 that out over time. Like you said, looking at  
12 patterns.

13 MR. BRAUNEIS: Yes. We should  
14 probably take a coffee break. This is probably  
15 a good time for that.

16 (Whereupon, the above-entitled  
17 matter went briefly off the record.)

18 MR. BRAUNEIS: Okay. The next  
19 topic that I have in mind that I'd like some  
20 feedback on is the topic of signatures on  
21 documents as the office transitions to an

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1 electronic recordation system.

2 As you know, the current requirement  
3 now is for an ink signature on a paper document  
4 and if a copy of a document is submitted, we  
5 require another ink signature or a  
6 certification by which somebody certifies that  
7 the copy is a true copy of the original  
8 ink-signed document.

9 We're going to have to migrate away  
10 from that and the question is in what direction?  
11 And it's a question both about the capacity of  
12 the new electronic system -- should it be able  
13 to accept and preserve certain kinds of digital  
14 signatures? And the question about whether we  
15 should have any standards for requiring certain  
16 kinds of signatures or whether we should leave  
17 that up to remitters who decide for themselves  
18 what level of security or guarantees of  
19 authenticity and integrity of the document they  
20 would like to have.

21 So I guess the floor is open for

1 thoughts on both those issues -- on the capacity  
2 and the requirements issue or standards issue  
3 as to electronic signatures, digital signatures  
4 and the like, which can range anything from an  
5 image of an old-fashioned ink signature to a  
6 typed signature that was typed with the intent  
7 of signing to digital signatures that consist  
8 of, you know, large digital files with the use  
9 of keys and hash values and the like are greater  
10 guarantors of the integrity and the  
11 authenticity of the document. Thoughts?

12 MR. MONTLER: I would standardize  
13 the signature. I think flexibility and having  
14 variations is valuable in certain settings.  
15 With something like a signature, it's probably  
16 not worth having the flexibility because it will  
17 just engender discussions of whether it was a  
18 satisfactory way of authenticating signatures.

19 MR. BRAUNEIS: Okay. And so if we  
20 were to adapt this sort of standard set of  
21 requirements for what the signature should be,

1 any ideas about what it should be? The  
2 Electronic Signature Act generally says any  
3 mark that's adopted with the intent to, you  
4 know, sign the document, and that's very broad  
5 and that, you know, could be as simple as you  
6 typing, or typing in between brackets or  
7 whatever, your name. So we could say that's it,  
8 that's enough.

9 MR. BORKOWSKI: I think it needs to  
10 be a little more --

11 MR. BRAUNEIS: Okay.

12 MR. BORKOWSKI: Because that's  
13 almost like nothing, it really is.

14 MS. MORALES: Well, with the PTO,  
15 we submit -- right now, we submit documents  
16 electronically both ways, either with the  
17 patent agent or the attorney typing his or her  
18 name in between slashes with their registration  
19 number underneath, or like oaths and  
20 declarations by inventors are the actual  
21 signature scanned, the document scanned and

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1 uploaded. So those are two ways --

2 MR. BRAUNEIS: Okay. So there's  
3 either a visual scan or a typed name in between  
4 slashes. But there is no use of more advanced  
5 visual signatures?

6 MS. MORALES: Not that I've seen,  
7 no. That's the only way that we upload  
8 documents for the PTO. And the trademark, for  
9 trademark --

10 MR. BRAUNEIS: Yes, and I guess you  
11 know, Kevin, just to put one of your remarks  
12 against another, so now we're lowering the  
13 standards, we've got lots of individuals who are  
14 coming in who are relatively unsophisticated  
15 and you think, wow, if major companies are going  
16 to be thinking, oh my gosh, a digital signature  
17 you know how do I handle this, imagine an  
18 individual who comes in and you tell him well  
19 you need to go get, you know, a PDF digital  
20 signature.

21 MR. MONTLER: I don't think it



1 needs to be that hard. I mean if you have a Mac  
2 you can take a picture of your signature and  
3 enter it onto a document. I'm not creative  
4 enough or familiar enough with all of the  
5 proprietary systems and I don't have the  
6 willingness to utilize proprietary systems, but  
7 I'm pretty sure they're out there and there's  
8 got to be a way of standardizing.

9 MR. BRAUNEIS: Right. Well, I mean  
10 if a visual scan is all you need then that's one  
11 thing. One could imagine, and I think yesterday  
12 in the discussion there was voiced some concern,  
13 that you know a visual scan not only is perhaps  
14 not a degree of authenticity but it actually  
15 also provides the means for others to construct  
16 inauthentic documents now that you've got --

17 MR. MONTLER: That's the issue,  
18 right. When you democratize something like  
19 this so you're lowering the barrier to entry,  
20 right, and you need something like -- that's  
21 what I was saying, a signature is important

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1 enough for attestation of ownership that it  
2 should be relatively consistent and controlled.  
3 And that's really where the bar doesn't go lower  
4 from my perspective.

5 MR. BRAUNEIS: As you say, maybe  
6 all the more important if you're going to  
7 democratize is to make some kind of --

8 MR. MONTLER: Exactly. You get a  
9 lot of people who don't understand copyright who  
10 are going to be making submissions something  
11 like that. Because they don't know, they think  
12 they did something that added creative value,  
13 they don't understand copyright and they're  
14 going to be doing this, so you want to be able  
15 to hold them accountable.

16 MR. BORKOWSKI: Well, it's  
17 interesting. What would you think of this and  
18 I know I brought this up yesterday, the whole  
19 notion of making a certification under the false  
20 statement statute. Would that potentially --  
21 it might not matter as much what format the

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1 authentic signature is in if you're attesting  
2 under that statute that everything in this  
3 document is accurate to the best of your  
4 knowledge; you could by implication include  
5 your signature. I don't know if you think  
6 that's too onerous, but that's an idea.

7 MR. HOLM: Yes, it's not a bad idea.  
8 I mean is there going to be age verification and  
9 you can have the sort of capacity issues to  
10 monitor as well, something to think about.

11 MR. BRAUNEIS: Right. I mean  
12 often at least that's been in tandem with  
13 payment mechanisms. Ordinarily you know to  
14 have a credit card account or something. If we  
15 started accepting Bitcoins, we might have a  
16 problem with that or more of a problem with that.

17 MS. MORALES: I think - I'm sorry.

18 MR. HOLM: The IRS and the student  
19 loan companies deal with this already. And they  
20 -- this is student loans -- directly assign a  
21 PIN number that they use to sign documents

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1 that's unique to you. And the IRS can also use  
2 your prior, like the adjusted --

3 MR. BRAUNEIS: AGI, right. Your  
4 prior's year AGI. Right.

5 MR. HOLM: I don't know if you want  
6 that problem with the system of assigning them  
7 --

8 MR. BORKOWSKI: Something like a  
9 PIN would be great.

10 MR. HOLM: Yes.

11 MR. BORKOWSKI: Well, I guess one  
12 thing -- I mean, we sort of discussed this  
13 yesterday and I still think it's a good idea,  
14 I think users need to have user accounts when  
15 they do this. Maybe where the user sets up his  
16 or her account, to get a unique identifier PIN  
17 something or other, potentially.

18 MR. BRAUNEIS: I mean, you know it  
19 gets perhaps too much into the weeds here, but  
20 then there's questions about so what kind of  
21 verification do you require at the time of

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1 account set up that is more likely to not have  
2 people essentially signing up for false  
3 accounts in the same way that they would submit  
4 false documents otherwise.

5 MR. BORKOWSKI: A credit --

6 MR. BRAUNEIS: A credit card, yes.

7 MR. BORKOWSKI: But that happens.

8 I mean, that's an issue everywhere you have that  
9 people still require a user account.

10 MR. BRAUNEIS: Right. I think  
11 that makes sense.

12 Material returned to the remitter --  
13 so you heard earlier about what the office  
14 currently returns to remitters, namely the  
15 original document that has been, on each page,  
16 labeled with a sticker saying that it's been  
17 recorded and this was the page number and so  
18 forth and the document number. That process in  
19 exactly that form won't go away -- excuse me,  
20 it will go away if we have a lot of electronic  
21 submissions.

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1           We could digitally or image-wise  
2 stamp each page saying recorded and page number  
3 and so forth and then return a copy -- not,  
4 obviously, the original. In the electronic  
5 environment, discussions of copies of originals  
6 get a little strange.

7           Is there anything else we should do?  
8 I mentioned the possibility of using a so-called  
9 hash value that's calculated from the original  
10 document that's a guarantee of integrity of the  
11 document, since any digital alteration of the  
12 document would no longer match the hash value  
13 that's calculated from that document.  
14 Anything else that we should be returning to  
15 remitters once they --

16           MS. MORALES: I'm sorry, I'm not  
17 sure I understood. So you will not provide a  
18 hard copy certificate?

19           MR. BRAUNEIS: Well, you know,  
20 that's open, that's open for discussion. If you  
21 say, absolutely, one needs a hard copy

1 certificate mailed back in the postal mail, then  
2 we could consider that. Alternatively, we can  
3 provide an electronic certificate that, you  
4 know, that conceivably that would not be not  
5 just an image of a paper certificate, but that  
6 would have some digital file signature,  
7 whatever, that would guarantee its  
8 authenticity, and then we would not send out  
9 paper certificates.

10 MS. MORALES: No, I think that  
11 would be fine. It's just, if we were to need it  
12 for evidentiary purposes at some court in the  
13 U.S., or someplace else that would require a  
14 hard copy, that we would able to get it, like  
15 we do now?

16 MR. BRAUNEIS: Right. I'm sure  
17 the Copyright Office could provide, as it does  
18 now, a service that provides certified versions  
19 of a certificate in hard copy as needed. But  
20 then you're saying that in that case we could  
21 dispense with providing hard copies as a matter

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1 of course, and then reserve that for, you know,  
2 upon demand when it's needed.

3 MS. MORALES: Exactly. I mean I  
4 think we'd be happy not to house a bunch of  
5 original certificates.

6 MR. BRAUNEIS: Okay.

7 MS. KOSSOWICZ: I think I'll have  
8 to second that. I think if there is any way we  
9 can get something back, some sort of  
10 confirmation, electronically, it would  
11 probably be better than getting something back  
12 physically from the office.

13 MR. BRAUNEIS: Okay.

14 MS. KOSSOWICZ: And just further to  
15 the electronic signatures, I was sitting here  
16 listening to everybody else on that topic. In  
17 our business, over the past couple of years, I  
18 just remember when original copies, you know,  
19 fully executed copies were critical to have.

20 Well, we're kind of moving kind of  
21 slowly away from that lately, especially with



1       licensing.    We have a lot of electronic  
2       signatures with respect to licensing HFA  
3       digital licenses.  Same thing with other types  
4       of licenses -- we accept PDFs between parties,  
5       so I don't know exactly where assignments and  
6       transferred documents stand right now.  I don't  
7       think we've gone to all electronic signatures  
8       there, but it's possible that we could someday  
9       go that route as well.

10               MR. BRAUNEIS:     So when you say  
11       electronic signatures in licenses, are you  
12       speaking just of a PDF that's a flat image file  
13       or is there something else going on?  And the  
14       reason I'm asking is because if the industry is  
15       beginning to coalesce around a standard, then  
16       it might be useful to take advantage of that  
17       standard.

18               MS. KOSSOWICZ:    PDF signatures,  
19       most of the time.

20               MR. BRAUNEIS:     Okay.  But when you  
21       say PDF, that is simply an image that's embedded

1 in a PDF container, not something that's  
2 digital, that is some sort of, use of --

3 MS. KOSSOWICZ: Right. And I think  
4 what you're talking about there we do do, with  
5 some licensing companies like HFA.

6 MR. BRAUNEIS: Okay. So maybe I  
7 should -- actually HFA is coming to the New York  
8 roundtable so we'll ask them about it.

9 MS. KOSSOWICZ: Right. So we  
10 don't have to physically sign anything on paper  
11 in order to obtain a license with them, if we  
12 have an account.

13 MR. BRAUNEIS: Okay. Great.  
14 Other comments on what remitters should get back  
15 from the Copyright Office?

16 So now, what about the question of  
17 the availability of recorded documents on the  
18 internet? Currently, as you heard, we do have  
19 an electronic image repository which contains  
20 images of all recorded documents from 1996 to  
21 the present. That repository is accessible

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1 through web browsers, but only web browsers that  
2 are on computers physically within the  
3 Copyright Office.

4 Members of the public can come in,  
5 can access documents, see all those documents,  
6 print them out, save them, whatever, but they  
7 have to be physically present. We could make  
8 those documents available on the internet  
9 relatively easily, actually, since the system  
10 is already web-based. And we could do that  
11 either retrospectively or purely  
12 prospectively. Is that an advantage? Is that  
13 a disadvantage? I'm curious about your  
14 thoughts on that.

15 MS. MORALES: Well, I think for us  
16 it would also be definitely an advantage,  
17 because right now the online catalogue does not  
18 give a lot of information on a particular  
19 recordation. It gives the parties, and maybe  
20 the first title of the subject work, and date  
21 of recordation and, maybe, date of execution of

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1 the document but nothing else.

2 So if we really want to look at the  
3 document we have to send our service, as you  
4 said, down to the Copyright Office to get a copy.  
5 So if we were able to download that online, it  
6 would be great.

7 I don't know if people are worried  
8 about somebody looking at their signature, but  
9 when we file the designation of agents, and  
10 they're posted in the Copyright Office's  
11 directory, the signature is always blocked out.  
12 So that's what the Copyright Office does. We  
13 can look at the entire notification of the agent  
14 on-line. So it would be a great help to us to  
15 be able to view recorded documents in this same  
16 way.

17 MR. BRAUNEIS: Okay. So you say  
18 generally positive. There's an issue about a  
19 certain sort of personally identifiable  
20 information like signatures, and maybe you  
21 could deal with that through redaction. All

1 right. Yes.

2 MS. MINOW: I work with libraries  
3 and if there's something doubtful we just don't  
4 put it up. We have no way of sending somebody  
5 down to the Copyright Office to check and see  
6 if there's been a transfer. So it would be  
7 completely helpful for libraries to have this  
8 conversation. And redaction for personal  
9 information could be a very good idea.

10 MR. BRAUNEIS: Okay. Are there  
11 other thoughts?

12 MR. HOLM: I think there are  
13 legitimate privacy concerns about personal  
14 information, but on the flip side, like that's  
15 sort of more to the point of making the  
16 information available, is the ability to then  
17 contact people who now own the license or own  
18 the work.

19 So you'd have to have a tradeoff  
20 between the personal privacy of people who are  
21 submitting information and actually making the

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1 information useful. So you know, I don't know  
2 what the correct balance is but I think that  
3 needs to be considered.

4 MR. MONTLER: I agree with that. I  
5 think it depends on maybe a later topic as well  
6 which is what -- I mean as a distributor, you  
7 know, we want to know who to pay. And so if  
8 there's not data available at scale, which would  
9 be my preference, at least codes or identifiers,  
10 we'd like to be able to contact somebody.

11 I still don't think it scales if it's  
12 just the document by document. I think there  
13 needs to be a better database that's visible and  
14 accessible, which is my main theme later on.

15 MR. BRAUNEIS: Okay.

16 MR. MONTLER: But I do think I would  
17 tether the two discussions around that point  
18 which is, you know, we need to have who owns  
19 these.

20 MR. BRAUNEIS: Okay.

21 MR. HOLM: Beyond the threshold

1 question of whether you should make them  
2 available is how you should make them available.  
3 But I agree, I think it would be useful to have  
4 the documents available, like on a PDF that you  
5 could download, and then look through it and see  
6 which works are involved for yourself. But even  
7 more helpful would be is if there were an  
8 electronic form that you could automatically  
9 scan in and have it compile a giant database so  
10 you could then easily trace the chain of title,  
11 or even just, like, having people who are  
12 inputting information into the database then  
13 make a separate, open, database so that  
14 information doesn't go to waste. So like if you  
15 had a database listing of this work by this  
16 author that was transferred to this person, so  
17 that it's more accessible to the individual, and  
18 users don't have to then go and download, then  
19 read an entire document, download another  
20 document, read through that entire document.

21 MR. BRAUNEIS: Okay. I mean as far as the

1 second proposal, I'm not sure exactly how that  
2 is different than the current electronic  
3 catalogue. In other words, the electronic  
4 catalogue does tell you this title was part of  
5 this document, which involved the transfer from  
6 this assigner to this assignee. And without  
7 looking at the document you have a database of  
8 transfers.

9 MR. HOLM: That's true but it's  
10 not, it's hard to see be sure it's complete. You  
11 have transfers that involve 10,000 works.  
12 Those aren't listed necessarily.

13 MR. BRAUNEIS: Well, they are.  
14 Well, we'll talk a little bit more about various  
15 kinds of linkages, but in a multi-work document  
16 there is a separate record that's created for  
17 each work in that document, listing the title  
18 and the registration, if it's available, and  
19 linking that record to the underlying document  
20 record, which has the names of the parties, and  
21 the title of the document and so forth.

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1           So for each identified work there is  
2 a separate record that names that work and tells  
3 you what document it's part of. There are  
4 certainly ways that it could be improved, but  
5 I think it does at least that. Is there another  
6 comment in the queue? Okay.

7           Providing notice of recordation to  
8 others. Some of the written comments  
9 suggested that, for example, the record owner  
10 of a work could get email notice if a document  
11 was recorded against that work. That actually  
12 turns out to be relatively difficult to  
13 implement, because that means we first have to  
14 identify who the record owner is of every work  
15 and it's kind of -- if we knew that, then we could  
16 go home.

17           An easier way to implement it would  
18 actually be a broader way, in which anybody who  
19 wanted to could sign up for email notification  
20 for particular titles, and in the same way that,  
21 you know, you had search services for trademarks

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1 that if anything's filed against a particular  
2 registered trademark the search service will  
3 send it to, bring it to the attention of a  
4 company.

5 We can have the same sort of thing,  
6 where we provided, let's say, an email as a kind  
7 of standard communication that a document has  
8 been recorded that concerns this particular  
9 title. Thoughts about whether that's a good  
10 idea? A bad idea?

11 MS. KOSSOWICZ: Well, on a going  
12 forward basis, right, if we do go electronic and  
13 do set up accounts for people and those people  
14 are parties, or registered recording documents,  
15 you know, maybe on a going forward basis it would  
16 be possible to notify the parties if anything  
17 is subsequently filed against that document. I  
18 don't think that that would be that difficult.

19 MR. BRAUNEIS: In terms of  
20 identifying the interested party rather than--

21 MS. KOSSOWICZ: Right. But maybe

1 not necessarily going back all the way, if you  
2 can't do that. But on a going forward basis it  
3 seems like that would make sense.

4 MR. BRAUNEIS: Yes, and I think it  
5 would be relatively easy if we're talking about  
6 standard identifiers that uniquely identify a  
7 particular work; we're going to have some over  
8 inclusiveness if we're talking about titles,  
9 and titles can be duplicated, and can appear on  
10 more than one work.

11 We could set it up that way. You  
12 could say all right any time there's something  
13 reported involving a particular title or a  
14 particular identification number then the  
15 system will just generate an email to the user  
16 account of whoever recorded a previous document  
17 or submitted a previous registration  
18 application involving this title or this  
19 identification, identifier. So I can see your  
20 point. Yes, Paul?

21 MR. GOLDSTEIN: Without

1 questioning the desirability of that  
2 functionality, because it would be a great thing  
3 to have, there's a question of whether the  
4 Copyright Office would be the place to organize  
5 this, or whether it might want to consider  
6 making its database available to the private  
7 sector. For example, the trademark example  
8 that you cite. It's not the PTO, but it's the  
9 Thomson enterprise that does that.

10 Just to raise that as a question --  
11 whether there are opportunities for the private  
12 sector, that the private sector might better  
13 serve --

14 MR. BRAUNEIS: Okay. I appreciate  
15 that, and later in the day we'll definitely talk  
16 more broadly about the form in which the  
17 Copyright Office catalogue or database might be  
18 made available for others who want to build  
19 applications, whether they're notification, or  
20 search functions, or whatever on top of that  
21 data. Finally, interim steps.

1 MS. MINOW: May I--

2 MR. BRAUNEIS: Oh, I'm sorry.

3 MS. MINOW: Thank you. If the  
4 private sector has that ability to develop the  
5 database and wants to make enhancements, I think  
6 that's great. As long as there's also a full  
7 database available to the public for free. And  
8 all the folks out there who are making free apps  
9 can do that.

10 MR. BORKOWSKI: Let me make one  
11 other comment, because I don't want it to be  
12 unaddressed here. I know I addressed it  
13 yesterday. I still think that the role of the  
14 Copyright Office isn't to push information to  
15 people, I think. To be the database of record  
16 for copyright type transactions, and I don't  
17 think that -- and it has limited resources. I  
18 think those resources should be used to try to  
19 build up a very robust electronic recordation  
20 system of the type we've already started to  
21 discuss, but I don't think that it should be in

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1 the position of you know wanting people to sign  
2 up, oh if anybody registers something with  
3 respect to this copyright or whatever, let me  
4 know.

5 Because I don't think the resources  
6 are best used that way. I don't think this is  
7 the function of the Office. And I also think  
8 it might be a disinclination, a disincentive,  
9 I should say, for recordation. There may be  
10 content owners out there who, for whatever  
11 reason, don't want the world to know that a  
12 particular recordation has happened. If  
13 somebody's interested enough they'll probably  
14 be able to find it.

15 But the example, you gave, I mean we  
16 don't need Perez Hilton to kind of like sign up  
17 for any time this happens I want to know about  
18 it because that's really not the function of the  
19 Office, in our view.

20 MR. BRAUNEIS: Well, there is an  
21 interesting tension there between the Office's

1 function as providing information about works,  
2 which, at least on an abstract level you think,  
3 gee we'd kind of like to make that information  
4 as widely available as possible to whoever wants  
5 it, and the interests of perhaps particular  
6 content owners in not wanting to have that  
7 information available, at least to particular  
8 actors, in particular ways. Right?

9 I mean, I assume that if somebody's  
10 really interested in purchasing a catalogue, or  
11 works then you're perfectly happy that that kind  
12 of information is available to them. So what  
13 role does the Copyright Office play in either  
14 making the information available completely  
15 broadly, without respect to what use the public  
16 wants to make of it, or having, implicitly, some  
17 kinds of costs or hurdles in place to discourage  
18 certain uses, or to at least --

19 MR. BORKOWSKI: You know it's not  
20 to discourage them, and I think it depends on  
21 what you mean by making available. And I think

1 that the Office's function is to make available  
2 the information database in as user friendly a  
3 way as possible. But I think the person who  
4 want to access, have that data, needs to take  
5 the step to access it.

6 I mean, I think there has to be a good  
7 reason, there should be a good reason to do it,  
8 not just I'm kind of interested in what's going  
9 on here, and just having the Office push out  
10 data, because I really think those resources  
11 could be better spent elsewhere.

12 MR. MONTLER: Is it a resource  
13 argument or what? In the Perez Hilton example,  
14 what's the harm -- because I again started the  
15 transparency theme. For me we're likely  
16 diverging here, as--

17 MR. BORKOWSKI: Well, that's why I  
18 said it, because I wanted to get you involved,  
19 to react to this.

20 MR. MONTLER: I think that's, you  
21 know, precisely within the purview of the Office



1 is to make this kind of information available.  
2 And so I'm trying to figure out, I'm trying to  
3 get a sense of the harm that you're concerned  
4 about. So Perez Hilton finds out --

5 MR. BORKOWSKI: Well, I mean that's  
6 just my example.

7 MR. MONTLER: Or just give me an  
8 example of what the harm is.

9 MR. BORKOWSKI: Well, first of all,  
10 I think part of it is a resource issue, because  
11 I think that this would require expenditure of  
12 resources that would be better spent elsewhere.

13 But I also think that if somebody  
14 wants to access information in this database,  
15 they should take the step to do it. Meaning that  
16 there's a particular thing that they're  
17 interested in, and so they could get inside this  
18 database and they could look for it, and if it  
19 all works as we're trying to move this database  
20 towards, they'll be able to have that  
21 information.

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1           I don't see what the benefit  
2 necessarily is of just having a system where  
3 anybody can sign up randomly, well not randomly,  
4 just to access information for the sake of  
5 accessing information. I mean I guess I just --  
6 I don't see the value of that. I see the value  
7 of having a database that can give you the  
8 information you want when you search it. But  
9 I just don't see that next step.

10           MR. MONTLER: So it's a resource  
11 argument and then the value of having that kind  
12 of affirmative transparency --

13           MR. BORKOWSKI: Yes, I suppose it's  
14 kind of what the function of the Office is. I  
15 mean, I see it as a repository of information  
16 more so than an agent that actively pushes  
17 information out. And it just strikes me as  
18 different, and I just don't see spending  
19 resources that are limited to do the second part  
20 of it. I think spending resources to make sure  
21 that you have a database that is accurate and

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1 easily usable is a high value.

2 MR. MONTLER: And let's say you're  
3 a musician and you're interested in performing  
4 anything written by Eddie Vedder, right. And  
5 you track that, and you find out that Eddie  
6 Vedder records something; you have a notice  
7 request to the Office, it comes to you, and now  
8 you know that you can create a sound recording  
9 of an Eddie Vedder composition. I mean that's  
10 a great thing for controlling consumption and  
11 interaction with--

12 MR. BORKOWSKI: I think so, but I  
13 think there are also a lot of private databases  
14 out there that can provide this type of  
15 information.

16 MR. MONTLER: And I have to go back  
17 to your comment: it should be free. Well, if  
18 you want enhancements, that makes sense.

19 MR. BORKOWSKI: Well, I just think,  
20 I mean, I think there's a difference between the  
21 public and private sectors, and I just go back

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1 to thinking that I think that the function of  
2 the Office is more of the database of record and  
3 a repository for information. And I just don't  
4 know what the consequence would be,  
5 necessarily, to have a system whereby people  
6 just get notified of the various filings. I  
7 can't do better than that. I mean I just don't  
8 see value sufficient enough to justify the  
9 resources that would be spent to do that.

10 MR. MONTLER: I don't know the  
11 resources, but do I think it will better  
12 encourage advancement of the arts.

13 MS. MINOW: The resources could be  
14 minimal, because it could be just sent out to  
15 others who would be happy to work with it for  
16 free, make it easier.

17 MR. BRAUNEIS: Well then we'd be  
18 talking about, actually --

19 MS. MINOW: Unless you're --

20 MR. BRAUNEIS: I mean, in other  
21 words a non-profit or maybe a for-profit, but

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1 as an adjunct to the actual profitable  
2 activities, might take the Copyright Office  
3 information and then operate this service  
4 themselves.

5 I mean if, for example, and this is,  
6 again, but why not? Let's bring it into this  
7 conversation. So if the office were to provide  
8 an application programming interface that  
9 simply allows any organization that wants to,  
10 to query the database in various ways that are  
11 not limited by the current web interface, then  
12 any other organization could decide to build on  
13 top of the day-to-day, something like a  
14 notification of application, where you could  
15 sign up not with the Copyright Office but with  
16 whoever, to be notified.

17 I mean is that what you're thinking  
18 of when you say make the database available?

19 MS. MINOW: Yes. And things that  
20 we perhaps don't even contemplate all their uses  
21 that others may come up with. You know, look

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1 at what Stanford did with the Determinator with  
2 the registration: they made it searchable for  
3 the (inaudible) of Art. And yes, there could  
4 be (inaudible), there could be all kinds of  
5 things that people in the field could add on.

6 MR. BRAUNEIS: Okay. Are there  
7 any other -- oh, interim steps. I'm sorry, we  
8 were just about to give interim steps when --  
9 yes, so that's the last kind of discussion topic  
10 for this session is: suppose we're going to  
11 build an electronic recordation system, at  
12 least version 1.0 of an electronic recordation  
13 system, that's going to take a couple of years  
14 before that is ready to go, I think.

15 And so are there things that we can  
16 do in the meantime to reduce backlog, to improve  
17 services? Zarifa can actually talk about one  
18 improvement that's in the works and about to go  
19 live, but there may be others too.

20 MS. MADYUN: Yes. And in-house  
21 we're actually moving from what they call legacy

1 databases that we're using and we're doing  
2 internally work into eCO. So you'll receive  
3 documents now back with the digital stamp of the  
4 volume and document number and page number, as  
5 opposed to having someone actually do the labor  
6 of putting those labels on the documents.

7 There was I guess you could call it  
8 a pilot program where we were accepting flash  
9 drive and disks of large titled documents, so  
10 that we can upload those titles faster when the  
11 basic record was created. And some remitters  
12 have taken full advantage of that.

13 It just started with one remitter  
14 and I guess, you know, word of mouth, and more  
15 and more people have been submitting that. Or  
16 course now we can't require it, but if remitters  
17 are willing to provide that in a flash drive or  
18 a disk when they send up their document, that  
19 will assist us in uploading that information a  
20 lot faster.

21 Your basic record could be created

1 in February, but we may not be able to actually  
2 type those titles in until later in the year and,  
3 you know, that's been an issue for a lot of  
4 remitters, because when that basic record's  
5 done they want those titles to be there as well.

6 So one of the interim steps we have  
7 been taking is to get those titles  
8 electronically. And the last interim step  
9 we're implementing is, we've had conversations  
10 with remitters who submit their documents, and  
11 they are unsure if we received it, because  
12 there's no confirmation, because there's no  
13 electronic system so there's nothing that we  
14 send back to them saying hey we received your  
15 document on this date.

16 But we are going to start doing that,  
17 sending some type of confirmation saying that  
18 we received this document on this date, and this  
19 is the party that was listed in the work that  
20 it involves.

21 Because I guess there are some



1 issues where I guess yesterday and I forgot the  
2 woman's name, one of the participants. Oh,  
3 Bonnie Chavez, she was saying that sometimes  
4 their clients call them because they have a deal  
5 that needs to be closed and they have to have  
6 some indication that there was a document that  
7 was filed with the Copyright Office and there's  
8 nothing that we've provided them to let them  
9 know that.

10 So in order to kind of alleviate  
11 those issues we're going to do that on the front  
12 end. Just send that email confirmation out  
13 with pertinent information so that you know at  
14 least we received it.

15 And so those are the steps right now  
16 that we're taking to kind of try to ease the  
17 backlog and make the remitters a lot more happy  
18 and satisfied with the work that we're doing.  
19 And we're just trying to do a lot more with less  
20 and luckily I have a staff that's willing to get  
21 in there and do that.

1           MR. BRAUNEIS:    So that's what has  
2           been in the works and what is in the works.  And  
3           guess the floor is open for comments on those,  
4           suggestions of any other ideas, things that we  
5           could do now or sooner than the full  
6           implementation of electronic recordation  
7           system that would help.

8           MS. MORALES:     I'm not sure I  
9           understand what you said about accepting the  
10          electronic submission of information that works  
11          in both of those documents.

12          MR. BRAUNEIS:    Right.  So that's  
13          what Zarifa was describing as the flash drive  
14          and CD model.  And so when you submit a paper  
15          document, in the same envelope you would include  
16          a flash drive or a CD with a list of titles.  
17          Typically we've accepted them in Excel  
18          spreadsheets I think and made a list of a  
19          corresponding registration numbers.  And that  
20          would help us in no longer having to manually  
21          key in each of the titles in a large document.

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1                   So I don't know when we accepted the  
2 first flash drive but --

3                   MS. MADYUN:    I do.  Yes.  It was  
4 August 2011 we accepted the very first one.  It  
5 was from one particular remitter that at point  
6 in time they submitted a document, I can't  
7 remember if it was 50,000 maybe more than that  
8 titles and there was just no way we could -- I  
9 mean it would take forever for us to enter that  
10 in.

11                   And we just had the conversation do  
12 you even have this in electronic form?  And they  
13 said oh yeah we do.  And then they asked well  
14 can we just submit everything like that for  
15 these large titles, and we said sure if that's  
16 what you chose to do, we can't say no, and it  
17 would help.  And so they've been doing that  
18 consistently.

19                   MS. MORALES:  So right now it's a  
20 flash drive -- would receiving a file by email  
21 work?

1                   MR. BRAUNEIS:       That came up  
2                   yesterday.

3                   MS. MADYUN:    Yes, it did.  If we  
4                   contact you and say do you happen to have or we're  
5                   working on a document do you happen to have these  
6                   titles in electronic form? And you say yes, then  
7                   you could send it to us.  But to just send it  
8                   to us randomly it's just office policy we  
9                   wouldn't be able to open that attachment because  
10                  you know for fear of viruses or something like  
11                  that.

12                  MS. MORALES:    Okay.

13                  MS. MADYUN:       But if you have  
14                  something and I know we've worked together on  
15                  a few things so if you have something next week  
16                  -- if you have things that are outstanding you  
17                  can let me know and we can work on trying to get  
18                  those into the office.

19                  MS. MORALES:    Sure.  We can always  
20                  do that.  I mean we would always -- I can't think  
21                  of a circumstance when we wouldn't have them in

1 electronic form.

2 MS. MADYUN: Okay.

3 MS. MORALES: In Excel or Word or  
4 something.

5 MS. MADYUN: Okay. That'll be  
6 great.

7 MR. HOLM: Maybe a good idea would  
8 be to start asking remitters what information  
9 they have that they could easily send to you.  
10 I don't know if that's something you do on a  
11 regular basis.

12 MS. MORALES: Well we need to hear  
13 back from the specialists. But then it opens up  
14 a challenge you know, where to email it and all  
15 that but as far as when to submit it.

16 MR. BRAUNEIS: Okay. Well, it's  
17 11:45 that is our slated time for a lunch break.  
18 And I believe lunch has arrived or some lunch  
19 has arrived and it's sitting at the back of the  
20 room.

21 So let's break for lunch and I

1 actually don't know if that particular lunch is  
2 not the right lunch for you I'm not sure where  
3 to direct you but perhaps the Stanford folks  
4 would know if there's any alternative lunches.

5 (Whereupon, the above-entitled  
6 matter went off the record.)

7 MR. BRAUNEIS: Welcome back to the  
8 Recordation Reengineering Roundtable here at  
9 Stanford. Thank you again for your  
10 participation and I hope that you've fortified  
11 yourselves and went out and saw the sun during  
12 lunch.

13 So as I did yesterday, I think I'm  
14 going to combine the discussion of the next two  
15 topics because they are very closely related and  
16 narrowly speaking both of these topics are  
17 asking about what information recorded  
18 documents or the catalogue of recorded  
19 documents could or should contain.

20 Should they contain registration  
21 numbers, should they contain other standard

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1 identifiers?

2 But more broadly they're asking  
3 about the place or the role of the recordation  
4 database in the entire ecosystem of copyright  
5 information about works. The question of  
6 whether recorded documents records should  
7 contain registration numbers is a question  
8 about the relation of the recorded documents  
9 database to the registration database.

10 The question about whether they  
11 should contain other standard identifiers is a  
12 question about having cross references between  
13 the copyright database as a whole and other  
14 databases that use those standard identifiers.

15 So although we'll start out with  
16 some particular information about registration  
17 numbers and other standard identifiers,  
18 eventually I want to talk much more broadly  
19 about what the Copyright Office's role is in the  
20 entire ecosystem of collecting and providing  
21 copyright information about works.

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1           So just to start off with a little  
2 bit of factual background so we have that as the  
3 basis for discussion, in that same time period  
4 that I spoke of this morning, 1978 to 2009, there  
5 were about 8 million works represented in  
6 recorded documents, about 3,710,000 of them are  
7 identified with registration numbers. So  
8 those works records contain not only the title  
9 of the work, sometimes they will even contain  
10 a title but contain only a registration number  
11 for a work in the cases where works are untitled.  
12 But mostly they contain both a title and a  
13 registration number. So that's about 46  
14 percent.

15           Now, not all of those registration  
16 numbers are post-1978 numbers that could  
17 immediately be linked with the electronic  
18 registration data base; many of those numbers  
19 are pre-1978 numbers, but as a whole about 46  
20 percent of the recorded document records of  
21 works include registration numbers.



1           Here's what those numbers look like  
2 over a time with respect to the two largest  
3 categories of documents, namely assignments and  
4 financing documents. And there's a lot of  
5 variation, here particularly in the earlier  
6 years, possibly caused by single transactions  
7 that either did or didn't have registration  
8 numbers in them that skew that data --  
9 conceivably either caused by changes in  
10 Copyright Office practice with respect to  
11 cataloguing registration numbers because I have  
12 not completely investigated Copyright Office  
13 policy from 30 years ago and there may not be  
14 many people around who could tell me about that.

15           But one thing you notice is that the  
16 percentage of financing documents that have  
17 registration numbers has gone up over roughly  
18 the past 20 years and the percentage of  
19 assignments has somewhat gone down.

20           Remember back to our discussion  
21 about financing documents that back in 1990 the

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1 federal district of California decided that all  
2 financing documents should be recorded at the  
3 Copyright Office and then a little later the 9th  
4 Circuit decided that only those documents that  
5 concern registered works should be filed with  
6 the Copyright Office.

7 And that certainly may be one  
8 explanation of why you see an uptick in later  
9 years because the financing documents that  
10 involve unregistered works are no longer being  
11 filed or recorded at the Copyright Office.

12 Just to give you a quick sense of the  
13 current use of registration numbers or non-use  
14 of registration numbers in recorded documents  
15 and how that might affect search capabilities,  
16 here's one work that I happened to find that had  
17 both recorded document information and  
18 registration information about it. It's a  
19 novel called "Damascus Gate" by Robert Stone.

20 If you search by registration number  
21 you only find the registration. You don't find

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1 any recorded documents. There are recorded  
2 documents and some of them do contain  
3 registration numbers so here's a grant or  
4 assignment of an interest from Robert Stone to  
5 Paramount Pictures. That document did contain  
6 a registration number; currently the search by  
7 registration number, however, does not locate  
8 this document.

9 And then there are other documents  
10 recorded with respect to this work that happen  
11 not to contain registration numbers. In fact,  
12 this is the termination of the previous  
13 assignment we just saw. That document doesn't  
14 contain any registration number and so it's not  
15 in the catalogue and yet a further grant of  
16 rights in that work or further grants of rights  
17 in that work that don't contain registration  
18 numbers.

19 If you did a search by title,  
20 "Damascus Gate" you would find both  
21 registration and recorded documents that are

1 relevant to that title. I probably should have  
2 done this last night, I didn't; but there  
3 certainly would be issues with some titles about  
4 whether it was a unique title for a particular  
5 work or not. I don't know whether if you search  
6 by title "Damascus Gate" it happens to be only  
7 one work with that title and so you can narrow  
8 it down like that. But certainly with many  
9 titles you've got a problem where if you're  
10 searching by title, the title is not a unique  
11 identifier and you're getting a lot of  
12 information you don't need that you need to sort  
13 through in order to figure out what you do need.

14 But one thing's for sure and that is  
15 as the system is presently set up, you can't do  
16 a search that sort of gives you a snapshot  
17 through time of a registration plus each  
18 recorded document in order that affects a  
19 particular work.

20 As for other standard identifiers,  
21 the document records currently are not set up

1 to accept other standard identifiers so even if  
2 the recorded documents themselves contain  
3 ISBNs, ISSNs, other standard identifiers, they  
4 don't go into the Copyright Office catalogue.  
5 Registration records can store some standard  
6 identifiers -- currently three standard types  
7 of standard identifiers -- but it turns out that  
8 those are relatively little used.

9           So we've got 16.7 million  
10 registration records in that 1978 to 2009 period  
11 and of those about 3.5 percent contain ISBN  
12 numbers, about the same percentage, although  
13 now that I look at those percentages that can't  
14 be correct because the ISSNs are lower in number  
15 and yet higher in percentage. Well I'm going  
16 to have to recalculate that. It's probably a  
17 slightly lower percentage of ISSNs and then  
18 about 3/100ths of a percent contains ISRCs which  
19 are for sound recordings. We don't currently  
20 have the capability of accepting ISWCs for  
21 musical works or any other sort of standard

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1 identifier.

2 So that's just the sort of factual  
3 background but I'd like to open up the  
4 conversation about registration numbers and  
5 standard identifiers.

6 How helpful would it be to link  
7 recorded documents records and registration  
8 records through the registration number and how  
9 helpful would other possible -- are there other  
10 ideas in the room about the use of standard  
11 identifiers? Kevin?

12 MR. MONTLER: It would be  
13 extremely helpful to the extent that they're  
14 comprehensive. So I focus on music with  
15 fragmentation on the publishing side, most of  
16 our pain comes through publishing.

17 MR. BRAUNEIS: Most of your what?

18 MR. MONTLER: Most of the pain--

19 MR. BRAUNEIS: The pain. The  
20 pain. Okay.

21 MR. MONTLER: And that's because--

1                   MR. BRAUNEIS: That's because you  
2 got sound recording people here.

3                   MR. MONTLER: It's more about the  
4 reality of a composition copyright being in  
5 --it's just not associated with a digitally  
6 tangible file like a sound recording. So when  
7 you have a service like ours you take a sound  
8 recording from a record label and that's what  
9 we use to track and pay for licensing.

10                   It's very, very difficult to find  
11 any comprehensive library of publishing  
12 information to associate with sound recordings.  
13 We work with the record labels to get that. They  
14 don't want to be liable for errors. They don't  
15 have a very comprehensive database outside the  
16 U.S. where you can run a global server as well.

17                   And so when we try to do deals with  
18 publishers who view the world differently, they  
19 don't necessarily view the world in association  
20 with ISRCs; they're historically more passive  
21 recipients of a check. We don't know who to pay

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1 and we don't know where to go to find who to pay  
2 and it's a very disparate database that holds  
3 a different -- it's not normalized. So EMI  
4 could be, I think I looked one time at different  
5 -- 27 different ways E.M.I., EMI, EMI Pub.,  
6 right, and so those are another ones that you  
7 can't unify them under split ownership.

8 It's an area that's in great need of  
9 improvements in efficiency and access.  
10 There's an artificial barrier to innovation for  
11 someone who wants to be respectful to those  
12 copyrights, you just can't find them. We don't  
13 know who to pay.

14 And that's part of the reason I'm  
15 really in favor of transparency -- as much  
16 transparency as this office can provide and the  
17 tools to allow access to that at scale. So a  
18 one by one search is not going to work at scale.  
19 It has to be a bulk access, standardized code  
20 relationships, every work of (inaudible)  
21 agency, all the ISRCs and their association.

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1                   MR. BORKOWSKI:    Okay.  Let me ask  
2                   you this because I remember hearing yesterday  
3                   from some of the publishers that were present  
4                   saying that they actually -- if I could get your  
5                   response to this -- that they do have massive  
6                   databases, that they're much ahead on this and  
7                   you're saying that those aren't sufficient.  
8                   Why are those not sufficient?

9                   MR. MONTLER:        Because you have  
10                  publishers and then there's the middle line the  
11                  --

12                  MR. BRAUNEIS:     The ASCAP, BMI.  
13                  Harry Fox.

14                  MR. MONTLER:    Harry Fox, exactly.  
15                  And the middle men their job is to do that  
16                  administration, they associate sound recording  
17                  with the composition.  The publishers don't  
18                  necessarily have that.  They have CWR files that  
19                  fields about 30 to 35 percent of their  
20                  compositions have ISWCs.  And so a lot of the  
21                  relationships between the composition and the

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1 sound recording occur from code to code  
2 relationships. So I have an ISRC that I get from  
3 the record label and I have to figure out which  
4 ISWCs go into it, but you're starting out with  
5 30 to 35 percent of the available repertoire  
6 with an ISWC, you're already starting out behind  
7 the eight ball.

8 And then finding a standardized  
9 normalized set of data to refer to, to make that  
10 link yourself is very, very difficult. You get  
11 data from lots of different sources and because  
12 it's not normalized which one do you prioritize?

13 MR. BORKOWSKI: So I guess I'm just  
14 trying to understand this. Is this because  
15 you're dealing with rights that aren't  
16 administered by the PROs and Harry Fox or is this  
17 because you're dealing with those rights but  
18 you'd like to deal directly with the publishers  
19 and not necessarily through those  
20 organizations?

21 MR. MONTLER: Well, what's

1 happening is major publishers are withdrawing.

2 MR. BORKOWSKI: Yes, I know.

3 MR. MONTLER: And so to mitigate  
4 fragmentation we have to know what we're  
5 licensing from them. And as long as that, and  
6 it is allowed and there are cases that are coming  
7 out literally over the last few weeks that put  
8 parameters on how the withdrawals were  
9 governed, as long as that's allowed we have to  
10 know what we're licensing.

11 And so in other words there isn't a  
12 body that aggregates 100 percent of the market  
13 or three bodies like ASCAP, BMI and SESAC. We  
14 have to know what we're licensing from publisher  
15 A or publisher B and so on.

16 And you know the first reaction is  
17 well it's incumbent upon them, on the publisher  
18 who wants to withdraw and have a direct field.  
19 The thing is they don't have that database.  
20 They have a file, a set of you know CWR files  
21 that have their composition ownership so Kevin

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1 wrote the song "Happy Birthday," here you go.  
2 Well it doesn't say that Madonna sang it. They  
3 might have limited information.

4 So in terms of creating efficiencies  
5 for use in lowering the barrier and encouraging  
6 the arts and innovation for distribution,  
7 creating a centralized database with this kind  
8 of code for music would just, it would be game  
9 changing for the distribution industry.

10 MS. KOSSOWICZ: But aren't there  
11 other companies that are currently working on  
12 these industry-wide databases that are trying  
13 to tie all these rights together?

14 MR. MONTLER: There are but the  
15 problem is this information is dynamic so it's  
16 changing over time and you have to maintain --  
17 there's a tremendous amount of politics between  
18 these organizations. In Europe there's a  
19 global rights database initiative. They've  
20 been in discussion since 2008 and it looks to  
21 be stalled. And there are just too many

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1 competing interests and very legitimate -- I'm  
2 not taking a side on which interests are better  
3 or worse, but you know these companies are  
4 approaching it from a different perspective  
5 even with the same industry.

6 So to me it feels riper for you know  
7 regulation or government compulsion at some  
8 level and I'm sort I'm setting out the problem  
9 to the experts but it's a pretty significant  
10 problem for us at scale and for many in the  
11 musical industry on the distribution side.

12 MR. BRAUNEIS: Okay. And I  
13 understand the problem is that again just to  
14 understand the nature of this that although it's  
15 possible that say ASCAP has the ISWC- ISRC  
16 matches, when Sony BMG withdraws from ASCAP it  
17 doesn't take that data with it?

18 MR. MONTLER: Yes, exactly. So  
19 ASCAP's model is to tell us what we're licensing  
20 after we've used it. That's how they work.  
21 Same with BMI. When someone withdraws, like

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1 let's say Sony ATV, I'm at risk if I don't have  
2 a direct deal with Sony ATV. I'm at risk of not  
3 knowing, let's say I do a deal with ASCAP but  
4 I don't have one with Sony ATV, I have licensed  
5 content co-mingled with unlicensed content from  
6 a compositional perspective but I don't know  
7 that in advance, how to disentangle them.

8 The only way I can know that is to  
9 know which entity is licensing which  
10 composition in advance of use. And that's  
11 where there's not a reliable -- there's no  
12 transparency, that's the thing of well I'm  
13 licensing in advance. And part of it is a  
14 willingness issue and part of it is a data  
15 problem. And I'm hoping to sort of encourage  
16 both through, you know, this kind of process,  
17 forcing willingness and helping build a better  
18 data set for access.

19 MR. BRAUNEIS: Okay. That's  
20 interesting. I mean I think that is a -- it's  
21 definitely a copyright information project.

1 It's not strictly speaking I think a document  
2 recordation project but within the greater  
3 scope of facilitating copyright information  
4 about works it certainly falls within that.

5 MR. MONTLER: Exactly.

6 MR. BRAUNEIS: Let me just ask a  
7 little bit about, going back for a moment to  
8 document recordation, about the use of  
9 registration numbers and other standard  
10 identifiers in recorded documents records.  
11 Other potentially utility or disutility in  
12 doing that? In allowing for that and requiring  
13 that and incentivizing that?

14 MR. MONTLER: Are you suggesting  
15 it's sort of put it in if you have it or get it  
16 and put it in?

17 MS. MORALES: Well no because  
18 getting it would be a long process. For  
19 registration did you say?

20 MR. MONTLER: No, for like an ISRC.  
21 ISRC I think is pretty straightforward.

1           MR. BRAUNEIS:   Well I mean it's  
2           kind of either or both.  I mean I'm interested  
3           in reactions and you know is it useful enough  
4           to build this kind of comprehensiveness that  
5           you want some incentive in place to motivate  
6           folks to include it, or is it something that  
7           voluntarily if you have it then we'd love to have  
8           it as part of our data --

9           MS. KOSSOWICZ:  I don't think that  
10          the Copyright Office would necessarily be the  
11          right place to look for a comprehensive list of  
12          say ISRCs for example, because it's never going  
13          to have a complete record of ISRCs because we  
14          don't register every single ISRC, right, we only  
15          register the best edition, otherwise I mean we  
16          would be spending all our money on this.  We only  
17          register you know what we have to.  And so there  
18          may be the explicit version vs. the edited  
19          version vs. I don't know, the ring tone or  
20          whatever rights.  They may have separate ISRCs  
21          but we're only registering the best edition.

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1           And to go back and have to find  
2 everything and link it all with all of the  
3 catalogues that we have, I don't think it's even  
4 possible.

5           MR. MONTLER:   So at least within a  
6 registration plus recordation of transactions,  
7 whatever transactions may or may not be a  
8 recurring model we're not going to get a  
9 comprehensive collection of ISRC, ISWCs,  
10 anything like that.

11          MS. KOSSOWICZ:   Right. And that's  
12 what our fee does for you.

13          MR. MONTLER:   Yes, I mean certainly  
14 you can separate going forward, right, and  
15 there's lots of challenges with the past, making  
16 things available instead of warehouse  
17 documenting. But if we're looking at you know  
18 how to build something going forward, having  
19 this kind of information would facilitate  
20 respectful distribution. I mean that's in  
21 alignment with the industry if you want people

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1 to know who to pay.

2 And again this is a big publishing  
3 issue I think more so than on the recording side.  
4 But people use these codes to know who to pay  
5 and know how to be respectful of copyright. And  
6 I think we should give them that access if we  
7 can.

8 Then, you know, through whatever  
9 compulsion, combination of availability of  
10 technology and so on, but you know however you  
11 put the pieces together that, for me, is one of  
12 the principles that we should be looking at.

13 MR. HOLM: The use of standard  
14 identifiers is especially important to  
15 individual rights, particularly photos. A lot  
16 of the current systems sort of envisioned an  
17 idea where you have an author and a title for  
18 every given work and many, many, many photos do  
19 not have titles or if we know what the title is.

20 So in the absence of some kind of  
21 recognition technology you need some concrete

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1 term that you can refer to a particular  
2 photographic work or find out anything useful  
3 about it. And I don't know that there is  
4 necessarily a comprehensive ISBN type system  
5 that you could adopt but there needs to be  
6 something that would be useful information  
7 about photos available.

8 MR. BORKOWSKI: At the Columbia  
9 roundtable the photographers will give their  
10 perspective. I know they're very sensitive to  
11 this issue. They have a lot of issues involved  
12 as you know from the comments.

13 MS. CORWIN: And I'm pretty sure  
14 -- it's not necessarily a standard identifier  
15 but I know that they're very big on metadata,  
16 since digital images all have embedded  
17 metadata, it eventually might lead to that.

18 MR. HOLM: And we might get to that  
19 later in this round, I just wanted to mention  
20 it and have it stated.

21 MR. BRAUNEIS: In addition to

1 standard work identifiers there are also  
2 available a variety of standard party  
3 identifiers and I'm curious about views on the  
4 extent to which the Copyright Office might  
5 incorporate those.

6           Currently I think it's fair to say  
7 we don't -- we are blind to those. So their  
8 international standard name identifiers, the  
9 musical work of folks who use so called  
10 interested party identifiers or IPIs. The  
11 academic community uses a subset of  
12 international standard name identifiers called  
13 ORCID's or Open Research Contributor IDs and the  
14 Copyright Office systems right now make no use  
15 of those.

16           And so I'm not sure what use should  
17 be made of those or could be made of those but  
18 we don't currently make any use of those.

19           MR. BORKOWSKI: I got the sense  
20 yesterday that nobody really uses it, at least  
21 not for the people present. I mean we don't do

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1 it.

2 MS. KOSSOWICZ: Not to my  
3 knowledge.

4 MR. BORKOWSKI: Yes, not to my  
5 knowledge either and I think that was the  
6 consensus yesterday. I don't know how it is in  
7 other industries. I know our industry does not  
8 use those in any kind of --

9 MR. BRAUNEIS: OK, so not yet. And  
10 in the academic community in about the past 18  
11 months about 500,000 ORCID's have been assigned  
12 and I myself have an ORCID because Edward Elgar,  
13 the publisher that I publish something with,  
14 said you need to get an ORCID. And so I got one.

15 MR. BORKOWSKI: It does sound like  
16 a bitcoin.

17 MR. HOLM: I understand I guess the  
18 collecting societies make use of them, the  
19 ISNI's.

20 MR. BRAUNEIS: So that would be for  
21 musical works. So we'll ask that question again

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1 in New York.

2 MR. HOLM: Right because they need  
3 some system to track who gets what.

4 MR. MONTLER: And it forces  
5 normalization. Like I said it's a big problem  
6 on the composition side.

7 MR. BRAUNEIS: Next topic is change  
8 of contact information and of licensing agents.  
9 Currently the Copyright Office website gives  
10 the advice well if you have changed your contact  
11 information and you want to make that public you  
12 can do one of two things. You can go and record  
13 a document that says we've changed our contact  
14 information and here are all the works that that  
15 pertains to or if you've registered the works  
16 you can file a supplementary registration that  
17 says here's a supplement to our previous  
18 registration that says we've changed our  
19 contact information.

20 But the problem of keeping an up to  
21 date set of contact information for owners of

1 copyrighted works doesn't seem to fit all that  
2 well into either the registration or  
3 recordation model because it's not really about  
4 a transaction -- there's no transaction that's  
5 occurred, nor is it talking about your  
6 registering any new work.

7 So the question is should the  
8 Copyright Office facilitate in some other way  
9 the availability of up to date contact  
10 information and, if so, how? How would that  
11 best be done?

12 MS. MORALES: The documents that we  
13 file are just what you say, the notice of name  
14 change and address and we have a schedule  
15 attached linking the notice to the different  
16 registrations. It doesn't seem too cumbersome  
17 to do that and it seems like a good way to do  
18 it.

19 MR. BRAUNEIS: The question is  
20 though, and I'm going to have to check this  
21 myself, how does that actually show up in the

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1 Copyright Office catalogue? So if you, and I'd  
2 actually love to, if you have an example of that  
3 to get me a document number or something so that  
4 I could see, because unless you've titled the  
5 document Change of Address, then there's no way  
6 that I would necessarily search and find that  
7 document as a change of address document.

8 I guess maybe if I'm searching by  
9 title then it would come up that one of the  
10 documents recorded with respect to that title  
11 is a change of address document.

12 But to me it seems like a bit of a  
13 cumbersome way just to announce to the world  
14 that you've changed your address.

15 MS. MORALES: Going back to your  
16 other question about linking registration  
17 numbers, for the kind of work that I do it would  
18 be very helpful to have your registration number  
19 linked to your recordation because, as you said,  
20 if you don't have a title, how else are you going  
21 to find it?

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1                   It's often that I'll get a list or  
2                   you know one registration number and I want to  
3                   search about any activity on it, so how am I going  
4                   to do that?

5                   How I do it now is I look up the  
6                   registration number, I see who the parties are  
7                   and then I go down that rabbit hole searching  
8                   under those names and all of that, but still  
9                   not knowing if something's been recorded under  
10                  some other name or something.

11                  So the registration is important to  
12                  link it through this maze of ownership that I  
13                  think very important.

14                  MR. BORKOWSKI:    But we have to be  
15                  cautious though because in many instances,  
16                  especially instances that involve large  
17                  catalogues, which as you identified at the  
18                  beginning of the day you know our industry is  
19                  among the top -- along with music publishers.  
20                  And the example given earlier of the 50,000  
21                  titles, first of all it's not possible in a

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1 catalogue that size to be able to run down all  
2 the registration numbers. They may not be  
3 immediately available, they may involve foreign  
4 works, they might involve U.S. works that have  
5 not yet been registered. So there can't be  
6 a requirement that if we transfer a document it  
7 is recorded and there are the registration  
8 numbers.

9 I agree that it is good to put them  
10 in because it helps you find things and that's  
11 the goal here. But given that I come from an  
12 industry that has a tendency to do these large  
13 scale transactions, it is not practical from our  
14 perspective to even do that. So for that reason  
15 it really shouldn't be required. I think you  
16 should encourage it as much as you can because  
17 I do think it provides value.

18 MR. BRAUNEIS: Yes?

19 MS. MADYUN: I just wanted to add  
20 something to the changing of the address. When  
21 we do catalogue those documents we treat it as

1 a one party document so there's only one party  
2 that's listed in the record. And again if you  
3 label it "change of address," then that's there  
4 and if there are a list of titles then we will  
5 index all those titles.

6 But to actually physically see the  
7 address that has been changed you again would  
8 have to either come to the office yourself or  
9 send a third party to go and do that for you.

10 MR. BRAUNEIS: Right. So there's  
11 an example --

12 MS. MORALES: Well another thing is  
13 you need to have the document available.

14 MR. BRAUNEIS: Not having the  
15 document available on the internet really is a  
16 problem because at least with those it seems  
17 like, wow, if somebody's announcing to the world  
18 that they've changed their address it would be  
19 great to not have to go to the Copyright Office  
20 to find out what the address is.

21 MS. MORALES: And maybe in the

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1 interim to be part of the record of what the new  
2 address is, another field in the online  
3 catalogue.

4 MS. MADYUN: And that could help  
5 and I know that the reason why it has been offered  
6 to recorded documents is because with a  
7 supplemental registration you would have to do  
8 one for each work. But for a document you could  
9 lump all those works together under one document  
10 and pay one filing fee and it would be beneficial  
11 cost-wise to do it as a document as opposed to  
12 a supplemental registration if you had 50,000  
13 titles you not going to -- I forget how much it  
14 is.

15 MS. MORALES: It's \$115 dollars but  
16 I always thought that a supplementary  
17 registration was to amplify or correct the basic  
18 registration at the time that you registered it  
19 so that, you know, if you did something wrong  
20 or something was ambiguous that stayed in your  
21 application and you wanted to correct that, that

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1 you file for supplementary registration but you  
2 don't really use it for ten years down the line  
3 when you've changed your address or ownership.  
4 That's what you record a document for.

5 MR. BRAUNEIS: That may be correct.  
6 The current version of the Copyright Office web  
7 site actually does say you could also file a  
8 supplementary registration.

9 MS. MORALES: You know where I saw  
10 that discrepancy; if you look in the circular  
11 for supplementary registration I think it  
12 specifically tells you that you --

13 MR. BRAUNEIS: It says recorded  
14 documents don't --

15 MS. MORALES: That reminds me that  
16 there are two different things on the Copyright  
17 Office website about how to handle that.

18 MR. BRAUNEIS: Okay.

19 MR. BORKOWSKI: I go back to what  
20 I said yesterday. I mean I still think that on  
21 a going forward basis at least it should require

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1 for all sorts of reasons user accounts. And if  
2 you have user accounts then I think the user,  
3 when that company or person changes an address  
4 or contact information you could enter it into  
5 the account.

6 And ideally I think, I mean to the  
7 extent you start getting documents linked to  
8 this particular remitter, once that address  
9 change is made there should be a way to populate  
10 out in terms of documents already that are in  
11 the system to say that, okay, the contact  
12 information is now this. I mean I think that  
13 shouldn't be -- I mean going forward I don't  
14 think that should be all that challenging.

15 MR. HOLM: They're constantly  
16 linking new accounts to the old records right?  
17 Say you had your 10,000 records and you have to  
18 link your account to all those records.

19 MR. BRAUNEIS: Right. And I guess  
20 the question is probably a question of just  
21 making sure that people have notice of this but

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1 the Office does currently have deposit  
2 accounts. It was an old method, pre-credit card  
3 kind of method of payment where you actually  
4 kept on deposit with the Copyright Office a  
5 certain amount of money that you would use to  
6 pay for your fees and so forth.

7 I think it's fair to say that the  
8 holders of those deposit accounts did not expect  
9 that all their contact information would be made  
10 public, they just weren't thinking of it in that  
11 way that all the contact information that's  
12 contained in that account has not traditionally  
13 been made public and is there simply to  
14 facilitate transactions between the remitter or  
15 the registrant and the Copyright Office and to  
16 sort of convert and enlarge that to user  
17 accounts more generally I think we'd have to  
18 provide notice that oh and by the way the  
19 information that you're submitting is going to  
20 be made public. Or at least some portion of it  
21 will be.

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1 MR. BORKOWSKI: Well yes you can't  
2 surprise people. They have to know.

3 MR. BRAUNEIS: Right. But I mean  
4 working from deposit accounts right now one  
5 might be able to all of a sudden publish a bunch  
6 of information about depositers who are  
7 remitters but that might not be what they  
8 expected when they gave us that information.

9 MR. BORKOWSKI: Did you have any  
10 sense of what percentage of remitters have  
11 deposit accounts? It can't be that much right?

12 MR. BRAUNEIS: I do not but --

13 MS. MADYUN: It's a lot.

14 MR. BORKOWSKI: Is it?

15 MS. MAYDUN: Yes. Just looking at  
16 it from the recordation standpoint the majority  
17 of our documents come in with a deposit account.

18 We rarely get checks and it's more  
19 so from the bigger companies that have deposit  
20 accounts because they're doing multiple  
21 transactions at the office on a daily basis

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1 between registration and recordation. So for  
2 them it's easy just to have their deposit  
3 account and us take the money out of it.

4 It's more of the firms and the  
5 companies that don't do as much business with  
6 us that will send in a check.

7 MR. HOLM: Are those deposit  
8 accounts currently linked to existing records?

9 MR. BRAUNEIS: Certainly not  
10 like the public Copyright Office catalogue, no,  
11 I think that's fair to say. They're completely  
12 internal and they're used for payment purposes.  
13 They are not linked to information that the  
14 Office makes available to the public.

15 Well to broaden out this  
16 conversation a little bit there are a series I  
17 think of the last four questions there under  
18 Standard Identifiers which goes from the  
19 specific question of identifiers to more  
20 generally the kinds of inter-operability and  
21 linkage between whatever the Copyright Office

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1 catalogue is and other copyright databases.  
2 Many of the comments to the notice of inquiry  
3 mention, gee there should be inter-operability,  
4 there should be linkages. But I think not with  
5 a lot of detail about exactly what is meant, what  
6 kind of inter-operability would be useful.  
7 What kind of linkage would be useful? And so  
8 I'm curious if there are any thoughts about  
9 those issues.

10 MR. HOLM: This is maybe a question  
11 to ask the collecting societies but one option  
12 would be to allow the collecting societies to  
13 submit recordation and registration on behalf  
14 of their members. And they have fairly decent  
15 databases of a lot of this information that they  
16 would be able to make that information available  
17 to the Copyright Office either on a one-time  
18 basis or an ongoing basis that would certainly  
19 improve things considerably.

20 MR. MONTLER: It would but it comes  
21 down to if they're required to do it. I mean

1 that's part of their view of their role and I  
2 think there's concern they're going to be  
3 disintermediated as this becomes visible. I  
4 don't think they will but I think that's part  
5 of the concern.

6 MR. BRAUNEIS: Not speaking for  
7 them because I can't, but one could imagine I  
8 suppose that if a collecting society were able  
9 to provide that additional service if they're  
10 feeling like they're in danger of  
11 disintermediation they'd say hey here's another  
12 reason to use us an intermediary, we're going  
13 to register your works and record your documents  
14 for you so you don't have to do it.

15 So if we had the capability of  
16 accepting those.

17 Now you know again in terms of  
18 inter-operability, what does that mean? Maybe  
19 it means no more than formulating a data  
20 standard which they can use when they're  
21 electronically submitting information and that

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1 data standard could equally be used by a third  
2 party intermediary and an actual party to a  
3 document.

4 I'm not sure what there is, thinking  
5 about it now, that stands in the way of a  
6 collecting society to act as a facilitator of  
7 registration or recordation.

8 I mean law firms certainly act in  
9 that capacity.

10 MR. MONTLER: I would say and  
11 without putting words in your mouth but I would  
12 say there's concern of you know they're  
13 dependent on the accuracy of the data they're  
14 getting from multiple sources and their job is  
15 to hire somebody to figure out who to pay and  
16 how to associate.

17 And the reluctance I've seen from  
18 labels and from societies and performing arts  
19 organizations is a concern about basically  
20 liability about mistakes because there is such  
21 a problem with the quality of the data. It's

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1 no one's fault, it's just part of my theme here.  
2 If you compel them to do it, they can and I'm  
3 sure they would, but to date it hasn't been a  
4 requirement necessarily to be normalized or to  
5 have ISWCs or associate with ISRCs. So that's  
6 the state of the data out there and anyone who's  
7 charged with recording it in a legal way is  
8 making a representation behind it. And I think  
9 they'll be nervous.

10 And then there's a subset where  
11 they're probably comfortable. But I know as you  
12 get more comprehensive they get nervous. And  
13 that's what they've stated.

14 MR. BRAUNEIS: Right.

15 MR. BORKOWSKI: It's interesting  
16 though, because I would just say the other thing  
17 is they're the ones that proposed this in their  
18 commentary. They were the ones who said that  
19 maybe we should be doing this so maybe their  
20 concern is somewhat less.

21 MR. MONTLER: Well because they're

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1 recording they're on that side. Sound  
2 recordings it's a cleaner -- you don't have  
3 split repertoire. On the composition side you  
4 have multiple writers who assign different  
5 people on different copyrights and the PROs  
6 we're talking about are just the performing  
7 rights. You have Harry Fox on the mechanical  
8 side. So you have this you know how often is the  
9 performing right, the same split as the  
10 mechanical? Pretty often but not always. So  
11 who controls for that when you're registering?  
12 So there's quite a few, there's layers of  
13 complexity on the publishing side.

14 MR. BORKOWSKI: I'd also say to the  
15 extent this would ever be implemented I think  
16 a lot of large scale players might be able to  
17 register or record on behalf of their members.  
18 I think they would have to be a known person to  
19 the Office. Because you can't have a situation  
20 where just anybody can say I'm here, I'm  
21 recording this on behalf of somebody else. That

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1 would be a disaster.

2 It's one thing with a law firm --  
3 they're under standards of professional  
4 responsibility but there has to be some control  
5 as to who can be that third party I would say.

6 MR. BRAUNEIS: Right. So some  
7 kind of super user account where you're a  
8 fiduciary user account or something like that  
9 which would require much more diligence and due  
10 diligence in vetting the intermediary before  
11 you let them do that kind of thing.

12 Should the Copyright Office play a  
13 role in formulating metadata standards of  
14 information about copyright and works? Now the  
15 easiest part of that question I think is a  
16 question about whether the Office should set  
17 data format standards or metadata standards for  
18 submission of information to the Copyright  
19 Office.

20 And you saw in one of the slides  
21 about structured electronic documents the idea

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1 that we might define an XML schema which would  
2 set up a set of tags that say here's the kind  
3 of information you want and here's the tags that  
4 you would use to properly label that information  
5 so we know, our peers know how to ingest it and  
6 put it in the Copyright Office catalogue.

7 But of course there are all sorts of  
8 metadata standards that are floating around  
9 that the Copyright Office is not currently  
10 involved in and is there a role for the Office  
11 in facilitating and perhaps promoting the use  
12 of certain standards by adopting them or other  
13 sorts of roles for the office in doing that?

14 MR. HOLM: That's a fairly serious  
15 trade off here unfortunately except that the  
16 Office picks or favors some standards, it's  
17 likely those standards are more going to be used  
18 because that's then how people can submit  
19 information to you. But the tradeoff is that  
20 you're then closing potentially new standards  
21 or better standards from being adopted. And

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1 if it is the case of the Office of adoption of  
2 a particular standard causes that standard to  
3 become the standard, then you're stuck with  
4 that. Right? It's the QWERTY keyboard problem.

5 I think there's a gain in doing that  
6 because you learn the interoperability and  
7 people actually then using it but you are then  
8 losing something potentially.

9 MR. BORKOWSKI: Like I said  
10 yesterday I'd be more comfortable allowing the  
11 standards that are being set now currently, and  
12 they are being set those are the ones, the main  
13 ones there should be recognized.

14 I don't think the Office should be,  
15 like I said yesterday, in the position of  
16 actually developing the standards but I think  
17 you should be attuned to what standards are  
18 being developed and which ones have come to kind  
19 of be the accepted ones. And those are  
20 definitely the ones that you should be able to  
21 communicate with. I would be interested in your

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1 view.

2 MR. MONTLER: Yes, I mean those  
3 standards are changing over time as well so DDEX  
4 and HTML5 and XML standards. And it's sort of  
5 the trade-off between having flexibility. I  
6 mean what we're finding as a licensing entity  
7 is that the capabilities of content owners  
8 varies pretty significantly.

9 And the common debate is, you know,  
10 whose standard prevails. But I do think you do  
11 need to pick either one winner or a couple of  
12 winners, unfortunately, because again  
13 standardization is so important. It's hard to  
14 understate how normalized data problems inhibit  
15 usage. I mean it is a massive, massive problem  
16 on the publishing side.

17 And so putting a standard in place,  
18 letting people flow information through drop  
19 downs is a great way of standardizing the  
20 lexicon, you know, XML with pre-populated  
21 coding is a great way to do that because it forces

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1 everyone to speak the same language.

2 So in terms of the implementation of  
3 which standard I think those are legitimate  
4 concerns. You know, you can make one and then  
5 be stuck with its limitations, whatever those  
6 might be, as technology evolves. But I do think  
7 I would vote to take that risk and have standards  
8 because I think the benefit of standardization  
9 is so high for usage.

10 MR. BRAUNEIS: Yes, and I guess is  
11 there some way for whatever the Office does to  
12 be flexible enough that at least certain  
13 amendments to standards, which also happens,  
14 that those could be immediately reflected in  
15 Copyright Office records? Because as many if  
16 not all of you know, if the Office has to take  
17 some affirmative action to change the way it  
18 works, change the way its data is structured,  
19 change the way its website works, we're talking  
20 about a year or two years or something like that.

21 So any way that we accommodate a

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1 standard we have to think about how can we  
2 accommodate it flexibly so that these minor  
3 amendments to the standard can be immediately  
4 reflected in the database without changes.

5 MR. MONTLER: That's the cost of  
6 not controlling the standard but I agree with  
7 George, I don't think it's worth setting out a  
8 new standard. I think there's robust standards  
9 that manage data at scale already. There are  
10 a few of them. But that's the issue is being  
11 sort of up to date and maintaining currency.

12 MS. MORALES: The PTO uses the XML  
13 format now, don't they?

14 MR. BRAUNEIS: Yes. They have  
15 published an XML schema for submission of  
16 recorded documents and we can do the same thing.  
17 There are just questions now about, you know,  
18 I think it's fair to say that the documents and  
19 the nature of the information that comes into  
20 the Patent and Trademark Office is actually  
21 less complex than the information that could

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1 conceivably come into the Copyright Office.

2           It's not as though there are -- you  
3 know as there are different types of works,  
4 musical works, sound recordings, motion  
5 pictures, text, etc., photographs, graphic  
6 works, which all have communities that are  
7 building up standards. It's not as though in  
8 trademarks and patents you've got you know 16  
9 different communities who are building up  
10 different standards of data about trademarks or  
11 patents.

12           And so I think we have a somewhat  
13 more complicated problem in developing those  
14 standards for copyright but I actually agree  
15 that the Patent and Trademark Office has  
16 published an XML schema for use in submitting  
17 recorded documents about trademarks or patents  
18 and that we could follow that example.

19           Is there a specialized role for the  
20 Copyright Office catalogue to play that is  
21 different from the roles that privately

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1 maintained databases play? And this somewhat  
2 goes to Kevin's comment about gee maybe the  
3 Office or somebody could facilitate a scalable  
4 database of you know matching ISWCs with ISRCs  
5 and so on. Maybe we could. Traditionally  
6 that's not what the Office has done.  
7 Traditionally the Office has been much more  
8 focused on registrations and on registering  
9 documents that represent certain kinds of  
10 important basic transactions in works,  
11 certainly not non-exclusive licensing  
12 transactions -- there are very few  
13 non-exclusive licenses that have ever been  
14 recorded in the Copyright Office for obvious  
15 reasons. They aren't important enough and they  
16 possibly aren't of enough value that you would  
17 go to the trouble of recording them. They tend  
18 to be assignments and grants of security  
19 interest and other major transactions in works.

20 So we could continue doing that and  
21 say we're only about registrations and major

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1 transactions that involve sale or grants of  
2 security interest, and that's where our  
3 competence is, or we could expand in some way.

4 And so the question is are there  
5 areas of expansion? Have I correctly described  
6 the competence or the historical competence and  
7 scope of the Office's involvement? Thoughts?

8 MR. MONTLER: I'd like to see you  
9 increase the scope.

10 MR. BRAUNEIS: You'd like to see  
11 increasing the scope?

12 MR. MONTLER: Yes, it's just an area  
13 where the marketplace isn't resolving and if did  
14 resolve it would be expensive. So that would  
15 inhibit access.

16 And again I think the themes of  
17 transparency, democratization of access, you  
18 know, I think as a society with the internet and  
19 the lowered barrier to entry to access to this  
20 kind of information, I mean the more in part a  
21 panel of sort of modernizing the Copyright

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1 Office's interaction with the public. Right?  
2 This could be done along with that. Right? So  
3 the internet is a great vehicle for  
4 democratizing access.

5 MR. BRAUNEIS: So you say it could  
6 be done but it would be expensive. That brings  
7 to mind gee the Copyright Office is not usually  
8 the kind of place, in contrast to a corporation  
9 like that one you represent, has you know money  
10 in the seven, eight, nine figures available to  
11 do these things.

12 MR. MONTLER: It's not the building  
13 that's expensive; it's the attaining and  
14 obtaining. It's basically you know this  
15 information like I say it's disparate,  
16 disorganized and someone's going to have to go  
17 clean it, access it, clean it. It has to be  
18 dynamic and ongoing because it changes hands and  
19 there's more being created. And so it's really  
20 keeping up with that.

21 Now if in the process of recordation



1 if it's within the interest for someone who's  
2 going to record, to make this information, to  
3 clean it advance, that's what I'm saying. It's  
4 not the distribution of it.

5 MR. BRAUNEIS: So you're saying  
6 which may soon bring us to the next big topic  
7 of conversation but that although there's a cost  
8 involved here, the cost could be distributed  
9 among all private participants simply by  
10 requiring them to do something and then it's not  
11 really the Office that has that cost, it's each  
12 private participant that has to maintain the  
13 database by submitting new information as it  
14 becomes available.

15 MR. MONTLER: Yes. Sort of  
16 acknowledging from the morning discussion is  
17 who does the heavy lifting of making sure things  
18 are accurate? Do you submit it in paper and  
19 someone at the Office goes through everything  
20 and corrects it or do you templatize it and have  
21 the individual who's inputting it be

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1 responsible for its accuracy.

2 And that's the way of scaling cost  
3 and efficiency, because that person has  
4 tremendous interest to be accurate. Right? So  
5 it's the right rationalization of economic  
6 interest to make that first. Along with that  
7 kind of thought process is what I'm suggesting.  
8 Have them be interested in having this data be  
9 clean and usable in this way.

10 MR. BRAUNEIS: Okay. But I mean I  
11 guess we're talking about a particular field  
12 here, music in which you are a constant on. But  
13 in that field then I'm wondering so are you  
14 saying if the Office had a database of musical  
15 works and sound recordings and it was easy to  
16 contribute information to that database that  
17 you think that the players would start doing  
18 that, because they would see the benefit of  
19 simply having a single repository of all this  
20 information?

21 Or are you saying you're going to

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1 have to have some kind of legal requirement or  
2 disability if you don't do it, or something, in  
3 order to push that?

4 MR. MONTLER: The latter.

5 MR. BRAUNEIS: The latter. Okay.

6 MR. MONTLER: I know it's a bit -- I'm  
7 just throwing it out there.

8 MR. BRAUNEIS: No, that's okay.  
9 We will get to that soon. But the idea of you  
10 know what kind of incentive is needed and does  
11 it need to be a kind of legal stick or could it  
12 simply be the carrot of having the information  
13 available -- that's kind of an important  
14 consideration in thinking about what we need to  
15 do to put together something like that.

16 Okay. So lastly for this  
17 conversation does the Copyright Office have a  
18 core field of expertise that should guide its  
19 role in collecting and providing copyright  
20 information about works. And how can it best  
21 interact with others who have different core

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1 fields of expertise.

2 This question I have to say is  
3 motivated in part by a comment made by Microsoft  
4 in its response to the notice of inquiry and one  
5 of the things that Microsoft commonly says is  
6 you know the Copyright Office is good at  
7 figuring out whether various legal requirements  
8 have been met.

9 So on the registration side we  
10 developed this expertise in seeing whether  
11 there's copyrightable subject matter that's not  
12 functional and making that determination. But  
13 it's not within the core competence of the  
14 Copyright Office to build search engines, for  
15 example.

16 And so the Microsoft comment ends up  
17 saying you should adopt an API-first or  
18 API-forward approach to your data because you  
19 need to just let others develop various kinds  
20 of user interfaces and to develop other uses for  
21 your data so you can concentrate on what you're

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1 good at, which is making these determinations.

2 Now I'm not sure I necessarily think  
3 that's a given but does that make sense or are  
4 there other core competencies that we can  
5 identify and say because of that, because the  
6 Office has this special role, a special  
7 competence, that should define how we interact  
8 with the rest of the information ecosystem? And  
9 it should lead us to, for example, develop and  
10 publish an application programming interface so  
11 we can let others build search engines and  
12 aggregate data from the Office records and other  
13 records and do things that the Office is not  
14 particularly well equipped to do.

15 MR. HOLM: There's an analogy here  
16 I think. I think one of the Office's key areas  
17 of expertise, I don't know if I can call it  
18 expertise, but it's an ability to collect  
19 information from a large group of stakeholders  
20 because you have this carrot of constructive  
21 notice recordation or the carrot of damages or

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1 registration, you have a way to get information  
2 from people that no one else really does.

3 So that's sort of your thing that you  
4 do equally in the same way that the real property  
5 offices -- you're legally required to record  
6 with the county recorder when you transfer real  
7 property.

8 But in the real property system,  
9 then if you want to actually trace the title you  
10 go to a private title company because they have  
11 the expertise coming up with their own database  
12 that shows you who owns what and you know making  
13 sure the title is appropriately claimed by  
14 whoever claims to be selling it.

15 I think the analogy there is the  
16 Office may not be the best party to be running  
17 interface to the information or providing  
18 useful ways to use the information. The role  
19 of the Office should be just to get the  
20 information and then give it to the private  
21 sector to use in all sort of potentially

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1 creative ways.

2 MR. BRAUNEIS: I mean what's  
3 interesting to me, one of the things is that  
4 nobody has stepped forward to play the role that  
5 a title company does with respect to real  
6 property records, which is to say you're right  
7 that what title companies do is they maintain  
8 what they call their title plant which is their  
9 own private database of all of the public  
10 information. And on a daily basis, it used to  
11 be, send people over physically to collect new  
12 records and daily update their own title plant.  
13 Now I think it's done in many jurisdictions  
14 largely electronically but you had major  
15 players, Chicago Title & Trust Company, for  
16 example, building their own private database  
17 containing real property records.

18 I don't think anybody's done that  
19 with respect to the Copyright Office records.  
20 The records are purchased and made available  
21 through Lexis and Westlaw but if any of you use

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1 the Lexis and Westlaw interfaces they aren't  
2 really any better than the Copyright Office's  
3 interfaces, and I'm not sure that Lexis and  
4 Westlaw see that as -- and I don't want to put  
5 words in their mouths, not being here, but I'm  
6 not sure they see that as sort of their core  
7 mission. They're focused on things like  
8 judicial opinions not copyright materials.

9           And so it's not like you're getting  
10 a hugely greater functionality with Lexis and  
11 Westlaw than you're getting from the Office  
12 directly. So I guess it's a curious question  
13 to me why hasn't that happened? Is it you know  
14 is it because of barriers that the Office itself  
15 has set up to gain information or is it because  
16 perhaps there's not as much value in doing that  
17 as there is in real property? And I hate to  
18 say that because gee I want to think that  
19 copyright is front and center and there's great  
20 value in producing such a title plant. But it  
21 hasn't been done. And why?

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1           Any other comments on metadata  
2 standards, Copyright Office's role in the  
3 copyright information ecosystem? Okay.

4           Well, let's move on to the last topic  
5 for the day which is additional incentives to  
6 record documents. I do have a couple of extra  
7 slides to show and data points to give you. Yes?

8           MR. MONTLER: I'm sorry but I  
9 actually do have to run but jumping back to the  
10 last thing, I mean there's two constituents.  
11 There's those who are recording you know sort  
12 of staking their copyright and letting the world  
13 know and then there are those who want to use  
14 it.

15           And I think thematically I'm hoping  
16 we can focus the Copyright Office's mandate on  
17 the latter a little bit more as well. And so  
18 I'll leave that as food for thought.

19           MR. BRAUNEIS: Okay. Let me just  
20 push back a little bit if you've got like two  
21 more minutes. And that is, most users want to

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1 engage in possibly relatively low value single  
2 transactions, right. So if you want to license  
3 a song because you're making a video that  
4 happens to have that song in the background  
5 that's going to be put on YouTube or whatever.  
6 And traditionally the Copyright Office database  
7 has been about high value transactions, not  
8 licensing but sale of the entire stream of  
9 income from that work forever. Or the pledging  
10 of that entire stream of income to secure a loan.

11 And so I wonder whether a focus on  
12 users means venturing far afield from the  
13 historical focus of the office on the sort of  
14 major high value transactions into a world of  
15 coordinating a much larger number of much lower  
16 value transactions and whether that involves an  
17 incredible paradigm shift in what the office's  
18 role would be.

19 MR. MONTLER: I think that would be  
20 -- there's a middle area as well and I think  
21 that's underserved right now so larger, I mean

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1 like what we're doing at Google and I'm sure at  
2 Microsoft and others who want to work at scale,  
3 who want to make catalogues available at scale  
4 but just don't have anywhere to go to do it.

5 And the users will benefit from that  
6 certainly, including the smaller users, but  
7 also large middle tier users. But also the  
8 copyright holders will benefit. They'll get  
9 paid more frequently. There will be like I said  
10 more respectful use. And so you'll make the  
11 original constituency that you're mentioning,  
12 the high value, they'll benefit even more from  
13 this.

14 So I think if it can be done it's a  
15 win-win and also one last point is there are  
16 governments where we're asking, you know,  
17 Google and others to talk about this issue to  
18 facilitate the kind of interaction that I'm  
19 hoping we can in the U.S. as well.

20 So it's something that, you know,  
21 with the internet and all of the types of

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1 innovation, I mean I happened to focus on music,  
2 I work on non-music content as well. But you know  
3 everyone's trying to figure out how to make this  
4 accessible in a way that's respectful of  
5 copyrights at the scale that the internet is  
6 already doing. People are behaving in a certain  
7 way. And when we acknowledge that that's how  
8 they're behaving, let's figure out how to put  
9 it within a respectful structure.

10 MR. BRAUNEIS: Okay. Great, thank  
11 you very much.

12 MR. MONTLER: Thanks a lot.

13 MR. BRAUNEIS: Okay. So additional  
14 incentives to record documents. I guess the  
15 first question that I have when it comes to  
16 discussion of additional incentives to record  
17 documents is do we need such incentives? Would  
18 they be -- that's not the first question.

19 The first question is are there  
20 significant numbers of transactions that are  
21 not being recorded such that getting some

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1 additional incentives would increase the number  
2 of transactions that are being recorded, and  
3 would provide important information that's not  
4 currently publicly available.

5 Now we see that the volume of  
6 documents recorded with respect to financing  
7 transactions has gone up, the volume of  
8 documents recorded with respect to assignments  
9 apparently has gone down. We're not sure  
10 exactly what that means, we're not sure if that  
11 means that additional incentives would somehow  
12 result in a higher number of transactions being  
13 recorded or, if so, what those would be.

14 So it does seem that introducing the  
15 incentive of you won't perfect your security  
16 interests until you record the financing  
17 document has led to a substantial increase in  
18 the number of financing documents that are being  
19 recorded.

20 It seems less provable that dropping  
21 the requirement of recording a transaction by

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1 which you obtained your title that was dropped  
2 in 1989, that that has had much of an impact on  
3 the number of assignments that are reported.

4 And it may be that, for example,  
5 because infringement lawsuits typically  
6 involve relatively high value works and because  
7 the owners of those works are being relatively  
8 careful anyways with making sure that the titles  
9 of those works are in order, that much of that  
10 went on anyways as it would go on anyways and  
11 is not affected by a particular legal  
12 requirement one way or another.

13 Here's another slide that just  
14 visually suggests that the cost of recording may  
15 have had a substantial effect on the number of  
16 documents being recorded.

17 So I've taken out of the current year  
18 financing documents since it seems to me that  
19 those are typically involved in large scale  
20 transactions and if you want to obtain your loan  
21 then you're going to pay your \$105 dollars plus

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1 extra titles when you are engaging in that  
2 transaction.

3 So for other types of recorded  
4 documents we see a pretty steep drop in the early  
5 2000s that for a couple of decades we're seeing  
6 recorded documents in this band of 12,000 to  
7 14,000 per year. And then in early 2000s we lose  
8 about a third of those documents and we're down  
9 to 8,000 a year. And that happens pretty  
10 consistently in time or correlatively in time  
11 with an increase in recording fees.

12 So if that scale on the right side  
13 is the number of documents, you've got a scale  
14 that's 100 times less in magnitude which is the  
15 scale of the cost of recording a basic document  
16 and the little green bands are the actual dollar  
17 figure and the red bands in between them are  
18 adjusted at constant 1978 dollars. And you can  
19 see that even in 1978 dollars the cost was double  
20 in about the year 2000 and tripled by the  
21 mid-2000s, which is where it stays, and that

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1 seems to coincide with this drop.

2 I'm not suggesting that's the only  
3 cause or even that we could establish a  
4 correlation between them but there's a possible  
5 correlation here. Right?

6 So the first thing I want to ask is  
7 before we get to the -- well two things. One,  
8 does anybody have any ideas about other methods  
9 by which we might inquire into more information  
10 about the question, are there substantial  
11 numbers of transactions out there that aren't  
12 being recorded, that with some kind of change  
13 in incentive, whatever it is, we might  
14 encourage more recording? So let me ask that  
15 first. It's a kind of research question.

16 MR. BORKOWSKI: Can you run a  
17 survey of some kind targeted towards either high  
18 volume filers or some of the in between, you  
19 know, middle volume filers? Maybe not the high  
20 ones because they're recording all the time it  
21 seems.



1           I think a survey of your users would  
2 probably make some sense if you want know that.

3           MR. BRAUNEIS:     Yes, I like the  
4 idea.     So actually survey users and ask  
5 questions like have you maintained the same  
6 volume, have you increased, have you decreased  
7 and, if so --

8           MR. HOLM:     If we lowered the price  
9 X amount do you think you'd record more or less?  
10 Or if the price went up substantially how much  
11 would that be a disincentive?  If we had a lovely  
12 electronic recordation system would you use it?  
13 Stuff like that.

14           MR. BRAUNEIS:     Right.     Okay.  
15 User survey. I like that.  Other thoughts about  
16 sort of how to find out whether there are  
17 transactions out there that aren't being  
18 captured?

19           MR. HOLM:     There really are  
20 transactions out there that aren't being  
21 recorded just because people have never used --

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1                   MR. BRAUNEIS: They've never been  
2 users.

3                   MR. HOLM: You know like how you  
4 capture it but some sort of industry survey. I  
5 think you also need to be careful and do it  
6 relatively specific within given industries,  
7 since depending on the market structure or  
8 publishing arrangements in a particular kind of  
9 content the answer could be very different. I  
10 imagine in the music industry the number --  
11 because the number of people who actually  
12 publish is fairly high because there are big  
13 players whereas in the photographic works  
14 industry that's probably not the case.

15                   MR. BORKOWSKI: Actually it's the  
16 motion picture industry where the recordation  
17 is very high, less so in our industry.

18                   MR. HOLM: Right. Well when  
19 you've got each single work that is of very high  
20 value that you normally wouldn't get--

21                   MR. BORKOWSKI: The more interesting

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1 question would be if you could get to the small  
2 users, I mean the small copyright owners. I  
3 don't know how you'd do that, and ask them  
4 because that's what your goal is here. I don't  
5 know how you'd get to them, but see how you could  
6 motivate them to record more.

7 MR. BRAUNEIS: Unfortunately  
8 Creative Commons couldn't make it because with  
9 that kind of system, I have no idea if they  
10 collect this information or not, but they might  
11 be a better party to get a sense of what small  
12 time users are doing.

13 MR. BORKOWSKI: That's true.

14 MS. MORALES: Generally speaking  
15 my experience has been that small users and big  
16 companies have a kind of lack of knowledge about  
17 copyrights and what the protection affords.  
18 They just do.

19 I was at a meeting a couple of weeks  
20 ago where a big company was astounded by the  
21 benefits of copyrighting. These are not

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1 unsophisticated people but for some reason and  
2 maybe it's just me taking it personally, I feel  
3 like copyrights might take a second seat to  
4 patents and trademarks in some people's minds.  
5 They know patents are big hitters and they pay  
6 dearly for a patent registration. That might  
7 have something to do with it.

8 MR. BRAUNEIS: And without  
9 identifying the clients you were talking to, is  
10 it fair to say that they might be in the software  
11 or other technology business and not be music  
12 and motion picture or publishing business?

13 MS. MORALES: It was not a client  
14 but yes, exactly.

15 MS. MADYUN: I have to second that.

16 MS. MORALES: We encourage the  
17 implementation of copyright programs, part of  
18 which consist of registrations, recordatons and  
19 DMCA Designation of Agents. Companies are more  
20 aware of designations But registering and  
21 recording does not seem to be something that a

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1 lot of people are in tune with.

2 Many companies are surprised at the  
3 relatively low cost and they're surprised at the  
4 benefits.

5 So I don't know how you reach out to  
6 them. I don't know how you survey them. George  
7 asked how you reach people that are not eCO  
8 users, how do you do that? Is there any link  
9 to the amount of registrations done to the  
10 amount of recordations done?

11 MR. BRAUNEIS: That question was  
12 asked yesterday and the answer is that that's  
13 kind of the next thing I want to. But I have  
14 not correlated, over time, changes in  
15 registrations with changes in recordations to  
16 see whether you could find such a correlation.

17 Obviously you'd have to think about  
18 sort of lag times too, right, because the year  
19 you register something may not be the year that  
20 you engage in the transaction with respect to  
21 it and there might on average be a certain lag

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1 time between registration and starting to see  
2 a bump in transactions with respect to those  
3 registered works.

4 But it will be very useful to get  
5 that information and thanks for motivating me  
6 even more to do that and to do that correlation.

7 MS. MORALES: I was just thinking  
8 that there are a lot more registrations, we see  
9 a dramatic increase in your chart since eCO went  
10 live, which was 2007 I think. Maybe at the end  
11 of an application a reminder to record your  
12 documents pertaining to this registration,  
13 something like that.

14 MR. BRAUNEIS: Yes, I kind of like  
15 that. Right. It's like of like advertising  
16 you've got to sort of get the idea before the  
17 consumer many times before it sinks in.

18 MR. BORKOWSKI: Well that's  
19 interesting; you could send Circular 12 along  
20 with the certificate of registration --

21 MR. BRAUNEIS: Right. Here's your

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1 certificate of registration and by the way, in  
2 case you're engaged in a transaction with  
3 respect to this newly registered work, you  
4 should consider recording it.

5 All right. Now, are there any other  
6 services or changes besides generally, lowering  
7 the cost of recordation and making it easier to  
8 do through electronic recordation? Are there  
9 any other things that you think would be an  
10 incentive for people to use the recordation  
11 system?

12 Susanne, you mentioned it would be  
13 useful to be able to access documents and print  
14 them out. And there's one comment in our answer  
15 to our NOI that says you know we would actually  
16 record more if we could access those documents  
17 at any time because we would treat it as kind  
18 of our own private cloud server with respect to  
19 all the documents.

20 And so you know one possibility is  
21 that gee by opening up the availability to get

1 those recorded documents over the internet, at  
2 least to those who have submitted them, we might  
3 actually encourage more recordation. So along  
4 those lines are there any other sorts of  
5 services we might provide that people would say,  
6 well if you did that then I might record more?

7 MR. BORKOWSKI: I don't know about  
8 services but I wonder if you could offer  
9 potentially some financial incentives. Maybe  
10 the more somebody records the less they end up  
11 paying somehow, whether it's a series of free  
12 recordations after a certain number or you get  
13 past this amount then you pay less. Or you  
14 purchase a book of recordations. Well look a lot  
15 of different industries have these types of  
16 incentives. I don't know that the really large  
17 filers would care to save a few bucks here and  
18 there but maybe they would. It's just something  
19 potentially to think about.

20 MS. MORALES:

21 MS. MORALES: Well, the PTO has a



1 small entity/large entity option in the fee  
2 worksheet where you can pay less of a fee if  
3 you're a small or micro entity as opposed to a  
4 large entity. You click one or the other and  
5 it lowers your fee if you're smaller or micro.

6 MR. BRAUNEIS: Right. So we could  
7 introduce various kinds of price  
8 discrimination, as it were, whether it's  
9 between a small or large entity or some other  
10 kinds of ways to differentiate between, you  
11 know, essentially standing for large value  
12 transactions versus small value transactions.  
13 Somebody who is recording a document involving  
14 the transfer of a motion picture that's worth  
15 \$500 million dollars is not really going to  
16 blink an eye at paying \$100 or \$200 or \$300  
17 dollars. Someone who's recording a document  
18 that is with respect to a \$500 dollar  
19 transaction is probably not going to record it  
20 if they have to give up, you know, a fifth of  
21 their revenue just to get the transaction

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1 recorded.

2 MR. BORKOWSKI: And that also would  
3 be in some of the comments that Creative Commons  
4 filed. Their point was that a lot of our people  
5 don't come -- or use our licenses -- don't  
6 register because it's too expensive. And those  
7 are truly small users; I mean it's like one or  
8 two with them. So yes the PTO --

9 MR. HOLM: The PTO actually offers  
10 recordation free of charge to the user.

11 MR. BRAUNEIS: For patents, not for  
12 trademarks.

13 MR. HOLM: That's right.

14 MR. BRAUNEIS: But they have a lot  
15 more money than you do.

16 MR. HOLM: That probably true,  
17 right.

18 MR. BRAUNEIS: I guess the question  
19 would be on what basis would they -- you know  
20 we could do large versus small entity, I don't  
21 know what kind of pushback from certain large

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1 entities about that. But if anyone not just now  
2 but in the future has any ideas about how to  
3 accomplish that graduated fee scheme, that  
4 would be very helpful.

5 Okay. So let's go on to the  
6 discussion of various additional legal  
7 incentives to record. And here by legal  
8 incentives I mean certain kinds of disabilities  
9 that would attach if you don't record or  
10 limitations on remedies and so forth.

11 Right now the current requirement is  
12 that if you're not the initial owner you have  
13 to provide a so-called transfer statement and  
14 that's simply a statement that you obtained  
15 copyright either by written agreement or by  
16 inheritance or other. And just to let you know  
17 how that's currently being used, of 16.7 million  
18 registrations in the catalogue about 3 percent,  
19 about 500,000, contain such transfer  
20 statements.

21 Now I'm not sure whether that means

1 that the others are all the initial owners of  
2 copyright who are registering or whether some  
3 people have simply failed to conform to this  
4 request but we don't have a lot of transfer  
5 statements and this might be a limit on what  
6 transitional incentives could do. In other  
7 words, we would only get something less than  
8 this number of documents recorded if we  
9 implemented such a requirement.

10 We could also reinstitute the  
11 requirement that a transfer to the current  
12 copyright owner be recorded before filing an  
13 infringement law suit. So undo the Berne  
14 Convention Implementation Act.

15 We could condition additional  
16 remedies such as tax advantages or attorney's  
17 fees on the recordation of the transfer to the  
18 current copyright owner the way that now damages  
19 or attorney's fees are conditioned on  
20 registration of their work before the  
21 commencement of infringement.

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1 I could keep on going talking about  
2 various incentives that are proposed but maybe  
3 we can start thinking about those before we get  
4 to the others. Is this a good idea? Susanne  
5 says no.

6 MS. MORALES: No. I mean  
7 copyright owners are already scurrying around  
8 trying to register what's been infringed, so if  
9 you also make them record, I don't know, it's  
10 one more hurdle. Which they should, record, but  
11 making it obligatory before the commencement of  
12 infringement seems burdensome.

13 MR. BORKOWSKI: These are -- oh I'm  
14 sorry.

15 MS. MORALES: No, that's all.

16 MR. BORKOWSKI: I mean these are  
17 valuable rights and the goal should be that a  
18 copyright owner should be able to protect that  
19 copyright with a minimal amount of burden.

20 And we already have the registration  
21 requirement which no other country in the world

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1 has, and those copyright systems function just  
2 fine. Imposing yet another obstacle that would  
3 either serve as a prerequisite or as a  
4 limitation on extremely effective remedies  
5 which are frequently the only remedies that are  
6 available to copyright owners is a bad idea.

7 It just strikes me as going  
8 backwards. It's a fundamental fact that the  
9 piracy problems, especially on the internet,  
10 especially for my industry and related  
11 industries, is astronomical. And what we need  
12 is better tools to enforce our copyrights, not  
13 being constantly undermined in our attempt to  
14 do that.

15 And it will violate Berne  
16 compliance, it just does. I mean Congress  
17 removed it in 1989 for that very reason and there  
18 is Supreme Court case law that says we try to  
19 comply as much as possible with our foreign  
20 treaty obligations.

21 And I say there's no good reason that

1 we should be at odds with those obligations by  
2 putting additional formalities. I really do  
3 think that's the wrong way to go.

4 And it's also a trap for the unwary,  
5 the unsophisticated copyright owners. They're  
6 the ones who are going to be screwed by this,  
7 much more so than the sophisticated ones.

8 MS. KOSSOWICZ: Yes, I'd just like  
9 to say that I agree with what George said. It  
10 just feels like there's more and more barriers  
11 to you know protecting one's copyright  
12 interests and there are so many things that  
13 we're trying to juggle as it is, you know,  
14 between the piracy issues and digitization and  
15 this and that. And this is just one other thing  
16 to have to deal with and it just seems crazy.

17 MR. HOLM: Since Kevin isn't here  
18 I guess I'll --

19 MR. BRAUNEIS: This is an opportune  
20 time.

21 MR. HOLM: So to start with,

1 depending on how it's implemented, Berne  
2 compliance is not necessarily an issue. I think  
3 the problem would be is if you imposed  
4 requirements on the original owner rather than  
5 subsequent owners, so if you require for  
6 subsequent owners to file infringement law  
7 suits that they have to record or for subsequent  
8 owners you get statutory damages or for what I  
9 propose is for transfer to be valid -- those  
10 restrictions on the subsequent owner would not  
11 violate Berne because Berne does not  
12 particularly concern itself about ownership.  
13 Berne only requires that the work be protected  
14 for the statutory, the minimum terms. And that  
15 the owners of the work, the original owners of  
16 the work be allowed to exercise all the rights  
17 associated with the work. And statutory damages  
18 is not actually one of them because most  
19 European countries do not have statutory  
20 damages.

21 I mean there are two other points.



1 One is that Berne only applies to foreign works,  
2 not that it's necessarily a good idea if you  
3 treat them differently but legally you can. And  
4 Berne almost certainly does not -- it's not  
5 totally clear because it never came up before  
6 the panels but Berne doesn't restrict  
7 restrictions on ownership, right?

8 So I mean, in Germany copyright is  
9 inalienable, you cannot transfer it. In Spain,  
10 you cannot transfer rights that don't currently  
11 exist; you can't transfer a right, rights in all  
12 mediums including any that may be developed --  
13 that transfer would be invalid in Spain.

14 So the extent that the requirement  
15 falls on subsequent owners, I don't think that's  
16 a Berne compliance problem. It may be a great  
17 idea but Berne is not at issue. Again, this is  
18 not totally clear but Berne probably does not  
19 -- again this not totally clear, the wording is  
20 not 100 percent clear and there's never been  
21 adjudication on it so it could be argued

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1 otherwise but I think that it wouldn't be a Berne  
2 problem.

3 MR. BORKOWSKI: Well I agree with  
4 you that it's certainly true. I mean it's  
5 unclear as to how they would come up with the  
6 subsequent owners. I think it's fundamentally  
7 unfair to treat U.S. copyright owners as  
8 essentially in a worse category than you would  
9 foreign copyright owners. I just don't see any  
10 public policy benefit for that.

11 And -- I forget the next point.

12 MR. HOLM: Inalienability and  
13 those kinds of restrictions?

14 MR. BORKOWSKI: No, it doesn't  
15 matter. Anyway it might come to me. But I still  
16 want to circle back to what is the great public  
17 benefit that overrides the ability of a  
18 copyright owner to protect his or her copyright.  
19 And I just don't see that.

20 I think it's a way of limiting rights  
21 that are not limited in terms of -- you know the

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1 Constitution doesn't provide for formalities.  
2 Of course Congress can impose some to some  
3 extent but this is a right that's considered  
4 extremely valuable and I don't see the  
5 countervailing public benefit of requiring even  
6 the most immediately previous document in the  
7 transfer to be recorded because the balance is  
8 that if you don't do it right you lose valuable  
9 rights.

10 And I think that one is -- I just  
11 think that tradeoff I should say is not  
12 acceptable. It just isn't because you're losing  
13 valuable rights. You're depriving people of  
14 rights that they actually should be able to  
15 exercise.

16 MS. KOSSOWICZ: Nobody would be  
17 buying or selling catalogues.

18 MR. BRAUNEIS: I think to some  
19 extent you're asking what's the public benefit.  
20 And that brings me back to my first question,  
21 which I don't know the answer to, which is you

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1 know is there a problem out there of large  
2 numbers of works where we don't know the  
3 copyright ownership of them because the  
4 documents haven't been reported and there would  
5 be a great public benefit in knowing that so that  
6 further transactions could take place with  
7 regard to those works.

8 We do know that we have some  
9 so-called orphan works problem. On the other  
10 hand, those typically involve works that have  
11 been in existence for quite some time and I don't  
12 know the extent to which implementing  
13 additional requirement recordation at this late  
14 date would address the problem of not knowing  
15 what happened 50 years ago.

16 So one of the questions I'm  
17 interested in is well, to what extent is there  
18 an information problem out there because  
19 transactions are not being recorded?

20 MR. BORKOWSKI: I don't think  
21 that's a vast problem. I think it is an issue,

1           however one that I know the Copyright Office has  
2           tried to address in the past with its report and  
3           I know potential legislation has been debated.  
4           And that's probably the best way to deal with  
5           it.

6                         But it's a minuscule problem in the  
7           overall scheme of things in terms of knowledge  
8           as to who owns it. In terms of the large scale  
9           copyright owners like my clients and Tegan's  
10          company, people know who owns that stuff.  
11          Everybody knows who owns the rights to Eminem  
12          and who to contact.

13                        So in terms of at least my industry  
14          it isn't that difficult to find out who owns it  
15          if you want to use it.

16                        The same thing is true with the music  
17          publishers. I mean they've got online  
18          databases you could access just to find out how  
19          to license, if you want to license a composition  
20          and what have you.

21                        So I don't see a huge information

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1 deficit. It's not going to be perfect, of  
2 course not; it's never going to be perfect. I  
3 just don't see it being such a problem that you  
4 would further hobble copyright owners in the  
5 ability to enforce their rights.

6 MS. KOSSOWICZ: And as a record  
7 label you know we have to obtain licenses from  
8 publishers as well. I mean, it is time  
9 consuming but we use the resources. We go to  
10 ASCAP, we go to BMI, we use SESAC, we go to HFA,  
11 you know, we ask co-publishers and we're able  
12 to get that information.

13 Is it time consuming? Yes, but I  
14 don't think that in our research we would really  
15 think to go to the Copyright Office first to  
16 figure out the answer to these things. There are  
17 other places that I think one would first go to  
18 to get the most updated information because it's  
19 the sources that provide royalties that have the  
20 most current information, usually because  
21 that's where people would tend to update the

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1 information first.

2 MR. BRAUNEIS: And are there cases  
3 in which you end up saying, you know what, we  
4 either don't know who the owner of this work is  
5 or we can't locate that owner and now what do  
6 we do?

7 MS. KOSSOWICZ: Very rarely. Very  
8 rarely.

9 MR. HOLM: There are two comments.  
10 One is I think, and I can't speak to what he was  
11 going to say but Kevin seemed to think there were  
12 problems on the distribution, that they were  
13 having trouble getting information about  
14 licensing catalogues. I don't know what that  
15 issue was but it does seem like there are  
16 potentially issues.

17 MS. KOSSOWICZ: Well there's no  
18 easy way to do it. It is labor intensive.

19 MR. HOLM: The other is that music  
20 I think is a very exceptional case in some ways.  
21 There is a lot of inter-ownership. I think

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1 that's subjectively true. That's not the case  
2 in a lot of other copyrighted works, especially  
3 photos and even obviously textual works.

4 And I think Mary and the other  
5 librarians could talk about this, but there are  
6 serious problems in those industries with  
7 finding out who owns the work and originates  
8 use of the work and there are uses that are not  
9 happening as a result.

10 I don't know and that would be a  
11 really hard question to answer whether the value  
12 of those unused works outweighs the loss of  
13 value in imposing additional requirements on  
14 copyright owners.

15 That's maybe not a question that we  
16 could answer or, if it is, it's one that's very  
17 difficult to answer.

18 MR. BORKOWSKI: It's probably a  
19 policy decision for Congress ultimately, I  
20 think.

21 MR. BRAUNEIS: Right, to the extent



1 that we could inform Congress one way or other  
2 that would be a good thing, yes.

3 MR. BORKOWSKI: Well you know our  
4 industry's feelings.

5 MR. BRAUNEIS: Yes. Right. Any  
6 comments? Mary has moved away from the  
7 participants' table.

8 MS. MINOW: Oh it's the power--

9 MR. BRAUNEIS: Oh, okay. It's a  
10 power issue. That's okay.

11 MS. MINOW: But yes I appreciated  
12 your saying that because in the library world  
13 we can't find the owners. But, I don't know, you  
14 talked about going backwards and that's where  
15 all of the stuff is going backwards.

16 MR. BRAUNEIS: Right. So your  
17 chiming in with the idea that it really is  
18 possibly the lack of registration or  
19 recordation many years ago that's the problem?

20 MS. MINOW: Right, and additional  
21 registration requirements, yes.

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1                   MR. BRAUNEIS:    That might not be  
2                   solved by an imposition of recordation  
3                   requirements today for new transactions.

4                   MR. HOLM:    It's worth pointing out  
5                   that you probably just didn't have to record.

6                   MR. BRAUNEIS:   Well, when you say  
7                   have to.    Recordation provides the same kind  
8                   of constructive notice as it does in copyright  
9                   and you could even classify the copyright  
10                  statute as providing a notice system which is  
11                  one of the systems that's in place in real  
12                  property.   But there's no civil or criminal  
13                  penalty here.   If you don't record you're just  
14                  placed at risk of losing your interest in the  
15                  property and I think that you're placed, in  
16                  theory, in the same kind of risk in the copyright  
17                  recording system.

18                  So if I granted, I assigned an  
19                  interest in a work that I had written to you and  
20                  then I assigned the same interest to George and  
21                  so we had a conflict between those two

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1 assignments, absent a recording statute, the  
2 first in time would always win. Right? And the  
3 recording statute adjusts that in order to try  
4 to build a public record of ownership and  
5 transfers in copyright.

6 But I think, at least in that  
7 respect, the real property and copyright  
8 systems are co-equal. I am interested -- but  
9 I don't know the answer -- in the fact that there  
10 does seem to be less litigation about copyright  
11 recording than there is about real property  
12 recording.

13 And maybe that's just because the  
14 number of transactions is much fewer because the  
15 average value of those transactions is less.  
16 But there is constant litigation about real  
17 property recording and there's very, very  
18 little about copyright recording. So there's  
19 a great difference there in the amount of case  
20 law that's available of recording and  
21 copyright.

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1           Well, let me just throw the last two  
2 proposals out there for incentives. A proposal  
3 has been forwarded to allow judges to consider  
4 diligent recordation and the factor of granting  
5 injunctive relief and so this is building on the  
6 idea that when granting injunctive relief  
7 courts can take into consideration all  
8 equitable factors and whether an owner has  
9 diligently recorded a transfer might be taken  
10 into account.

11           And then lastly a requirement that  
12 transfers of copyright ownership be recorded in  
13 the same way that Section 204 of the Copyright  
14 Act now requires a writing signed by the  
15 grantor. Section 204 says that a transfer of  
16 copyright ownership will not be enforced if it  
17 is not in writing. And judicial interpretation  
18 of that has ended up with the result that granted  
19 exclusive rights would be then treated as a  
20 non-exclusive license.

21           We could do the same thing with

1 respect to recordation. We could say if the  
2 transfer of copyright ownership is not  
3 recorded, then it will be treated not as a grant  
4 of exclusive rights but as, at most, a  
5 non-exclusive license between the grantor and  
6 the grantee. Thoughts about that proposal?

7 MR. BORKOWSKI: Well on the first  
8 one before we get to sort of the injunctive one,  
9 there's no need to tinker with and make it unique  
10 in the copyright world as a standard for  
11 injunctive relief because the standard for  
12 injunctive relief is about the same everywhere.  
13 And one of the factors that the judge has to take  
14 into account is the balance of the equities and  
15 also the public interest.

16 And so, if the defendant feels that  
17 there wasn't diligent recordation on the side  
18 of the plaintiff and that the defendant is  
19 prejudiced in that way or something is  
20 fundamentally unfair, she'll be able to make  
21 that argument to the judge and the judge will

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1 take into account.

2 There's no need for a different  
3 preliminary injunction or TRO standard in the  
4 Copyright Act because all of these equities are  
5 taken into account in the normal analysis.

6 With respect to this one I'm still  
7 trying to wrap my head around since yesterday.  
8 It completely up-ends the intention and the  
9 expectations of the parties after the fact and  
10 it essentially undermines I think the basic  
11 contract system that we have here.

12 Look, you have a situation in which  
13 the grantor grants let's say an exclusive right.  
14 The grantee then takes that, pays valuable  
15 consideration for that right, would have paid  
16 far less for a non-exclusive license and then  
17 all of a sudden by the operation of the law is  
18 deprived, essentially deprived of that valuable  
19 property right.

20 The grantor, who when he grants an  
21 exclusive right, is expecting the grantee to

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1 enforce that right and the grantee has the right  
2 to enforce that right in litigation. That's not  
3 true for a non-exclusive license.

4 And then from the grantee's  
5 perspective, at that point why can't the grantor  
6 turn around and start licensing other people  
7 because hey, you know, since that's not  
8 exclusive I could do that.

9 And that also up-ends the  
10 expectations of the parties. This is a morass  
11 in my view. I just don't see how this could work  
12 under any manifestation.

13 MR. BRAUNEIS: All right. To push  
14 back and play devil's advocate a little bit, let  
15 me say that the statute defrauds itself has some  
16 of the same effect, that is to say it up-ends  
17 the intent of the parties. We haven't always  
18 had statutes of frauds and at the time they were  
19 first introduced and people may not have been  
20 as aware of them as they are now, there was  
21 probably some of the same reaction. Like wait

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1 a minute, we had a handshake deal like we always  
2 had handshake deals in the past forever and now  
3 you're telling us that that handshake, after the  
4 fact, you're telling us that that handshake is  
5 no good and that we need to have a writing.

6 There's always some point at which  
7 you need to adjust expectations and publicize  
8 that adjustment of expectations. And once those  
9 expectations are widely publicized and they  
10 become known, then it becomes the new practice  
11 in the way that writing is the established  
12 practice, but may not have been in the past. I  
13 don't know how good that argument is.

14 MR. BORKOWSKI: And that's  
15 certainly theoretically true. And I'll go back  
16 to ultimately I don't understand the need for  
17 these additional formalities and I don't see the  
18 countervailing public benefit that would come  
19 from something like this.

20 MR. HOLM: One thing to think about  
21 when we're considering adding more formalities



1 is that part of the burden is intimately linked  
2 to the practice of the Copyright Office and the  
3 fee they charge.

4 So, hypothetically, if the  
5 Copyright Office charged \$10,000 dollars as a  
6 recordation fee, this would be an incredibly  
7 high burden. In a world where the Copyright  
8 Office offers free recordation this is much less  
9 of a burden.

10 So the burden is not independent of  
11 what the Copyright Office does. You can make  
12 it more or less of a burden depending on your  
13 other operations.

14 MR. BORKOWSKI: Right, but the  
15 burden is obviously not just financial to them.  
16 There are transactional costs. The remitter,  
17 who would be making these filings whether it's  
18 record keeping or whether it's something else.  
19 So those costs also have to be taken into  
20 account. It's not just purely how much does it  
21 cost to record. There's more to it than that.

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1                   MR. HOLM:    And that's something the  
2 Copyright Office has control over, too, right?  
3 Like a paper system versus an electronic system  
4 imposes different costs on a company that has  
5 to do recordation.

6                   MR. BORKOWSKI:   Right.  But not so  
7 much in terms of record keeping I think.

8                   MR. HOLM:    But it's sort of the sum  
9 of the internal cost and labor and IT and so on  
10 that are necessary to do the work.  The actual  
11 fee that's paid, the benefits that are provided  
12 by recording, is sort of the net sum of all of  
13 those that will probably either get recordation  
14 to go up or down with respect to transactions.

15                   MR. BRAUNEIS:   And we should also  
16 consider, I mean as you point out to the extent  
17 that you're burdening rights holders there are  
18 probably going to be transactions that  
19 otherwise would have happened that would not.

20                                So if this is in fact a severe burden  
21 to transferring copyright or granting exclusive

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1 rights, then there are transfers that would have  
2 happened otherwise that's won't happen, and  
3 that's not really a desirable outcome either.

4 MR. BORKOWSKI: Right. Again,  
5 particularly with respect to small value  
6 transactions where people say, gee, I'm only  
7 going to get \$500 dollars from this anyways and  
8 if I have to spend so much just to record the  
9 darn thing in order for it to be valid at all,  
10 then I just won't do it. And if that impedes  
11 the transfer to a user who will actually  
12 beneficially use that copyright, that's not a  
13 good thing in my view.

14 MR. BRAUNEIS: Other comments or  
15 thoughts on any of the topic that we've covered  
16 today? Closing pieces of wisdom?

17 Okay. Well if not then I think I'm  
18 going to declare this roundtable to formally be  
19 closed. And we'll stick around a little bit to  
20 exchange business cards and the like.

21 And again I want to thank Stanford

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1 for hosting this roundtable. We really  
2 appreciate the provision of facilities and food  
3 and drink to facilitate our presence here.

4 And A/V. And I want to thank all the  
5 participants for coming and contributing and  
6 making us aware of issues and problems and  
7 possible solutions. This has been really  
8 helpful and do view this not as the end of a  
9 discussion but the beginning. Keep in touch and  
10 we appreciate it very much.

11 And the next roundtable is this  
12 Friday, March 28th, at Columbia Law School at  
13 9 a.m. As soon as we fly there.

14 (Whereupon, the Roundtable  
15 discussion closed went off the record at 3:00  
16 p.m.)

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