

Statement of Maria Strong
Acting United States Register of Copyrights
Before the
Subcommittee on the Legislative Branch
Committee on Appropriations
United States Senate
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Madam Chairman, Ranking Member Murphy, and Members of the Subcommittee:

Thank you for the opportunity to submit the United States Copyright Office's fiscal 2021 budget request.

The Copyright Office has had an exceptionally busy year and has made significant progress on a number of fronts. As the main federal entity charged with administering the Copyright Act, the Office has many responsibilities, including overseeing the national copyright registration and recordation systems, advising Congress on copyright policy and legislation, working with the Department of Justice and other federal agencies on copyright litigation, conducting administrative and regulatory activity with respect to statutory copyright licenses (including managing over \$1 billion in royalties from compulsory licenses), and educating the public about copyright law. We do all of this work with a lean staff of less than 450 employees who are dedicated to copyright's Constitutional mission of "promot[ing] the progress of science and useful arts."¹

Summary of the Past Year

This past year, we were successful on a number of fronts. We released the 2019–2023 Strategic Plan, *Copyright: The Engine of Free Expression*, which focuses on information technology modernization, optimizing business processes, organizational change management, education and engagement, impartial expertise on copyright law and policy, and measuring success. We were able to make significant progress on these focus areas. For example, regarding information technology, fiscal 2019 marked the first year Congress appropriated funds specifically for IT modernization, which allowed the Copyright Office and the Library of Congress Office of the Chief Information Officer (OCIO) to continue laying the groundwork for a modernized information technology system. The Office worked closely with OCIO, providing business information that OCIO, which undertakes the development work, uses to develop the system. Using this business information, OCIO finished development on the first phase of a

¹ U.S. CONST. art. I, § 8, cl. 8.

recordation pilot which launched on April 27 and worked on user interface development for the new registration system, among other things.

The Office also kicked off business process reengineering (BPR) and organizational change management (OCM) activities. These efforts will streamline and improve Office workflows and help build and maintain a workforce that is efficient, adaptable, and inclusive. This work complements IT modernization, making workstreams more efficient and productive.

Since the Office's budget testimony last year, the Office has engaged in a number of outreach activities to provide accurate and unbiased information on copyright law. The Office developed a comprehensive communications strategy and conducted significant outreach, including to educate the public and stakeholders about implementing the landmark Music Modernization Act (MMA).² In fiscal 2019, the Office also answered over 100,000 public inquiries regarding copyright, helping people understand copyright and the Office's services.

Additionally, the Office continued its longstanding role of providing expert legal and policy advice. The Office recently released one policy study and continues work on several others. The Office also continued to provide legal advice and assistance across the government regarding complex and emerging areas of copyright law and policy, including Supreme Court and appellate litigation and international matters. Further, in the last year, the Office promulgated a number of regulations to implement various provisions of the MMA, as well as multiple rules to streamline practices for registration and recordation, explore new group registration options, and facilitate increased participation in the registration system.

We have achieved much this past year in administering the national registration and recordation systems. In fiscal 2019, the Office issued more than 547,000 registrations involving millions of works and recorded 12,550 documents containing 457,731 titles. The Office also received more than 700,000 deposited works; of those that were transferred to Library collections, they amounted to a total value of more than \$52 million. As we testified in mid-2019, the Office had eliminated the registration backlog. The registration division has been steadily working to reduce the number of workable claims on hand; the workable claims on hand are now approximately 77,000 claims. Indeed, in fiscal 2019 the Office decreased the overall average processing time for review of copyright registration claims from seven months to four. In the first half of fiscal 2020, we are pleased to report that the Office has been able to further reduce processing times to an average of 3.2 months – an overall reduction of over 50% in just eighteen months.

² Orrin G. Hatch–Bob Goodlatte Music Modernization Act, Pub. L. No. 115-264, 132 Stat. 3676 (2018).

Recent Events due to the Novel Coronavirus (COVID-19)

While the first half of fiscal 2020 has brought unique challenges for the Office, our staff has risen to the challenge. The Office implemented its pandemic response plan in March 2020, successfully transitioning 98% of the Office's staff to full or partial telework within just a few weeks. The bulk of the Office's operations have been largely unaffected by this transition, including all legal and policy work, registration processing of fully electronic claims, and ongoing modernization activities. Although processing of physical materials has been suspended since March 26 in accordance with our pandemic plan, the Office has issued a new rule that permits the Office to offer an electronic option for some services that previously required paper submission. We have also adjusted practices to receive certain additional applications and submissions via email during pandemic operations. To further relieve constraints imposed by the pandemic on users of Office services, the Acting Register is exercising the authority recently granted by Congress in the 2020 Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), including by issuing two notices that temporarily adjust certain timing provisions and monitoring operations to see if further measures are needed. The Office is closely monitoring the impact of COVID-19 on our fee receipts. While there has not yet been a significant shortfall of receipts, the Office appreciates the Committee's support if funding flexibility is needed to adjust to disruptions in operations or to address anticipated increased workloads when mail service is resumed.

In sum, the Office is proud to have made so much progress this year and is honored to serve the country and the copyright ecosystem. The Office is grateful for this opportunity to present a budget request that would enable this important work to continue in fiscal 2021.

FUNDING AND OVERALL FISCAL 2021 BUDGET REQUEST

The recurring financial support for the Office's modernization efforts, initially funded as part of the fiscal 2019 budget, continues for fiscal 2021, and the Office is pleased to provide an update on a number of initiatives that are now fully underway. In addition to ongoing modernization, the Office and the Copyright Royalty Judges (CRJ) are fully engaged in addressing new responsibilities under the MMA. To meet the new MMA mandates, the Office is requesting \$1.6 million in additional funding for fiscal 2021, primarily for Office and CRJ staffing as described further below.

The Copyright Office's overall budget is composed of three separate budgets or program areas:

- (1) *Basic Budget*, which funds most of the Office's core operations, including the majority of payroll-related expenses. Historically the basic budget has been composed of a combination of appropriated dollars and authority to spend fee revenue, with fees constituting a majority of this funding (generally in the range of 50% to 67%);

- (2) *Licensing Budget*, which is derived completely from licensing royalty collections otherwise payable to copyright owners and filing fees paid by cable and satellite licensees pursuant to statutory licenses administered by the Office; and
- (3) *Copyright Royalty Judges Budget*. Although the CRJ program is not a part of the Office, the Office provides it with budget formulation and execution support on behalf of the Library of Congress.

For fiscal 2021, the Office requests a combined total of \$94.891 million in funding and 435 FTEs, of which \$44.8 million would be funded through offsetting collections of fees collected in fiscal 2020 and in prior years.

The Office's fiscal 2021 requests are:

- *Basic Budget*: \$85.8 million and 403 FTEs. The fiscal 2021 budget request requests funding for its Basic Budget from \$38.0 million in offsetting fee collections (44%) and \$47.8 million (56%) in appropriated dollars. The request includes mandatory pay-related and price level increases of \$3.2 million and a program increase of \$0.7 million for staffing and public outreach and education activities to implement the MMA. The request also includes a reduction in the amount of \$2.1 million for non-recurring costs that were associated with program increases that involved the Office's warehouse move and contract support for the Office of Public Records and Repositories. The fiscal 2021 submission includes a request to shift base funding from offsetting fee collections to appropriations due to a projected, continued negative fee impact resulting from the enactment of the MMA. The MMA made significant changes to the section 115 compulsory license, and in accordance with the new law, the Office no longer accepts certain section 115 filings. This change resulted in a fiscal 2019 reduction in fee collections of \$4.2 million that is expected to be permanent. The Office adjusted its fee schedule effective March 20, 2020, to increase certain fees while being mindful of the purposes of the national copyright system. However, as noted in its report to Congress, *Proposed Schedule and Analysis of Copyright Fees to Go Into Effect in Spring 2020* (submitted October 16, 2019),³ the Office did not attempt to recoup any loss due to the MMA through fees because doing so would increase fees beyond those proposed in the 2018 Notice of Proposed Rulemaking, potentially significantly reducing the overall number of filings, thus undermining the copyright system overall.

³ U.S. COPYRIGHT OFFICE, PROPOSED SCHEDULE AND ANALYSIS OF COPYRIGHT FEES TO GO INTO EFFECT IN SPRING 2020 (Oct. 16, 2019), at <https://www.copyright.gov/rulemaking/feestudy2018/proposed-fee-schedule.pdf>.

- *Licensing Division Budget:* \$6.2 million and 23 FTEs, all of which are funded via filing and royalty fees. The requested increase includes mandatory pay-related and price level increases of \$0.3 million.
- *Copyright Royalty Judges Budget:* \$2.9 million and 9 FTEs, with \$0.1 million to support mandatory pay-related and price level increases. Included in the request is a program increase of \$0.9 million to support 3 FTEs and other costs associated with implementing the MMA and other increased workloads. Of the total, royalties and participation fees offset \$0.5 million (for non-personnel-related expenses). The remainder, \$2.3 million in appropriated dollars, is to cover the personnel-related expenses of the judges and their staff.

FOCUS OF FISCAL 2021 ACTIVITIES

The Copyright Office’s fiscal 2021 funding request provides resources necessary to continue the progress already started towards the Office’s strategic goals. As mentioned above, the Office’s strategic plan includes focus areas such as expert law and policy advice and modernizing information technology and business process, among other things. To advance these goals, the Office is seeking specific funding regarding: (1) meeting the mandates of the MMA; (2) modernization of the Office’s IT systems and applications, including the Office’s historical records initiative; and (3) modernization of the Office’s business environment and practices so that the Office’s core registration and recordation services are delivered as efficiently as possible. In late March, we updated our modernization webpage⁴ to reflect ongoing work for both IT and non-IT initiatives.

Music Modernization Act (MMA)

The enactment of the MMA assigned new responsibilities to both the Copyright Office and the CRJ. The MMA requires the Register of Copyrights to “engage in public outreach and educational activities” regarding the amendments made to section 115 of title 17, in addition to a number of rulemakings.⁵ Specifically, the Register must engage in public education and other outreach activities to inform interested members of the public and songwriters about the process by which a copyright owner may claim ownership of musical works through the “mechanical licensing collective” (MLC), which will administer a blanket licensing system for digital music providers to make and distribute digital phonorecord deliveries (*e.g.*, permanent downloads, interactive streams). The Office has planned a number of public outreach programs

⁴ See <https://www.copyright.gov/copyright-modernization/>.

⁵ Orrin G. Hatch–Bob Goodlatte Music Modernization Act, Pub. L. No. 115-264, § 102(e), 132 Stat. 3676, 3722 (2018).

to address the requirements of the MMA, and is requesting a program increase to include three additional FTEs to ensure these efforts are fully resourced.

The MMA also assigned additional responsibilities to the CRJ. In the MMA, Congress assigned to the CRJ the duty to ascertain the reasonableness of the MLC's operating budget and the allocation of contributions to that budget by the various licensees or licensee representative groups.⁶ Previously, under section 802(b) of the Copyright Act, the number of support staff authorized to support the CRJ was capped at three. A proviso in the fiscal 2020 Further Consolidated Appropriations Act permanently removed the staffing cap, allowing for the new hires requested in fiscal 2021.⁷

Copyright IT Modernization

Modernization of the Copyright Office's aging information technology systems and applications continues to be a top priority. The Office has a number of accomplishments to report as we are in the second year of our five-year modernization plan. OCIO is working alongside the Office on software development activities, which are progressing across multiple programmatic areas—including registration, recordation, statutory licensing, and access to public records. This calendar year, we are collaborating on several components of the new Enterprise Copyright System (ECS), including the gathering of public feedback. The first effort involves the public launch of a limited pilot program for our new recordation system, which will eventually replace our current paper-based system. We are pleased to report that we launched the public pilot on April 27, which was on target for our plans to launch in spring 2020. This pilot is initially available to a limited number of public users who will be able to record a document related to copyright ownership that falls under section 205 of title 17. We will incorporate the user feedback from this pilot into iterative improvements as part of future releases as this project is now in the phase of continuous development where additional functionalities and additional waves of users will be added.

In addition to the recordation pilot, we plan to release a limited prototype for at least one type of copyright registration application, from which we will gather public feedback. Work also continues on the release of a new Copyright Public Records Proof of Concept, an endeavor that will eventually replace the existing Copyright Office Online Public Catalog. Both of these endeavors are expected to be released by the end of calendar 2020.

For the historical records project, the Office is currently working with the Library's own experts in digital collections management to ensure that the digitization of the Office's over 26,000 physical copyright record books incorporates best practices and can be made available for public, online viewing as rapidly as possible. Combined, these record books contain well over

⁶ *Id.* § 102(c).

⁷ Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, § 1405, 132 Stat. 2534, 3208 (2018).

20 million pages of records dating between 1870 and 1977, covering works as diverse as books, photographs, musical compositions, sound recordings, motion pictures, and more. The Office will digitize more than 800 volumes over the next year alone. The Office also will continue improving the metadata for the more than 40 million registration application and index cards that are already publically viewable using the Office's Virtual Card Catalog (VCC). The metadata effort will enhance the public's user experience by providing more accurate online search capability.

As directed by the Committee, the Office has developed an integrated master schedule (IMS) for its modernization activities. To ensure the IMS aligns with best practice criteria, the Office is using expert consulting services to assist in developing a program for IMS management that allows for continuous improvement and refinement of the IMS and its estimates. The consultant services were procured under the Library's recent contract for Library-wide performance planning and measurement services. Given the building closures caused by the COVID-19 situation, onboarding these contractors has been slightly delayed, and this will result in some delays in near-term scheduled deliverables.

Modernization of Copyright Office Business Practices

In the past year, the Copyright Office completely eliminated the backlog of pending registration claims, reduced registration processing times by more than 40%. Additionally, the Office drafted a number of revised regulations to streamline registration practices and procedures. The Office also recently completed an independent analysis of its recordation business processes and began more targeted efforts to reduce the existing recordation backlog.

In addition, the Office has made significant progress in its business process reengineering efforts, with 66 distinct processes under review and which we are scheduled to complete this summer. The Office's modernization initiative also encompasses the Office's organization and people. This past year, the Office of Personnel Management (OPM) completed a review of the Office's organization and structural needs for modernization. The Office has engaged OPM for additional organizational review work, including assisting the Office in succession planning, as part of the Office's continued focus on processing time reduction efforts. The Office also is in the midst of our organizational change initiative, which involves the development of key change management processes and documents, staff training on change management practices, and strategic coaching on structuring and leading complex business transformation.

Consolidation of Copyright Office Storage Facilities

The Copyright Office has made exceptional progress in its planned consolidation of copyright materials from several geographically dispersed storage facilities into a single, modern facility. The collaborative warehouse construction project between the Library, the Office, and Architect of the Capitol is currently months ahead of the original 2021 construction completion schedule.

The physical structure, located near Landover, Maryland, was completed in March 2020 with a limited occupancy permit expected to be granted in September 2020. The new facility will allow the Office to provide faster location, better tracking, and improved security of the Office's significant inventory of copyright deposits.

CHANGES TO COPYRIGHT OFFICE FEES

Though the Copyright Office provides many of its services at no cost, the Copyright Act requires that the Office charge fees for certain services.⁸ When proposing a balance of user fees and taxpayer funded monies to support its operations, the Office gives careful consideration to the public benefits of the national copyright system, including the impact of user fees on a copyright system that is dependent on voluntary copyright registration and recordation. To ensure that the Office's fees are "fair and equitable and give due consideration to the objectives of the copyright system,"⁹ the Office conducts regular studies of its operating costs and fee structure. The Office released its most recent fee study as part of a Notice of Proposed Rulemaking in May 2018, and in June 2019, the Office issued a supplemental notice proposing limited revisions to the 2018 notice. After carefully considering comments from a variety of interested parties in response to the notices, in October 2019 the Office proposed the adoption of new fee schedule for certain Office services to Congress. By law, the Register may institute the new fees 120 days after the Office submits the proposed schedule to Congress, unless Congress enacts a law within the 120-day period stating that it does not approve the schedule.

In accordance with the final rule, which was published in the Federal Register on February 19, the new fees entered into effect on March 20, 2020.¹⁰ While the Office did increase some fees, we reduced proposed fee increases for the most commonly used applications, the Standard and Single Applications. The Office also did not increase fees for some group registrations applications and certain searches and certifications, among other things. In advance of the effective date, we presented a public webinar to discuss the changes. Both the webinar and the slides are available on our website.¹¹

MORE FLEXIBLE FEE AUTHORITY

The Copyright Office would also benefit significantly from greater flexibility in the use of its fee collections, specifically the authority to use existing fee balances to provide services to the public in the event of a lapse in appropriations. As we have noted before, flexibility in management of fee balances across budget cycles also would provide for more efficient and

⁸ 17 U.S.C. § 708.

⁹ 17 U.S.C. § 708(b)(4).

¹⁰ Copyright Office Fees, 85 Fed. Reg. 9374 (Feb. 19, 2020); the Copyright Office's webpage on the fee study and the final fee schedule is available at <https://www.copyright.gov/rulemaking/feestudy2018/>.

¹¹ *Id.*

cost-effective administration of large, non-recurring projects related to modernization and other capital expenditures. To that end, once authorized, the Office anticipates including in a future budget request a change in appropriations language to allow for 20% of the balance of fees collected in prior-years to be available each year, in addition to appropriated amounts, for obligation without fiscal year limitation, and to allow the Office to access existing fee balances to continue operations during a lapse in appropriations.

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The Copyright Office appreciates the Committee's continued support of the Office's efforts to modernize both its technology and services, and to the operation of the copyright system overall.