

UNITED STATES COPYRIGHT OFFICE



# **MODERNIZATION EFFORTS AND ACCOMPLISHMENTS 2011-2016**

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MARCH 14, 2016



## NEW BUSINESS UNITS AND SPECIAL PROGRAMS

To better align resources to the volume and complexity of Copyright Office duties, and to ensure sufficient expertise over core functions, the Register of Copyrights reorganized existing units and created new officers as part of the senior leadership team, as of the dates noted below. The full leadership team is available at <https://copyright.gov/about/leadership/>.

**Office of Chief Information Officer** (2013). This Office oversees information technology initiatives and is principally responsible for developing technology strategies related to upgrading and recalibrating Copyright Office services in accordance with industry standards.

**Office of Public Records and Repositories** (2014). This Office oversees the critical roles of making licenses and other copyright records available to the public, improving and enforcing metadata standards for copyright records, ensuring the security of physical and digital copyright deposits in the care of the Office, and certifying information for transactions and litigation.

**Office of Public Information & Education** (2014). This Office oversees public information services and outreach, as well as all authoritative publications, including the *Compendium of U.S. Copyright Office Practices* and the [copyright.gov](https://copyright.gov) website.

**Office of Chief Financial Officer** (2015). This Office oversees budgetary matters, procurement, contracting, and accounting, as well as royalty collections and disbursements for certain statutory licenses under the Copyright Act.

The Register appointed three Deputy Officers in 2015 in the **Office of General Counsel**, the **Office of Policy and International Affairs**, and the **Office of Registration Policy and Practice**, to ensure more manageable workloads and supervision of legal and regulatory work in these offices. And, attorneys and project managers have been added to the registration and public information offices, to better identify emerging issues at the business level.

### **Abraham L. Kaminstein Scholar in Residence Program** (2013)

Through this program, the Copyright Office invites academics with a demonstrated commitment to the study of copyright law and policy to spend time, at the invitation of the Register, conducting paid research and/or working on mutually beneficial projects.

### **Barbara A. Ringer Copyright Honors Program (2013)**

Through this program, the Copyright Office offers paid fellowships to attorneys in the initial stages of their careers over periods of 18–24 months. Applicants must demonstrate exceptional abilities and interest in copyright law and work closely with the Office of General Counsel and the Office of Policy and International Affairs.

### **Copyright Matters Lecture Series (2011)**

Copyright Matters is a community forum to discuss the practical implications of copyright law in the 21st century and to provide education and training to the staff of the U.S. Copyright Office. Through the series, the Register's Office invites a wide range of invited speakers—including Congressional leaders, authors, market experts, technology experts, and legal scholars—to present topics of critical importance to the copyright debate. To date, these have included presentations about authorship, copyright registration, marketplace investments, copyright enforcement, fair use, and international norm setting.

### **Academic Partnerships (2013)**

The Copyright Office collaborates with law professors and law students on specific copyright-related research and writing projects that serve existing needs of the Office. The Office is currently engaged in ongoing projects with Stanford University Law School, George Mason University School of Law, and George Washington University Law School.



## ADMINISTRATIVE PRACTICE AND PRIORITIES

As part of its efforts to modernize Copyright Office systems and practices, the Register has issued five publications since 2011, listed below in reverse chronological order. Some of these publications are products of the public initiatives outlined in *Priorities and Special Projects of the U.S. Copyright Office*, referenced below.

### **Report and Recommendations of the Technical Upgrades Special Project Team** (Feb. 2015)

The Copyright Office's technology infrastructure impacts all of the Office's key services and is the single greatest factor in its ability to administer statutory licenses and copyright registration and recordation services effectively. Yet the Office is currently utilizing twentieth-century technology while trying to meet twenty-first century needs. In consultation with stakeholders and the public, the Copyright Office CIO undertook a multi-year evaluation of the technology that underpins the Office's current systems. As a result of this process, the Technical Upgrades Special Project Team issued a report making a series of recommendations to improve and modernize the Office's technology systems and infrastructure.

Report and background materials: [https://copyright.gov/docs/technical\\_upgrades/](https://copyright.gov/docs/technical_upgrades/)

### **The Compendium of U.S. Copyright Office Practices, Third Edition** (Dec. 2014)

This was the first major revision of the *Compendium* in more than twenty-five years. At more than three times the size of the previous edition, it encompasses a comprehensive overhaul of the Office's practices and standards and makes them easily accessible and transparent to the public and the courts. The *Compendium* serves as a technical manual for the Office's staff, as well as a guidebook for authors, copyright licensees, practitioners, scholars, the courts, and members of the general public. It addresses fundamental principles of copyright law, such as creation, publication, registration, and renewal, as well as routine questions such as who may file an application, who may request copies of the Office's records, and how to submit titles and registration numbers in electronic form. It also contains a new Table of Authorities that lists the cases, statutory provisions, and other legal authorities cited in the Third Edition and the relevant section where each citation may be found. For the first time, the *Compendium* is a living electronic document.

*Compendium*: <https://copyright.gov/comp3/>

### **Transforming Document Recordation at the United States Copyright Office** (Dec. 2014)

Recordation of licenses, assignments, termination notices, and other records that form the life-cycle of a copyright interest is one of the key statutory functions of the Copyright Office. In order to make the resulting copyright records easily searchable, widely available, and useful to the public, it will be necessary to update the way this data is currently received, stored, and accessed. To this end, the 2013–14 Kaminstein Scholar in Residence undertook a review of the current state of copyright recordation and made recommendations for development and deployment of an electronic recordation system,

including addressing issues such as how to allocate responsibility for providing document cataloging information, how best to store and make electronic documents available, and how to accept and authenticate electronic signatures.

Report and background materials: <https://copyright.gov/docs/recordation/>

#### **Proposed Schedule and Analysis of Copyright Fees to Go into Effect on or about April 1, 2014** (Nov. 2013)

In accordance with the procedures set forth in Section 708 of the Copyright Act, the Copyright Office conducted a multi-year public review of its fee schedule for the registration of claims, recordation of documents, special services, Licensing Division services, and FOIA requests. As part of this review, the Office conducted a preliminary assessment of its 2011 costs and solicited stakeholder and public input into a proposed fee schedule. The analysis and proposed fee schedule were submitted for review by Congress and became effective on May 1, 2014, codified at 37 C.F.R. § 201.3. For the first time, the fees were differentiated to accommodate the considerations of individual authors filing certain non-complex claims. As discussed in the Funding the Future section of this Strategic Plan, the Office continues to consider the parameters of its fee authority and statutory changes that may permit the Office to further aggregate or offset costs and capital expenses.

Report and background materials: <https://copyright.gov/docs/recordation/>

Schedule of fees: <https://www.copyright.gov/docs/fees.html>

#### **Priorities and Special Projects of the United States Copyright Office** (Oct. 2011)

Issued shortly after the Register's appointment, the Priorities and Special Projects document set forth the Office's immediate priorities and announced a series of "special projects" to be undertaken with staff and the public. The special projects focused the Office on assessing a number of critical challenges, including: (1) updating the fee schedule and improving the Office's fiscal health; (2) updating, reconciling, and publishing registration practices; (3) addressing problems in technology infrastructure and improving the website; (4) re-engineering the recordation process and making historic records available; (5) meeting the increasing public demand for copyright information and education; (6) attracting, retaining, and training a highly skilled and multi-talented staff; and (7) creating relationships with academic institutions and scholars.

Document: <https://copyright.gov/docs/priorities.pdf>

## LEGAL RESOURCES AND POLICY STUDIES

Since 2011, the Copyright Office has published a compilation of judicial opinions on fair use as well as seven policy reports in support of Congress and its efforts to analyze or update the Copyright Act. These are listed below in reverse chronological order. Additional reports and studies are forthcoming.

### **Fair Use Index** (April 2015)

The Fair Use Index is a new tool tracking over 175 key judicial decisions regarding the fair use doctrine under copyright law. It is designed to help both lawyers and non-lawyers better understand the types of uses courts have previously determined to be fair—or not fair. The decisions span multiple federal jurisdictions, including the U.S. Supreme Court, circuit courts of appeal, and district courts. The Index was launched in support of the Joint Strategic Plan of the Intellectual Property Enforcement Coordinator (IPEC) and is updated periodically.

Resource at: <https://copyright.gov/fair-use/>

### **The Making Available Right in the United States** (Feb. 2016)

Two international treaties—collectively known as the WIPO Internet Treaties—require the United States to provide a “making available” right, which gives copyright owners the exclusive right to authorize the on-demand transmission of their works to the public. Though the United States did not adopt express “making available” language when implementing the treaties in 1998, the longstanding consensus across the U.S. government has been that the exclusive rights under the Copyright Act collectively provide the substance of the making available right. Concurring with that view, the Office’s report concludes that U.S. copyright law provides the full scope of protection required by the treaties, and that no statutory change is currently necessary. The report provides historical context and legal background to assist in understanding how U.S. law implements the making available right, and it recommends that Congress continue to monitor case law developments in this area.

Report and background materials: [https://copyright.gov/docs/making\\_available/](https://copyright.gov/docs/making_available/)

### **Orphan Works and Mass Digitization** (June 2015)

The Orphan Works and Mass Digitization study evaluated two circumstances in which practical obstacles under current law, including the lack of a clear statutory exception or licensing mechanism, may prevent good-faith actors from making productive uses of copyrighted works. The issue of “orphan works” refers to circumstances where a copyright owner cannot be identified or located, despite diligent efforts. The Mass Digitization analysis presents collective licensing options for large scale access or other uses to the extent they go beyond fair use or are otherwise ineligible for a statutory exception. The Report offers balanced frameworks by which users may move forward with their proposed uses and copyright owners may be compensated, as appropriate.

Report and background materials: <https://copyright.gov/orphan/>

### **Copyright and the Music Marketplace** (Feb. 2015)

Recognizing the cultural and economic importance of music, the Copyright Office evaluated the aging music licensing framework and the ever-evolving needs of those who create and invest in music in the twenty-first century. After an exhaustive review of the existing music marketplace, including statutory licenses, the role of performing rights organizations, access to music ownership data, and the concerns of songwriters and recording artists, the report made a number of recommendations aimed at bringing both clarity and relief to all players in the music marketplace through a series of balanced tradeoffs designed to create a more rational music licensing system.

Report and background materials: <https://www.copyright.gov/policy/musiclicensingstudy/>

### **Resale Royalties: An Updated Analysis** (Dec. 2013)

The Copyright Office analyzed the issue of resale royalties for visual artists at the request of Congress, including historical treatment and a comparative analysis of foreign laws. The Office concluded that certain visual artists, who typically do not share in the long-term financial success of their original works, may operate at a disadvantage under the copyright laws relative to authors of other types of creative works. Accordingly, the Office recommended further congressional exploration of a resale royalty, as well as other possible alternative or complementary options for supporting visual artists.

Report and background materials: <https://copyright.gov/docs/resaleroyalty/>

### **Copyright Small Claims** (Sept. 2013)

At the request of Congress, the Copyright Office reviewed the challenges the current system for resolving copyright disputes poses for copyright owners with potentially limited means or seeking to halt infringement that has caused a relatively modest amount of economic harm. Recognizing that the current system, where copyright owners must seek redress through the federal courts, can require the expenditure of substantial time, money, and effort for both the plaintiff and the defendant, the Office recommended the creation of a centralized tribunal within the Copyright Office as a voluntary alternative to the federal courts that would be available to resolve small copyright disputes on a streamlined basis.

Report and background materials: <https://copyright.gov/docs/smallclaims/>

### **Federal Copyright Protection for Pre-1972 Sound Recordings** (Dec. 2011)

At the urging of sound recording archivists and on the instruction of Congress, the Copyright Office conducted a study on the desirability of and means for bringing pre-1972 sound recordings into the federal copyright regime. The report considered how best to preserve and offer appropriate access to sound recordings created before February 15, 1972. The Office concluded that federalization of these recordings would best serve the interests of libraries, archives, and others in preserving and increasing

the availability to the public of old sound recordings. To accomplish this aim, the Office made certain additional recommendations relating to ownership, terms of protection, and registration of these works.

Report and background materials: <https://copyright.gov/docs/sound/>

#### **Satellite Television Extension and Localism Act § 302 Report** (Aug. 2011)

As required by Section 302 of the Satellite Television Extension and Localism Act of 2010 and after consultation with stakeholders and public hearings, the Copyright Office issued a report on marketplace alternatives to the statutory licenses set forth in Sections 111, 119, and 122 of the Copyright Act. The Office recommended a structured phase-out of these statutory provisions, while taking into account the reasonable needs of those who would be affected.

Report and background materials: <https://copyright.gov/docs/section302/>

## **ACTIVE POLICY STUDIES**

### **Section 512 Study**

The safe harbor provisions for online service providers were a crucial component of the Digital Millennium Copyright Act, enacted in 1998. The Copyright Office is undertaking a public study to evaluate the impact and effectiveness of these provisions, found in Section 512, including the costs and burdens of the notice-and-takedown process and how successfully Section 512 addresses online infringement and protects against improper takedown notices.

Report docket: <https://copyright.gov/policy/section512/>

### **Section 1201 Study**

Another important aspect of the Digital Millennium Copyright Act is the anticircumvention provisions found in Section 1201. The Copyright Office is undertaking a public study to assess the operation of Section 1201, including the triennial rulemaking process, the anti-trafficking provisions, the permanent exemptions, and consumer issues.

Report docket: <https://copyright.gov/policy/1201/>

### **Software-Enabled Consumer Products Study**

In response to a request from Chairman Grassley and Ranking Member Leahy of the Senate Judiciary Committee, the U.S. Copyright Office is undertaking a study to review the role of copyrighted software in everyday products. Among other Subjects of Inquiry identified in the Federal Register Notice of Inquiry,



the Copyright Office is evaluating the provisions of copyright law implicated by the ubiquity of software in consumer products and the effect of copyright law on technological advancements in such products.

Report docket: <https://copyright.gov/policy/software/>

### Mass Digitization

For the past several years, the Copyright Office has been exploring ways to facilitate and support mass digitization projects serving the public interest while appropriately balancing the interests and concerns of copyright owners. The Copyright Office currently is evaluating public comments on a proposed extended collective licensing system.

Report docket: <https://copyright.gov/policy/massdigitization/>

### Visual Works

Visual artists have expressed a growing list of concerns in recent years when speaking to both the Copyright Office and Members of Congress. To give these concerns deeper consideration, the Copyright Office currently is studying how certain visual works, particularly photographs, graphic artworks, and illustrations, are monetized, enforced, and registered under the Copyright Act.

Report docket: <https://copyright.gov/policy/visualworks/>



## MODERNIZATION HEARINGS AND WRITTEN TESTIMONY

*The Register's Perspective on Copyright Review: Hearing Before the H. Comm. on the Judiciary, 114th Cong. (2015)*

- » Sole witness: **Maria A. Pallante**, Register of Copyrights and Director, U.S. Copyright Office.
- » Hearing materials: <https://judiciary.house.gov/hearing/hearing-the-register-s-perspective-on-copyright-review/>
- » Transcript: <https://judiciary.house.gov/wp-content/uploads/2016/02/Written-Testimony-of-Register-Maria-A-Pallante.pdf>
- » Prepared statement of Register Pallante: [https://judiciary.house.gov/wp-content/uploads/2016/02/114-22\\_94408.pdf](https://judiciary.house.gov/wp-content/uploads/2016/02/114-22_94408.pdf)

*U.S. Copyright Office: Its Functions and Resources, Hearing Before the Subcomm. on Courts, Intellectual Prop., & the Internet of the H. Comm. on the Judiciary, 114th Cong. (2015)*

- » Four witnesses: **Keith Kupferschmid**, General Counsel, Software & Information Industry Association; **Lisa Dunner**, Partner, Dunner Law PLLC, on behalf of the American Bar Association; **Nancy Mertz**, Partner, Schoeman Updike Kaufman & Stern LLP, on behalf of the American Intellectual Property Law Association; and **Bob Brauneis**, Professor, George Washington University Law School
- » Hearing materials: <https://judiciary.house.gov/hearing/hearing-the-u-s-copyright-office-its-functions-and-resources/>
- » Transcript: [https://judiciary.house.gov/wp-content/uploads/2016/02/114-4\\_93529.pdf](https://judiciary.house.gov/wp-content/uploads/2016/02/114-4_93529.pdf)
- » Letter from Maria A. Pallante, Register of Copyrights and Director, U.S. Copyright Office, in response to John Conyers, Jr., Ranking Member, H. Comm. on the Judiciary 6 (Mar. 23, 2015): <https://copyright.gov/laws/testimonies/022615-testimony-pallante.pdf>

*Oversight of the U.S. Copyright Office: Hearing Before the Subcomm. on Courts, Intellectual Prop., & the Internet of the H. Comm. on the Judiciary, 113th Cong. (2014)*

- » Sole witness: **Maria A. Pallante**, Register of Copyrights and Director, U.S. Copyright Office.
- » Hearing materials: [https://judiciary.house.gov/wp-content/uploads/2016/02/114-4\\_93529.pdf](https://judiciary.house.gov/wp-content/uploads/2016/02/114-4_93529.pdf)
- » Transcript: <https://judiciary.house.gov/wp-content/uploads/2016/02/113-116-89810-1.pdf>
- » Prepared statement of Register Pallante: <https://judiciary.house.gov/wp-content/uploads/2016/02/091814-FINAL-Testimony-Maria-Pallante.pdf>

*The Register's Call for Updates to U.S. Copyright Law: Hearing Before the Subcomm. on Courts, Intellectual Prop., & the Internet of the H. Comm. on the Judiciary, 113th Cong. (2013)*

- » Sole witness: **Maria A. Pallante**, Register of Copyrights and Director, U.S. Copyright Office.
- » Hearing materials: <https://judiciary.house.gov/hearing/the-register-s-call-for-updates-to-u-s-copyright-law-0/>
- » Transcript: <https://judiciary.house.gov/wp-content/uploads/2016/02/Pallante-Lecture.pdf>
- » Prepared statement of Register Pallante: [https://judiciary.house.gov/wp-content/uploads/2016/02/113-20\\_80067.pdf](https://judiciary.house.gov/wp-content/uploads/2016/02/113-20_80067.pdf)

*Budget Hearing – Library of Congress and United States Copyright, Program Project and Activity Review Before the Subcomm. on the Legislative Branch of the H. Comm. on Appropriations, 114th Cong. (2016)*

- » Three witnesses: **David S. Mao**, Acting Librarian of Congress; **Robert R. Newlen**, Chief of Staff, Library of Congress; **Maria A. Pallante**, Register of Copyrights and Director, U.S. Copyright Office.
- » Hearing materials: <http://appropriations.house.gov/calendararchive/eventsingle.aspx?EventID=394415>
- » Prepared statement of Register Pallante: <https://copyright.gov/about/budget/2016/house-budget-testimony-fy17.pdf>

*Hearing to Review Library of Congress and Architect of the Capitol FY2017 Budget Request Before the Subcomm. on the Legislative Branch of the S. Comm. on Appropriations, 114th Cong. (2016)*

- » Two witnesses: **David S. Mao**, Acting Librarian of Congress; and the **Hon. Stephen T. Ayers**, Architect of the Capitol
- » Hearing materials: <http://www.appropriations.senate.gov/hearings/hearing-to-review-library-of-congress-and-architect-of-the-capitol-fy2017-budget-request>
- » Prepared statement of Register Pallante: <https://www.copyright.gov/about/budget/2016/senate-budget-testimony-fy17.pdf>

## RELATED SPEECHES OF THE REGISTER OF COPYRIGHTS

Maria A. Pallante, *Review and Reflection: Copyright Hearings and Related Discourse in the Nation's Capital*, 13 J. MARSHALL REV. OF INTELL. PROP. L. 487 (2014): <http://repository.jmls.edu/cgi/viewcontent.cgi?article=1329&context=ripl>

Maria A. Pallante, *The Next Generation Copyright Office: What it Means and Why it Matters*, 61 J. COPYRIGHT SOC'Y 213 (2014) (Eleventh Annual Christopher A. Meyer Memorial Lecture): <https://copyright.gov/about/office-register/meyer-lecture.pdf>

Maria A. Pallante, *The Curious Case of Copyright Formalities*, 28 BERKELEY TECH. L.J. 1415 (2013) (David Nelson Memorial Keynote Address): <https://copyright.gov/about/office-register/CuriousCaseofCopyrightFormalities.pdf>

Maria A. Pallante, *The Next Great Copyright Act*, 36 COLUM. J.L. & ARTS 315 (2013) (Twenty-Sixth Horace S. Manges Lecture): [https://www.copyright.gov/docs/next\\_great\\_copyright\\_act.pdf](https://www.copyright.gov/docs/next_great_copyright_act.pdf)

Maria A. Pallante, *Orphan Works & Mass Digitization: Obstacles & Opportunities*, 27 BERKLEY TECH. L.J. 1251 (2012) (David Nelson Memorial Keynote Address): <https://copyright.gov/regstat/2013/Pallante-OrphanWorks.pdf>



## OTHER MODERNIZATION MATERIALS

### UNITED STATES COPYRIGHT OFFICE

*Provisional Information Technology Modernization Plan and Cost Analysis* (Feb. 2016):

<https://copyright.gov/reports/itplan/technology-report.pdf>

United States Copyright Office Strategic Plan 2016-2020: *Positioning the United States Copyright Office for the Future* (Dec. 2015):

<https://copyright.gov/reports/strategic-plan/USCO-strategic.pdf>

### INSPECTOR GENERAL AND GOVERNMENT ACCOUNTABILITY OFFICE

#### Library of Congress Office of the Inspector General Reports

2014-PA-101: *The Library Needs to Determine an eDeposit and eCollections Strategy* (April 2015):

<https://www.loc.gov/portals/static/about/documents/edeposit-and-ecollections-strategy-april-2015.pdf>

2014-IT-101: *Report for Design of Library-wide Internal Controls for Tracking Information Technology Investments* (March 2015):

[https://www.loc.gov/portals/static/about/documents/Final\\_Report\\_LOC-ITSC\\_Audit\\_3%2013%2015\\_SG\\_KH.pdf](https://www.loc.gov/portals/static/about/documents/Final_Report_LOC-ITSC_Audit_3%2013%2015_SG_KH.pdf)

#### Government Accountability Office

*Library of Congress: Strong Leadership Needed to Address Serious Information Technology Management Weaknesses* (March 2015):

- » Report: <https://copyright.gov/technology-reports/reports/gao-lc-report-2015.pdf>
- » Response from Librarian of Congress: <https://copyright.gov/technology-reports/reports/lc-response-gao-2015.pdf>

*Copyright Office Needs to Develop Plans that Address Technical and Organizational Challenges* (March 2015):

- » Report: <https://copyright.gov/technology-reports/reports/gao-usco-report-2015.pdf>
- » Response from Register of Copyright: <https://copyright.gov/technology-reports/reports/gao-review-usco-response.pdf>

## LIBRARY OF CONGRESS STRATEGIC PLANS

*Library of Congress Strategic Plan Fiscal Years 2011–2016 (2010):*

<http://lcweb2.loc.gov/master/libn/about/documents/strategicplan2011-2016.pdf>

*Library of Congress Strategic Plan 2016–2020 (2015):*

[https://www.loc.gov/portals/static/about/documents/library\\_congress\\_stratplan\\_2020-2024.pdf](https://www.loc.gov/portals/static/about/documents/library_congress_stratplan_2016-2020.pdf)



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UNITED STATES COPYRIGHT OFFICE

**COMPENDIUM OF  
U.S. COPYRIGHT OFFICE PRACTICES**  
THIRD EDITION

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**COPYRIGHT AND THE MUSIC MARKETPLACE**

A REPORT OF THE REGISTER OF COPYRIGHTS

FEBRUARY 2015

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