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RECORDATION REENGINEERING
ROUNDTABLE
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WEDNESDAY
MARCH 26, 2014
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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, United States Copyright Office
MARY MINOW, Dominican University, Stanford University
KEVIN MONTLER, Google
SUSANNE MORALES, Fenwick & West LLP
C-O-N-T-E-N-T-S

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

(9:55 a.m.)

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

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

Well, by “guided” we mean that we take advantage of the kinds of interactivity
that you can have with a web site or with electronic, other kinds of electronic submission of information that will minimize mistakes in a way that we could not do that with the paper cover sheets that we have now.

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

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

We use various validation mechanisms so that if we enter a year, like the year 19,785 which doesn't make much sense, we return an error and explain with an error
message that the year has to follow a certain format and be within a certain range.

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

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

We can have a capacity to save templates or more generally, save repeated information that a remitter is likely to use in many filings, and we can use review streams to
present the information back to the remitter at the end in total and ask for review.

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

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

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

But now let's get to the remitter
responsibility part and I think this really covers three different kinds of responsibilities that could be placed on remitters.

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

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

And imagine a serious instance in which the remitter might have submitted the wrong titles of the document concerned so that somebody searching for a particular title would never find the document which has been submitted, and the document contains that title
for which the searcher is looking. But that title never shows up in the catalogue and therefore the document can't be found.

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

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

And so another topic that we'd like to discuss is to what degree do we drop the traditional examination for completeness and
for legibility and for presence of any wet ink
signature and leave that up to again the
responsibility of the remitter. If the
document's not legible then that's a problem
which might have legal consequences but would
not be examined for during the process of
cataloguing.

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

The next level kind of or a next
level, not the only next level, of automation
and of computerization of recordation would
involve so-called structured electronic documents and those are documents that are in a native electronic format and they contain their own indexing information, they're sort of self-indexing.

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

When you fill in the names you've got parties, you've got the titles of works and their registration numbers, you've got an execution date and those on the surface do look like they are part of a narrative textual transactional document.
But underneath, each of those filled-in boxes is another layer of the document in which each of those filled-in boxes populates these tagged fields and when the document is submitted, the information from those tagged fields can be pulled and can be used to create a record in the catalogue.

Some advantages of doing it that way: It's possible to have that information reviewed by the parties during the negotiation and drafting process so that instead of having the information entered into the copyright catalogue after the transaction is done by somebody -- one of the parties probably or a service provider who has not been involved in the transaction -- you can have the cataloguing information in sort of an integrated way reviewed by the parties as the electronic document is passed back and forth during the negotiation and drafting process. And barring some kind of radical computer failure there's
no possibility of discrepancies between this
document and the submitted cataloguing
information because the cataloguing
information is embedded in the document.

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

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

On the other hand, the recorder's
offices in major metropolitan areas in the
United States accept one or two million
documents a year, not 11,000, and there are very
few, there's sort of a small number of repeat players, title companies and banks, that are involved in a large number of transactions every year and it's much easier to come to agreement about standards and to implement them in that environment than I suspect it would be in the present environment.

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

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

We had several questions yesterday about will we continue the paper route even with a new electronic model. And I think the answer is we're decades away probably from dropping, refusing to accept paper documents for
recordation. So for the foreseeable future I think the paper route is open but if we build an electronic system we'd like to build one that the remitters want to use. So any thoughts about that?

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

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

MR. BRAUNEIS: Right.

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

But I don't see that there's any
other way to go. And I think we would feel comfortable with taking responsibility of inputting that data.

MR. BRAUNEIS: Okay.

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

MS. MORALES: Right. Not as much,

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

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

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

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

We don't take much information from the document cover sheet, you know: data certification, if it was a photo copied document. If you're indicating that you're
submitting an incomplete document and you've checked the document is incomplete, record as is, then we take that information off of there.

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

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

MS. MADYUN: That would be yes.

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

I mean, we could run this as essentially an entirely automated process, right, where you fill out the cataloguing information, you upload an electronic version
of the actual document and, assuming that there's no formal errors that we discover through an electronic validation process, that all goes directly into the catalogue, the pdf or other format of the document is added to the document repository and that's it.

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

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

And the question I guess is: would
it be substantially faster? Faster enough that it might make sense to think about doing that. I don't know. I mean the first time I heard this was yesterday and I’ve been thinking about it since then.

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

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

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

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

MR. BRAUNEIS: Well, again the difference between somebody having to, for the
cataloguing purposes on the registration side, somebody having to manually key into an electronic data base all the information about the title of the work and the author and the claimant and the type of work, etc., versus having that information already available because in this case the claimant -- the registration claimant -- has already filled that information and it's available electronically. There's no question that that speeds up the process.

Examination as concerns registration is perhaps a little different because the registration certificate stands for something. There's a presumption, a legal presumption, that all facts stated in the registration certificate are true and that copyright is valid. And the examiner has actually taken a look at the deposit and determined that it contains copyrightable subject matter.
And although for many types of works that examination is rather simple and basic, you know, you open up a book and if it contains a lot of text, okay copyrightable subject matter. In other areas like useful articles it actually is a more involved process and there are a substantial number of rejections.

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

In the case of a recorded document it's slightly different I think. The recordation certification stands for the fact
that this document has been submitted at a particular time.

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

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

You have to look through the document and see if it mentions any appendices
or schedules that are not there. And that's a process that requires interpretation and an understanding of the document.

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

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

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

I think it may be that a higher level of examination may come with maybe documents such as notices of termination where, you know, there are certain things that need be there -- that have to be there -- and you may put that information in but because you may have
misinterpreted something it's not there, and
then we have to do maybe a deeper level of
analysis.

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

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

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

MR. HOLM: I don't think there's a
legal constructive notice. The regulators if
you include the PTO regulation as to whether or
MR. BORKOWSKI: I thought I saw in the -- that one of the things that was mentioned was that there would be spot checks. The possibility to have spot checks. How would those work? I mean how do you make this work? Every document there will be spot checked or there would be a spot check with each document with regards to the verification process?

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

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

So if you see a mistake then you go and look and see is this an area in which you
know maybe we need to do more validation than we're doing on the input side because we're seeing a higher error rate with this particular kind of information than we would like.

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

And so, you know, those kinds of checks where you can quickly scan over a large number of documents and things pop out at you as having been wrongly formatted or wrongly entered and so on, and you can also imagine, you
know, running through a basic spell-checker and seeing that you're coming out with stuff that's misspelled frequently. So things like that.

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

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

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

So there's probably temporarily a higher error rate but I mean at this point now
everything's leveled out and we're actually
dealing with a similar remitter responsibility
model, it's probably fairly level.

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

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

    And so you know especially if it's
a document that involves relatively few number
of titles of works, it's much more likely that
when you see a misspelling of a title and you've
been involved in that transaction you know that
that's not the correct title of the work whereas
the recordation specialist who is not familiar
with it wouldn't know that.

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

MR. HOLM: Right. Yes.

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

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

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

MR. BRAUNEIS: Okay. Well, that is a nice positive feedback because I don't know whether that will be built or not but that's an idea and if we hear that you would like that then it's more likely to become a feature that we implement.
MR. BORKOWSKI: Can I ask one other thing?

MR. BRAUNEIS: Yes.

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

And I still think that but the main thing is the more it gets -- I think that saying the opposite of that, saying that it's the data entry or the electronic entry that would serve as constructive notice, not the underlying document, is particularly bad because then you're saying that constructive notice is taken of the facts of the document you know are not accurate.
So I mean we're going to have this situation, you're saying that this discrepancy -- and then I don't see how you can take constructive notice off of a document that you know is not accurate. And I think that's just fundamentally problematic.

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

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

And in that instance I think it makes sense to say there simply is no constructive notice. But we'd have to, you know, we'd have to think about that more and David [Nimmer] confirmed yesterday that he did not know of any
litigation involving possible discrepancies under the current system because there are possible discrepancies if the Office has entered the wrong information. What happens if somebody is searching for a document and never finds it because the wrong information has been entered into the catalogue, you know, if that's a financing document has the security interest been effective if nobody can find it?

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

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

What I have in mind specifically is this: you can separate out certain kinds of
recordation, recordation of notice of termination. That's a special category. But looking at your earlier presentation of the numbers, it looks like the large numbers are pure conveyancing transactions, either transfers or a security interest.

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

My hunch is that the vast bulk of recordations that you have never become the
basis for subsequent transactions. It's been assigned and that's a security interest has been assigned and that's it.

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

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

You know, also as a statutory matter
this is what happens with property: put the
burden on getting the grantor and the title
information correct on the recipient of the
interest, and that's the guided recordation
saying, you know, we're the ones who have an
economic stake in this and so we're going to make
sure that we've got the names of the grantor and
the grantee right, the name of the work right
and the like, so that if we were wrong about this
we're going to suffer the consequences at some
later transaction.

But it seems to me that, you know,
putting examination guidelines, putting the
examination to the point at which it's really
important to know who owns this work and what
the terms of the transfer are, rather than
giving every work “the 999,” because no one's
ever going to think about it, giving every one
of them the same degree of examination enables
this office to give a more precise examination
to those that really matter.
MR. BORKOWSKI: Do you think there would be a problem though if let's say the subsequent transaction was 10, 20 years later and if there are issues with the underlying documentation, maybe the people involved in the transaction are no longer there and that kind of thing or memories fade, wouldn't that be a problem?

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

MR. BRAUNEIS: I guess what I'd be worried about is that once you know the document and the record are -- at the point of initial entry into the system -- are matched regardless of whether there's information discrepancies between them simply because the system is presenting them to you at the same time as a
rmitter enters the information and uploads the
document, okay, that at one point when I was
getting into this we can see those side by side
even if there are discrepancies between them.

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

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

MR. GOLDSTEIN: I understand your
point and that's why I said there are two
possible ways of dealing with that. One is to limit the examination to those critical items that if you get them wrong, people are never going to get into the system correctly to begin with, i.e. the name of the grantor, the grantee and the name of the work. And just stop there and not, you know, look at every page of the document. That's one approach, which still puts a burden on the recordation staff.

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

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

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

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

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

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

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

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

And right now, just to let you know what's happening, the document entering system is purely an image file. It does not contain any optical character recognition text data; it is not searchable textually. Once we start allowing or receiving electronic documents,
there's no reason that we couldn't start receiving documents in, you know, an electronic format that contains text information, there's no reason that we couldn't start allowing full text searching of documents.

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

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

MR. BRAUNEIS: No. And I'm not saying that it couldn't be done, I'm just saying that there hasn't been a lot of discussion.
We have digital images of documents going back to 1996. Before that, it's microfilm. For microfilm from 1996 back I think to the 1950s, at which point beyond that it's actual paper-bound volumes. It would be a relatively easy process to do OCR on digital images. Relatively. Beyond that, it would be a much more difficult process. It would be the Google book project all over again to scan in all those paper volumes and then, you know -- okay. Yes?

MR. MONTLER: May I make a comment?

MR. BRAUNEIS: Yes.

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

One of the results of having an automated input system, I think, is the sort of democratization of usage. So less sophisticated parties, just like in content
creation certainly on YouTube, for example, you see a lot of sort of non-professionals creating. And this kind of thing will give them access.

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

MR. BRAUNEIS: Absolutely hope for that, yes.

MR. MONTLER: And I think because of that and sort of the punitive nature of errors over time, I think it's worth supporting a review -- some level of review for the uploads. It may slow down. I think that George pointed out it may actually slow things down in a way that's perhaps unacceptable for the short term, but I think it's worth doing because you're going to have a less sophisticated group of filers, basically, and it's worth kind of helping them out. You've lowered the bar to
filing, which I think is really a good thing, 
and might as well make sure they're doing it the 
right way.

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

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

patterns.

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

(Whereupon, the above-entitled 

matter went briefly off the record.)

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

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

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

So I guess the floor is open for
thoughts on both those issues -- on the capacity and the requirements issue or standards issue as to electronic signatures, digital signatures and the like, which can range anything from an image of an old-fashioned ink signature to a typed signature that was typed with the intent of signing to digital signatures that consist of, you know, large digital files with the use of keys and hash values and the like are greater guarantors of the integrity and the authenticity of the document. Thoughts?

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

MR. BRAUNEIS: Okay. And so if we were to adapt this sort of standard set of requirements for what the signature should be,
any ideas about what it should be? The Electronic Signature Act generally says any mark that's adopted with the intent to, you know, sign the document, and that's very broad and that, you know, could be as simple as you typing, or typing in between brackets or whatever, your name. So we could say that's it, that's enough.

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

MR. BRAUNEIS: Okay.

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

MS. MORALES: Well, with the PTO, we submit -- right now, we submit documents electronically both ways, either with the patent agent or the attorney typing his or her name in between slashes with their registration number underneath, or like oaths and declarations by inventors are the actual signature scanned, the document scanned and
uploaded. So those are two ways --

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

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

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

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

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

MR. MONTLER: That's the issue,
right. When you democratize something like
this so you're lowering the barrier to entry,
right, and you need something like -- that's
what I was saying, a signature is important
enough for attestation of ownership that it should be relatively consistent and controlled. And that's really where the bar doesn't go lower from my perspective.

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

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

MR. BORKOWSKI: Well, it's interesting. What would you think of this and I know I brought this up yesterday, the whole notion of making a certification under the false statement statute. Would that potentially -- it might not matter as much what format the
authentic signature is in if you're attesting under that statute that everything in this document is accurate to the best of your knowledge; you could by implication include your signature. I don't know if you think that's too onerous, but that's an idea.

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

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

MS. MORALES: I think – I’m sorry.

MR. HOLM: The IRS and the student loan companies deal with this already. And they -- this is student loans -- directly assign a PIN number that they use to sign documents
that's unique to you. And the IRS can also use your prior, like the adjusted --

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

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

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

MR. HOLM: Yes.

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

MR. BRAUNEIS: I mean, you know it gets perhaps too much into the weeds here, but then there's questions about so what kind of verification do you require at the time of
account set up that is more likely to not have people essentially signing up for false accounts in the same way that they would submit false documents otherwise.

MR. BORKOWSKI: A credit --

MR. BRAUNEIS: A credit card, yes.

MR. BORKOWSKI: But that happens. I mean, that's an issue everywhere you have that people still require a user account.

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

Material returned to the remitter -- so you heard earlier about what the office currently returns to remitters, namely the original document that has been, on each page, labeled with a sticker saying that it's been recorded and this was the page number and so forth and the document number. That process in exactly that form won't go away -- excuse me, it will go away if we have a lot of electronic submissions.
We could digitally or image-wise stamp each page saying recorded and page number and so forth and then return a copy -- not, obviously, the original. In the electronic environment, discussions of copies of originals get a little strange.

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

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

MR. BRAUNEIS: Well, you know, that's open, that's open for discussion. If you say, absolutely, one needs a hard copy
certificate mailed back in the postal mail, then we could consider that. Alternatively, we can provide an electronic certificate that, you know, that conceivably that would not be not just an image of a paper certificate, but that would have some digital file signature, whatever, that would guarantee its authenticity, and then we would not send out paper certificates.

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

MR. BRAUNEIS: Right. I'm sure the Copyright Office could provide, as it does now, a service that provides certified versions of a certificate in hard copy as needed. But then you're saying that in that case we could dispense with providing hard copies as a matter
of course, and then reserve that for, you know, upon demand when it's needed.

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

MR. BRAUNEIS:   Okay.

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

MR. BRAUNEIS:   Okay.

MS. KOSSOWICZ:   And just further to the electronic signatures, I was sitting here listening to everybody else on that topic. In our business, over the past couple of years, I just remember when original copies, you know, fully executed copies were critical to have. Well, we're kind of moving kind of slowly away from that lately, especially with
licensing. We have a lot of electronic signatures with respect to licensing HFA digital licenses. Same thing with other types of licenses -- we accept PDFs between parties, so I don't know exactly where assignments and transferred documents stand right now. I don't think we've gone to all electronic signatures there, but it's possible that we could someday go that route as well.

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

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

MR. BRAUNEIS: Okay. But when you say PDF, that is simply an image that's embedded
in a PDF container, not something that's
digital, that is some sort of, use of --

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

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

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

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

So now, what about the question of
the availability of recorded documents on the
internet? Currently, as you heard, we do have
an electronic image repository which contains
images of all recorded documents from 1996 to
the present. That repository is accessible
through web browsers, but only web browsers that are on computers physically within the Copyright Office.

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

MS. MORALES: Well, I think for us it would also be definitely an advantage, because right now the online catalogue does not give a lot of information on a particular recordation. It gives the parties, and maybe the first title of the subject work, and date of recordation and, maybe, date of execution of
the document but nothing else.

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

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

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

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

MR. BRAUNEIS: Okay. Are there other thoughts?

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

So you'd have to have a tradeoff between the personal privacy of people who are submitting information and actually making the
information useful. So you know, I don't know what the correct balance is but I think that needs to be considered.

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

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

    MR. BRAUNEIS: Okay.

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

    MR. BRAUNEIS: Okay.

    MR. HOLM: Beyond the threshold
question of whether you should make them available is how you should make them available. But I agree, I think it would be useful to have the documents available, like on a PDF that you could download, and then look through it and see which works are involved for yourself. But even more helpful would be is if there were an electronic form that you could automatically scan in and have it compile a giant database so you could then easily trace the chain of title, or even just, like, having people who are inputting information into the database then make a separate, open, database so that information doesn't go to waste. So like if you had a database listing of this work by this author that was transferred to this person, so that it's more accessible to the individual, and users don’t have to then go and download, then read an entire document, download another document, read through that entire document.

MR. BRAUNEIS: Okay. I mean as far as the
second proposal, I'm not sure exactly how that is different than the current electronic catalogue. In other words, the electronic catalogue does tell you this title was part of this document, which involved the transfer from this assigner to this assignee. And without looking at the document you have a database of transfers.

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

MR. BRAUNEIS: Well, they are. Well, we'll talk a little bit more about various kinds of linkages, but in a multi-work document there is a separate record that's created for each work in that document, listing the title and the registration, if it's available, and linking that record to the underlying document record, which has the names of the parties, and the title of the document and so forth.
So for each identified work there is a separate record that names that work and tells you what document it's part of. There are certainly ways that it could be improved, but I think it does at least that. Is there another comment in the queue? Okay.

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

An easier way to implement it would actually be a broader way, in which anybody who wanted to could sign up for email notification for particular titles, and in the same way that, you know, you had search services for trademarks
that if anything's filed against a particular
registered trademark the search service will
send it to, bring it to the attention of a
company.

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

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

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

MS. KOSSOWICZ: Right. But maybe
not necessarily going back all the way, if you can't do that. But on a going forward basis it seems like that would make sense.

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

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

MR. GOLDFEIN: Without
questioning the desirability of that functionality, because it would be a great thing to have, there's a question of whether the Copyright Office would be the place to organize this, or whether it might want to consider making its database available to the private sector. For example, the trademark example that you cite. It's not the PTO, but it's the Thomson enterprise that does that.

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

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

MR. BRAUNEIS: Oh, I'm sorry.

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

MR. BORKOWSKI: Let me make one other comment, because I don't want it to be unaddressed here. I know I addressed it yesterday. I still think that the role of the Copyright Office isn't to push information to people, I think. To be the database of record for copyright type transactions, and I don't think that -- and it has limited resources. I think those resources should be used to try to build up a very robust electronic recordation system of the type we've already started to discuss, but I don't think that it should be in
the position of you know wanting people to sign up, oh if anybody registers something with respect to this copyright or whatever, let me know.

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

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

MR. BRAUNER: Well, there is an interesting tension there between the Office's
function as providing information about works, which, at least on an abstract level you think, gee we'd kind of like to make that information as widely available as possible to whoever wants it, and the interests of perhaps particular content owners in not wanting to have that information available, at least to particular actors, in particular ways. Right?

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

MR. BORKOWSKI: You know it's not to discourage them, and I think it depends on what you mean by making available. And I think
that the Office's function is to make available
the information database in as user friendly a
way as possible. But I think the person who
want to access, have that data, needs to take
the step to access it.

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

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

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

MR. MONTLER: I think that's, you
know, precisely within the purview of the Office
is to make this kind of information available. And so I'm trying to figure out, I'm trying to get a sense of the harm that you're concerned about. So Perez Hilton finds out --

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

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

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

But I also think that if somebody wants to access information in this database, they should take the step to do it. Meaning that there's a particular thing that they're interested in, and so they could get inside this database and they could look for it, and if it all works as we're trying to move this database towards, they'll be able to have that information.
I don't see what the benefit necessarily is of just having a system where anybody can sign up randomly, well not randomly, just to access information for the sake of accessing information. I mean I guess I just -- I don't see the value of that. I see the value of having a database that can give you the information you want when you search it. But I just don't see that next step.

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

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

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

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

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

    MR. BORKOWSKI: Well, I just think,
I mean, I think there's a difference between the
public and private sectors, and I just go back
to thinking that I think that the function of the Office is more of the database of record and a repository for information. And I just don't know what the consequence would be, necessarily, to have a system whereby people just get notified of the various filings. I can't do better than that. I mean I just don't see value sufficient enough to justify the resources that would be spent to do that.

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

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

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

MS. MINOW: Unless you're --

MR. BRAUNEIS: I mean, in other words a non-profit or maybe a for-profit, but
as an adjunct to the actual profitable activities, might take the Copyright Office information and then operate this service themselves.

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

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

MS. MINOW: Yes. And things that we perhaps don't even contemplate all their uses that others may come up with. You know, look
at what Stanford did with the Determinator with
the registration: they made it searchable for
the (inaudible) of Art. And yes, there could
be (inaudible), there could be all kinds of
things that people in the field could add on.

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

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

MS. MADYUN: Yes. And in-house
we're actually moving from what they call legacy
databases that we're using and we're doing internally work into eCO. So you'll receive documents now back with the digital stamp of the volume and document number and page number, as opposed to having someone actually do the labor of putting those labels on the documents.

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

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

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

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

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

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

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

And so those are the steps right now
that we're taking to kind of try to ease the
backlog and make the remitters a lot more happy
and satisfied with the work that we're doing.
And we're just trying to do a lot more with less
and luckily I have a staff that's willing to get
in there and do that.
MR. BRAUNEIS: So that's what has been in the works and what is in the works. And guess the floor is open for comments on those, suggestions of any other ideas, things that we could do now or sooner than the full implementation of electronic recordation system that would help.

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

MR. BRAUNEIS: Right. So that's what Zarifa was describing as the flash drive and CD model. And so when you submit a paper document, in the same envelope you would include a flash drive or a CD with a list of titles. Typically we've accepted them in Excel spreadsheets I think and made a list of a corresponding registration numbers. And that would help us in no longer having to manually key in each of the titles in a large document.
So I don't know when we accepted the first flash drive but --

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

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

MS. MORALES: So right now it's a flash drive -- would receiving a file by email work?
MR. BRAUNEIS: That came up yesterday.

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

MS. MORALES: Okay.

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

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

MS. MADYUN: Okay.

MS. MORALES: In Excel or Word or something.

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

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

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

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

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

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

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

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

Should they contain registration numbers, should they contain other standard
But more broadly they're asking about the place or the role of the recordation database in the entire ecosystem of copyright information about works. The question of whether recorded documents records should contain registration numbers is a question about the relation of the recorded documents database to the registration database.

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

So although we'll start out with some particular information about registration numbers and other standard identifiers, eventually I want to talk much more broadly about what the Copyright Office's role is in the entire ecosystem of collecting and providing copyright information about works.
So just to start off with a little bit of factual background so we have that as the basis for discussion, in that same time period that I spoke of this morning, 1978 to 2009, there were about 8 million works represented in recorded documents, about 3,710,000 of them are identified with registration numbers. So those works records contain not only the title of the work, sometimes they will even contain a title but contain only a registration number for a work in the cases where works are untitled. But mostly they contain both a title and a registration number. So that's about 46 percent.

Now, not all of those registration numbers are post-1978 numbers that could immediately be linked with the electronic registration data base; many of those numbers are pre-1978 numbers, but as a whole about 46 percent of the recorded document records of works include registration numbers.
Here's what those numbers look like over a time with respect to the two largest categories of documents, namely assignments and financing documents. And there's a lot of variation, here particularly in the earlier years, possibly caused by single transactions that either did or didn't have registration numbers in them that skew that data -- conceivably either caused by changes in Copyright Office practice with respect to cataloguing registration numbers because I have not completely investigated Copyright Office policy from 30 years ago and there may not be many people around who could tell me about that.

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

Remember back to our discussion about financing documents that back in 1990 the
federal district of California decided that all
financing documents should be recorded at the
Copyright Office and then a little later the 9th
Circuit decided that only those documents that
concern registered works should be filed with
the Copyright Office.

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

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

If you search by registration number
you only find the registration. You don't find
any recorded documents. There are recorded
documents and some of them do contain
registration numbers so here's a grant or
assignment of an interest from Robert Stone to
Paramount Pictures. That document did contain
a registration number; currently the search by
registration number, however, does not locate
this document.

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

If you did a search by title,
"Damascus Gate" you would find both
registration and recorded documents that are
relevant to that title. I probably should have
done this last night, I didn't; but there
certainly would be issues with some titles about
whether it was a unique title for a particular
work or not. I don't know whether if you search
by title "Damascus Gate" it happens to be only
one work with that title and so you can narrow
it down like that. But certainly with many
titles you've got a problem where if you're
searching by title, the title is not a unique
identifier and you're getting a lot of
information you don't need that you need to sort
through in order to figure out what you do need.

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

As for other standard identifiers,
the document records currently are not set up
to accept other standard identifiers so even if
the recorded documents themselves contain
ISBNs, ISSN, other standard identifiers, they
don't go into the Copyright Office catalogue.
Registration records can store some standard
identifiers -- currently three standard types
of standard identifiers -- but it turns out that
those are relatively little used.

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

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

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

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

MR. BRAUNEIS: Most of your what?

MR. MONTLER: Most of the pain--


MR. MONTLER: And that's because--
MR. BRAUNEIS: That's because you got sound recording people here.

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

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

And so when we try to do deals with publishers who view the world differently, they don't necessarily view the world in association with ISRCs; they're historically more passive recipients of a check. We don't know who to pay
and we don't know where to go to find who to pay
and it's a very disparate database that holds
a different -- it's not normalized. So EMI
could be, I think I looked one time at different
-- 27 different ways E.M.I., EMI, EMI Pub.,
right, and so those are another ones that you
can't unify them under split ownership.

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

And that's part of the reason I'm
really in favor of transparency -- as much
transparency as this office can provide and the
tools to allow access to that at scale. So a
one by one search is not going to work at scale.
It has to be a bulk access, standardized code
relationships, every work of (inaudible)
agency, all the ISRCs and their association.
MR. BORKOWSKI: Okay. Let me ask you this because I remember hearing yesterday from some of the publishers that were present saying that they actually -- if I could get your response to this -- that they do have massive databases, that they're much ahead on this and you're saying that those aren't sufficient. Why are those not sufficient?

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

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

MR. MONTLER: Harry Fox, exactly. And the middle men their job is to do that administration, they associate sound recording with the composition. The publishers don't necessarily have that. They have CWR files that fields about 30 to 35 percent of their compositions have ISWCs. And so a lot of the relationships between the composition and the
sound recording occur from code to code relationships. So I have an ISRC that I get from the record label and I have to figure out which ISWCs go into it, but you're starting out with 30 to 35 percent of the available repertoire with an ISWC, you're already starting out behind the eight ball.

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

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

MR. MONTLER: Well, what's
happening is major publishers are withdrawing.

MR. BORKOWSKI: Yes, I know.

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

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

And you know the first reaction is well it's incumbent upon them, on the publisher who wants to withdraw and have a direct field. The thing is they don't have that database. They have a file, a set of you know CWR files that have their composition ownership so Kevin
wrote the song "Happy Birthday," here you go. Well it doesn't say that Madonna sang it. They might have limited information.

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

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

MR. MONTLER: There are but the problem is this information is dynamic so it's changing over time and you have to maintain -- there's a tremendous amount of politics between these organizations. In Europe there's a global rights database initiative. They've been in discussion since 2008 and it looks to be stalled. And there are just too many
competing interests and very legitimate -- I'm not taking a side on which interests are better or worse, but you know these companies are approaching it from a different perspective even with the same industry.

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

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

MR. MONTLER: Yes, exactly. So ASCAP's model is to tell us what we're licensing after we've used it. That's how they work. Same with BMI. When someone withdraws, like
let's say Sony ATV, I'm at risk if I don't have a direct deal with Sony ATV. I'm at risk of not knowing, let's say I do a deal with ASCAP but I don't have one with Sony ATV, I have licensed content co-mingled with unlicensed content from a compositional perspective but I don't know that in advance, how to disentangle them.

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

MR. BRAUNEIS: Okay. That's interesting. I mean I think that is a -- it's definitely a copyright information project.
It's not strictly speaking I think a document recordation project but within the greater scope of facilitating copyright information about works it certainly falls within that.

MR. MONTLER: Exactly.

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

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

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

MR. MONTLER: No, for like an ISRC. ISRC I think is pretty straightforward.
MR. BRAUNEIS: Well I mean it's kind of either or both. I mean I'm interested in reactions and you know is it useful enough to build this kind of comprehensiveness that you want some incentive in place to motivate folks to include it, or is it something that voluntarily if you have it then we'd love to have it as part of our data --

MS. KOSSOWICZ: I don't think that the Copyright Office would necessarily be the right place to look for a comprehensive list of say ISRCs for example, because it's never going to have a complete record of ISRCs because we don't register every single ISRC, right, we only register the best edition, otherwise I mean we would be spending all our money on this. We only register you know what we have to. And so there may be the explicit version vs. the edited version vs. I don't know, the ring tone or whatever rights. They may have separate ISRCs but we're only registering the best edition.
And to go back and have to find everything and link it all with all of the catalogues that we have, I don't think it's even possible.

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

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

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

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

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

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

So in the absence of some kind of recognition technology you need some concrete
term that you can refer to a particular photographic work or find out anything useful about it. And I don't know that there is necessarily a comprehensive ISBN type system that you could adopt but there needs to be something that would be useful information about photos available.

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

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

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

MR. BRAUNEIS: In addition to
standard work identifiers there are also available a variety of standard party identifiers and I'm curious about views on the extent to which the Copyright Office might incorporate those.

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

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

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

MS. KOSSOWICZ: Not to my knowledge.

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

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

MR. BORKOWSKI: It does sound like a bitcoin.

MR. HOLM: I understand I guess the collecting societies make use of them, the ISNI’s.

MR. BRAUNEIS: So that would be for musical works. So we'll ask that question again.
in New York.

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

MR. MONTLER: And it forces normalization. Like I said it’s a big problem on the composition side.

MR. BRAUNIS: Next topic is change of contact information and of licensing agents. Currently the Copyright Office website gives the advice well if you have changed your contact information and you want to make that public you can do one of two things. You can go and record a document that says we've changed our contact information and here are all the works that that pertains to or if you've registered the works you can file a supplementary registration that says here's a supplement to our previous registration that says we've changed our contact information.

But the problem of keeping an up to date set of contact information for owners of
copyrighted works doesn't seem to fit all that well into either the registration or recordation model because it's not really about a transaction -- there's no transaction that's occurred, nor is it talking about your registering any new work.

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

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

MR. BRAUNEIS: The question is though, and I'm going to have to check this myself, how does that actually show up in the
Copyright Office catalogue? So if you, and I'd actually love to, if you have an example of that to get me a document number or something so that I could see, because unless you've titled the document Change of Address, then there's no way that I would necessarily search and find that document as a change of address document.

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

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

MS. MORALES: Going back to your other question about linking registration numbers, for the kind of work that I do it would be very helpful to have your registration number linked to your recordation because, as you said, if you don't have a title, how else are you going to find it?
It's often that I'll get a list or you know one registration number and I want to search about any activity on it, so how am I going to do that?

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

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

MR. BORKOWSKI: But we have to be cautious though because in many instances, especially instances that involve large catalogues, which as you identified at the beginning of the day you know our industry is among the top -- along with music publishers. And the example given earlier of the 50,000 titles, first of all it's not possible in a
catalogue that size to be able to run down all
the registration numbers. They may not be
immediately available, they may involve foreign
works, they might involve U.S. works that have
not yet been registered. So there can't be
a requirement that if we transfer a document it
is recorded and there are the registration
numbers.

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

MR. BRAUNEIS: Yes?

MS. MADYUN: I just wanted to add
something to the changing of the address. When
we do catalogue those documents we treat it as
a one party document so there's only one party
that's listed in the record. And again if you
label it “change of address,” then that's there
and if there are a list of titles then we will
index all those titles.

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

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

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

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

MS. MORALES: And maybe in the
interim to be part of the record of what the new address is, another field in the online catalogue.

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

MS. MORALES: It's $115 dollars but I always thought that a supplementary registration was to amplify or correct the basic registration at the time that you registered it so that, you know, if you did something wrong or something was ambiguous that stayed in your application and you wanted to correct that, that
you file for supplementary registration but you don't really use it for ten years down the line when you've changed your address or ownership. That's what you record a document for.

MR. BRAUNEIS: That may be correct.

The current version of the Copyright Office website actually does say you could also file a supplementary registration.

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

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

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

MR. BRAUNEIS: Okay.

MR. BORKOWSKI: I go back to what I said yesterday. I mean I still think that on a going forward basis at least it should require
for all sorts of reasons user accounts. And if you have user accounts then I think the user, when that company or person changes an address or contact information you could enter it into the account.

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

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

MR. BRAUNEIS: Right. And I guess the question is probably a question of just making sure that people have notice of this but
the Office does currently have deposit accounts. It was an old method, pre-credit card kind of method of payment where you actually kept on deposit with the Copyright Office a certain amount of money that you would use to pay for your fees and so forth.

I think it's fair to say that the holders of those deposit accounts did not expect that all their contact information would be made public, they just weren't thinking of it in that way that all the contact information that's contained in that account has not traditionally been made public and is there simply to facilitate transactions between the remitter or the registrant and the Copyright Office and to sort of convert and enlarge that to user accounts more generally I think we'd have to provide notice that oh and by the way the information that you're submitting is going to be made public. Or at least some portion of it will be.
MR. BORKOWSKI: Well yes you can't
surprise people. They have to know.

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

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

MR. BRAUNEIS: I do not but --

MS. MADYUN: It's a lot.

MR. BORKOWSKI: Is it?

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

We rarely get checks and it's more
so from the bigger companies that have deposit
accounts because they're doing multiple
transactions at the office on a daily basis
between registration and recordation. So for them it's easy just to have their deposit account and us take the money out of it.

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

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

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

Well to broaden out this conversation a little bit there are a series I think of the last four questions there under Standard Identifiers which goes from the specific question of identifiers to more generally the kinds of inter-operability and linkage between whatever the Copyright Office
catalogue is and other copyright databases. Many of the comments to the notice of inquiry mention, gee there should be inter-operability, there should be linkages. But I think not with a lot of detail about exactly what is meant, what kind of inter-operability would be useful. What kind of linkage would be useful? And so I'm curious if there are any thoughts about those issues.

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

MR. MONTLER: It would but it comes down to if they're required to do it. I mean
that's part of their view of their role and I think there's concern they're going to be disintermediated as this becomes visible. I don't think they will but I think that's part of the concern.

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

So if we had the capability of accepting those.

Now you know again in terms of inter-operability, what does that mean? Maybe it means no more than formulating a data standard which they can use when they're electronically submitting information and that
data standard could equally be used by a third party intermediary and an actual party to a document.

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

I mean law firms certainly act in that capacity.

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

And the reluctance I've seen from labels and from societies and performing arts organizations is a concern about basically liability about mistakes because there is such a problem with the quality of the data. It's
no one's fault, it's just part of my theme here. If you compel them to do it, they can and I'm sure they would, but to date it hasn't been a requirement necessarily to be normalized or to have ISWCs or associate with ISRCs. So that's the state of the data out there and anyone who's charged with recording it in a legal way is making a representation behind it. And I think they'll be nervous.

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

MR. BRAUNEIS: Right.

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

MR. MONTLER: Well because they're
recording they're on that side. Sound recordings it's a cleaner -- you don't have split repertoire. On the composition side you have multiple writers who assign different people on different copyrights and the PROs we're talking about are just the performing rights. You have Harry Fox on the mechanical side. So you have this you know how often is the performing right, the same split as the mechanical? Pretty often but not always. So who controls for that when you're registering? So there's quite a few, there's layers of complexity on the publishing side.

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

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

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

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

And you saw in one of the slides about structured electronic documents the idea
that we might define an XML schema which would set up a set of tags that say here's the kind of information you want and here's the tags that you would use to properly label that information so we know, our peers know how to ingest it and put it in the Copyright Office catalogue.

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

MR. HOLM: That's a fairly serious trade off here unfortunately except that the Office picks or favors some standards, it's likely those standards are more going to be used because that's then how people can submit information to you. But the tradeoff is that you're then closing potentially new standards or better standards from being adopted. And
if it is the case of the Office of adoption of
a particular standard causes that standard to
become the standard, then you're stuck with
that. Right? It's the QWERTY keyboard problem.

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

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

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

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

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

And so putting a standard in place, letting people flow information through drop downs is a great way of standardizing the lexicon, you know, XML with pre-populated coding is a great way to do that because it forces
everyone to speak the same language.

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

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

So any way that we accommodate a
standard we have to think about how can we accommodate it flexibly so that these minor amendments to the standard can be immediately reflected in the database without changes.

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

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

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

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

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

Is there a specialized role for the Copyright Office catalogue to play that is different from the roles that privately
maintained databases play? And this somewhat
goes to Kevin's comment about gee maybe the
Office or somebody could facilitate a scalable
database of you know matching ISWCs with ISRCs
and so on. Maybe we could. Traditionally
that's not what the Office has done.
Traditionally the Office has been much more
focused on registrations and on registering
documents that represent certain kinds of
important basic transactions in works,
certainly not non-exclusive licensing
transactions -- there are very few
non-exclusive licenses that have ever been
recorded in the Copyright Office for obvious
reasons. They aren't important enough and they
possibly aren't of enough value that you would
go to the trouble of recording them. They tend
to be assignments and grants of security
interest and other major transactions in works.

So we could continue doing that and say we're only about registrations and major
transactions that involve sale or grants of security interest, and that's where our competence is, or we could expand in some way. And so the question is are there areas of expansion? Have I correctly described the competence or the historical competence and scope of the Office's involvement? Thoughts?

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

MR. BRAUNIS: You'd like to see increasing the scope?

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

And again I think the themes of transparency, democratization of access, you know, I think as a society with the internet and the lowered barrier to entry to access to this kind of information, I mean the more in part a panel of sort of modernizing the Copyright
Office's interaction with the public. Right?
This could be done along with that. Right? So
the internet is a great vehicle for
democratizing access.

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

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

Now if in the process of recordation
if it's within the interest for someone who's going to record, to make this information, to clean it advance, that's what I'm saying. It's not the distribution of it.

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

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

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

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

Or are you saying you're going to
have to have some kind of legal requirement or
disability if you don't do it, or something, in
order to push that?

MR. MONTLER: The latter.

MR. BRAUNEIS: The latter. Okay.

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

MR. BRAUNEIS: No, that's okay.

We will get to that soon. But the idea of you
know what kind of incentive is needed and does
it need to be a kind of legal stick or could it
simply be the carrot of having the information
available -- that's kind of an important
consideration in thinking about what we need to
do to put together something like that.

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

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

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

And so the Microsoft comment ends up saying you should adopt an API-first or API-forward approach to your data because you need to just let others develop various kinds of user interfaces and to develop other uses for your data so you can concentrate on what you're
good at, which is making these determinations.

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

MR. HOLM: There's an analogy here I think. I think one of the Office's key areas of expertise, I don't know if I can call it expertise, but it's an ability to collect information from a large group of stakeholders because you have this carrot of constructive notice recordation or the carrot of damages or
registration, you have a way to get information from people that no one else really does.

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

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

I think the analogy there is the Office may not be the best party to be running interface to the information or providing useful ways to use the information. The role of the Office should be just to get the information and then give it to the private sector to use in all sort of potentially
MR. BRAUNES: I mean what's interesting to me, one of the things is that nobody has stepped forward to play the role that a title company does with respect to real property records, which is to say you're right that what title companies do is they maintain what they call their title plant which is their own private database of all of the public information. And on a daily basis, it used to be, send people over physically to collect new records and daily update their own title plant. Now I think it's done in many jurisdictions largely electronically but you had major players, Chicago Title & Trust Company, for example, building their own private database containing real property records.

I don't think anybody's done that with respect to the Copyright Office records. The records are purchased and made available through Lexis and Westlaw but if any of you use
the Lexis and Westlaw interfaces they aren't really any better than the Copyright Office's interfaces, and I'm not sure that Lexis and Westlaw see that as -- and I don't want to put words in their mouths, not being here, but I'm not sure they see that as sort of their core mission. They're focused on things like judicial opinions not copyright materials.

And so it's not like you're getting a hugely greater functionality with Lexis and Westlaw than you're getting from the Office directly. So I guess it's a curious question to me why hasn't that happened? Is it you know is it because of barriers that the Office itself has set up to gain information or is it because perhaps there's not as much value in doing that as there is in real property? And I hate to say that because gee I want to think that copyright is front and center and there’s great value in producing such a title plant. But it hasn't been done. And why?
Any other comments on metadata standards, Copyright Office's role in the copyright information ecosystem? Okay.

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

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

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

MR. BRAUNEIS: Okay. Let me just push back a little bit if you've got like two more minutes. And that is, most users want to
engage in possibly relatively low value single transactions, right. So if you want to license a song because you're making a video that happens to have that song in the background that's going to be put on YouTube or whatever. And traditionally the Copyright Office database has been about high value transactions, not licensing but sale of the entire stream of income from that work forever. Or the pledging of that entire stream of income to secure a loan.

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

MR. MONTLER: I think that would be -- there's a middle area as well and I think that's underserved right now so larger, I mean
like what we're doing at Google and I'm sure at Microsoft and others who want to work at scale, who want to make catalogues available at scale but just don't have anywhere to go to do it.

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

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

So it's something that, you know, with the internet and all of the types of
innovation, I mean I happened to focus on music, I work on non-music content as well. But you know everyone's trying to figure out how to make this accessible in a way that's respectful of copyrights at the scale that the internet is already doing. People are behaving in a certain way. And when we acknowledge that that's how they're behaving, let's figure out how to put it within a respectful structure.

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

MR. MONTLER: Thanks a lot.

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

The first question is are there significant numbers of transactions that are not being recorded such that getting some
additional incentives would increase the number of transactions that are being recorded, and would provide important information that's not currently publicly available.

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

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

It seems less provable that dropping the requirement of recording a transaction by
which you obtained your title that was dropped in 1989, that that has had much of an impact on the number of assignments that are reported.

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

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

So I've taken out of the current year financing documents since it seems to me that those are typically involved in large scale transactions and if you want to obtain your loan then you're going to pay your $105 dollars plus
extra titles when you are engaging in that transaction.

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

So if that scale on the right side is the number of documents, you've got a scale that's 100 times less in magnitude which is the scale of the cost of recording a basic document and the little green bands are the actual dollar figure and the red bands in between them are adjusted at constant 1978 dollars. And you can see that even in 1978 dollars the cost was double in about the year 2000 and tripled by the mid-2000s, which is where it stays, and that
seems to coincide with this drop.

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

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

MR. BORKOWSKI: Can you run a survey of some kind targeted towards either high volume filers or some of the in between, you know, middle volume filers? Maybe not the high ones because they're recording all the time it seems.
I think a survey of your users would probably make some sense if you want to know that.

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

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

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

MR. HOLM: There really are transactions out there that aren't being recorded just because people have never used --
MR. BRAUNFELS: They've never been users.

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

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

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

MR. BORKOWSKI: The more interesting
question would be if you could get to the small users, I mean the small copyright owners. I don't know how you'd do that, and ask them because that's what your goal is here. I don't know how you'd get to them, but see how you could motivate them to record more.

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

MR. BORKOWSKI: That's true.

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

I was at a meeting a couple of weeks ago where a big company was astounded by the benefits of copyrighting. These are not
unsophisticated people but for some reason and maybe it's just me taking it personally, I feel like copyrights might take a second seat to patents and trademarks in some people's minds. They know patents are big hitters and they pay dearly for a patent registration. That might have something to do with it.

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

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

MS. MADYUN: I have to second that.

MS. MORALES: We encourage the implementation of copyright programs, part of which consist of registrations, recordatons and DMCA Designation of Agents. Companies are more aware of designations But registering and recording does not seem to be something that a
lot of people are in tune with.

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

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

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

   Obviously you'd have to think about sort of lag times too, right, because the year you register something may not be the year that you engage in the transaction with respect to it and there might on average be a certain lag
time between registration and starting to see a bump in transactions with respect to those registered works.

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

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

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

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

MR. BRAUNEIS: Right. Here's your
certificate of registration and by the way, in case you're engaged in a transaction with respect to this newly registered work, you should consider recording it.

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

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

And so you know one possibility is that gee by opening up the availability to get
those recorded documents over the internet, at least to those who have submitted them, we might actually encourage more recordation. So along those lines are there any other sorts of services we might provide that people would say, well if you did that then I might record more?

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

   MS. MORALES:

   MS. MORALES: Well, the PTO has a
small entity/large entity option in the fee worksheet where you can pay less of a fee if you’re a small or micro entity as opposed to a large entity. You click one or the other and it lowers your fee if you’re smaller or micro.

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

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

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

MR. BRAUNEIS: For patents, not for trademarks.

MR. HOLM: That's right.

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

MR. HOLM: That probably true, right.

MR. BRAUNEIS: I guess the question would be on what basis would they -- you know we could do large versus small entity, I don't know what kind of pushback from certain large
entities about that. But if anyone not just now but in the future has any ideas about how to accomplish that graduated fee scheme, that would be very helpful.

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

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

Now I'm not sure whether that means
that the others are all the initial owners of copyright who are registering or whether some people have simply failed to conform to this request but we don't have a lot of transfer statements and this might be a limit on what transitional incentives could do. In other words, we would only get something less than this number of documents recorded if we implemented such a requirement.

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

We could condition additional remedies such as tax advantages or attorney's fees on the recordation of the transfer to the current copyright owner the way that now damages or attorney's fees are conditioned on registration of their work before the commencement of infringement.
I could keep on going talking about various incentives that are proposed but maybe we can start thinking about those before we get to the others. Is this a good idea? Susanne says no.

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

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

MS. MORALES: No, that's all.

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

And we already have the registration requirement which no other country in the world
has, and those copyright systems function just fine. Imposing yet another obstacle that would either serve as a prerequisite or as a limitation on extremely effective remedies which are frequently the only remedies that are available to copyright owners is a bad idea.

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

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

And I say there's no good reason that
we should be at odds with those obligations by putting additional formalities. I really do think that's the wrong way to go.

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

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

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

MR. BRAUNERIS: This is an opportune time.

MR. HOLM: So to start with,
depending on how it's implemented, Berne compliance is not necessarily an issue. I think the problem would be is if you imposed requirements on the original owner rather than subsequent owners, so if you require for subsequent owners to file infringement law suits that they have to record or for subsequent owners you get statutory damages or for what I propose is for transfer to be valid -- those restrictions on the subsequent owner would not violate Berne because Berne does not particularly concern itself about ownership. Berne only requires that the work be protected for the statutory, the minimum terms. And that the owners of the work, the original owners of the work be allowed to exercise all the rights associated with the work. And statutory damages is not actually one of them because most European countries do not have statutory damages.

I mean there are two other points.
One is that Berne only applies to foreign works, not that it's necessarily a good idea if you treat them differently but legally you can. And Berne almost certainly does not -- it's not totally clear because it never came up before the panels but Berne doesn't restrict restrictions on ownership, right?

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

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

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

And -- I forget the next point.

MR. HOLM: Inalienability and
those kinds of restrictions?

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

I think it's a way of limiting rights
that are not limited in terms of -- you know the
Constitution doesn't provide for formalities. Of course Congress can impose some to some extent but this is a right that's considered extremely valuable and I don't see the countervailing public benefit of requiring even the most immediately previous document in the transfer to be recorded because the balance is that if you don't do it right you lose valuable rights.

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

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

MR. BRAUNEIS: I think to some extent you're asking what's the public benefit. And that brings me back to my first question, which I don't know the answer to, which is you
know is there a problem out there of large numbers of works where we don't know the copyright ownership of them because the documents haven't been reported and there would be a great public benefit in knowing that so that further transactions could take place with regard to those works.

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

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

MR. BORKOWSKI: I don't think that's a vast problem. I think it is an issue,
however one that I know the Copyright Office has tried to address in the past with its report and I know potential legislation has been debated. And that's probably the best way to deal with it.

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

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

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

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

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

Is it time consuming? Yes, but I don't think that in our research we would really think to go to the Copyright Office first to figure out the answer to these things. There are other places that I think one would first go to to get the most updated information because it's the sources that provide royalties that have the most current information, usually because that's where people would tend to update the
MR. BRAUNEIS: And are there cases in which you end up saying, you know what, we either don't know who the owner of this work is or we can't locate that owner and now what do we do?


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

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

MR. HOLM: The other is that music I think is a very exceptional case in some ways. There is a lot of inter-ownership. I think
that's subjectively true. That's not the case in a lot of other copyrighted works, especially photos and even obviously textual works.

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

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

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

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

MR. BRAUNEIS: Right, to the extent
that we could inform Congress one way or other
that would be a good thing, yes.

MR. BORKOWSKI: Well you know our
industry’s feelings.

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

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

MR. BRAUNEIS: Oh, okay. It’s a
power issue. That’s okay.

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

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

MS. MINOW: Right, and additional
registration requirements, yes.
MR. BRAUNEIS: That might not be solved by an imposition of recordation requirements today for new transactions.

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

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

So if I granted, I assigned an interest in a work that I had written to you and then I assigned the same interest to George and so we had a conflict between those two
assignments, absent a recording statute, the first in time would always win. Right? And the recording statute adjusts that in order to try to build a public record of ownership and transfers in copyright.

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

And maybe that's just because the number of transactions is much fewer because the average value of those transactions is less. But there is constant litigation about real property recording and there's very, very little about copyright recording. So there's a great difference there in the amount of case law that's available of recording and copyright.
Well, let me just throw the last two proposals out there for incentives. A proposal has been forwarded to allow judges to consider diligent recordation and the factor of granting injunctive relief and so this is building on the idea that when granting injunctive relief courts can take into consideration all equitable factors and whether an owner has diligently recorded a transfer might be taken into account.

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

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

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

And so, if the defendant feels that
there wasn't diligent recordation on the side
of the plaintiff and that the defendant is
prejudiced in that way or something is
fundamentally unfair, she'll be able to make
that argument to the judge and the judge will
take into account.

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

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

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

The grantor, who when he grants an exclusive right, is expecting the grantee to
enforce that right and the grantee has the right
to enforce that right in litigation. That's not
true for a non-exclusive license.

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

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

MR. BRAUNEIS: All right. To push
back and play devil's advocate a little bit, let
me say that the statute defrauds itself has some
of the same effect, that is to say it up-ends
the intent of the parties. We haven't always
had statutes of frauds and at the time they were
first introduced and people may not have been
as aware of them as they are now, there was
probably some of the same reaction. Like wait
a minute, we had a handshake deal like we always
had handshake deals in the past forever and now
you're telling us that that handshake, after the
fact, you're telling us that that handshake is
no good and that we need to have a writing.

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

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

MR. HOLM: One thing to think about
when we're considering adding more formalities
is that part of the burden is intimately linked
to the practice of the Copyright Office and the
fee they charge.

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

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

MR. BORKOWSKI: Right, but the
burden is obviously not just financial to them.
There are transactional costs. The remitter,
who would be making these filings whether it's
record keeping or whether it's something else.
So those costs also have to be taken into
account. It's not just purely how much does it
cost to record. There's more to it than that.
MR. HOLM: And that’s something the Copyright Office has control over, too, right? Like a paper system versus an electronic system imposes different costs on a company that has to do recordation.

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

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

MR. BRAUNEIS: And we should also consider, I mean as you point out to the extent that you're burdening rights holders there are probably going to be transactions that otherwise would have happened that would not. So if this is in fact a severe burden to transferring copyright or granting exclusive
rights, then there are transfers that would have
happened otherwise that's won't happen, and
that's not really a desirable outcome either.

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

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

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

And again I want to thank Stanford
for hosting this roundtable. We really appreciate the provision of facilities and food and drink to facilitate our presence here.

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

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

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