The Roundtable met in the Jerome Greene Annex, 410 West 117th Street, New York City, New York, at 9:00 a.m., Robert Brauneis, Moderator, presiding.
PRESENT

ROBERT BRAUNEIS, United States Copyright Office
CHRISTOS BADAVAS, Harry Fox Agency
JONATHAN BENDER, SoundExchange, Inc.
RICHARD BENGLOFF, American Association of Independent Music
RHONDA BLAKEY, BMG Rights Management
GEORGE M. BORKOWSKI, Recording Industry Association of America
JOANNA CORWIN, United States Copyright Office
BEAU DASHER, SAG-AFTRA
BRIAN DURANT, Harry Fox Agency
SUSAN E. DAVIS, National Writers Union
RACHEL FERTIG, Association of American Publishers
JUNE BSEK, Columbia University Law School
JANE GINSBURG, Columbia University Law School
JOHN GRBIC, United States Copyright Office
ANDY HACKETT, National Corporate Research, Ltd
ROY KAUFMAN, Copyright Clearance Center
ZARIFA MADYUN, United States Copyright Office
TRICIA McKIERMAN, Graphic Artists Guild, Inc.
STEFAN MENTZER, American Intellectual Property Law Association
VICTOR S. PERLMAN, American Society of Media Photographers
BRAD PRENDERGAST, SoundExchange, Inc.
HEATHER REID, Copyright Clearance Center
CLAIRE ROBINSON, W.W. Norton
MAURICE A. RUSSELL, Harry Fox Agency
EDOUARD TREPOZ, University of Lyon
C-O-N-T-E-N-T-S

Opening Remarks ........................................ 6
  Robert "Bob" Brauneis
  Moderator

Overview of the Agenda ............................. 10
  Robert "Bob" Brauneis
  Moderator

Introductions ......................................... 12

Recordation System at the Copyright ....... 17
  Office
    Zarifa Madyun
    Section Head
    Documents Recordation Section
    Copyright Office

Discussion .......................................... 27

Statistics About Recordation and ....... 30, 50
  Registrations
    Robert "Bob" Brauneis
    Moderator

Questions and Comments .................. 44, 62

Discussion .......................................... 65

Electronic Signatures ............................ 106
  Robert "Bob" Brauneis
  Moderator

Discussion .......................................... 107

Material Returned to Remitter ............ 113
  Robert "Bob" Brauneis
  Moderator

Discussion .......................................... 115
C-O-N-T-E-N-T-S (CONTINUED)

Structured Electronic Document .......... 117
    Robert "Bob" Brauneis
    Moderator

Discussion ............................ 118

Availability of Recorded Documents ...... 130
    on the Internet
    Robert "Bob" Brauneis
    Moderator

Discussion ............................ 130

Notice of Recordation to Others ......... 143
    Robert "Bob" Brauneis
    Moderator

Discussion ............................ 144

Interim Steps ........................... 146
    Zarifa Madyun
    Section Head
    Documents Recordation Section
    Copyright Office

Discussion ............................ 149

Looking at Document Recordation ......... 154
    from a Different Perspective
    Robert "Bob" Brauneis
    Moderator

Discussion ............................ 162

Standard Party Identifiers .............. 181
    Robert "Bob" Brauneis
    Moderator

Discussion ............................ 182
P-R-O-C-E-E-D-I-N-G-S

9:08 a.m.

MODERATOR BRAUNEIS: Let me just start by saying that, as a professor, I always notice when the front row is empty and the back benches are filled, but that doesn't make for the tightest and most intense kind of conversation. So, there are currently one, two, three, four, five, six, seven -- there are eight seats or really nine seats available at the table, and there are not even nine extra people here. So, I would encourage those of you who are sitting in the back to come forward. It doesn't matter if you were thinking you were going to be here as an observer and I'm not going to cold-call you.

(Laughter.)

This is not a class. But it really helps to have the conversation focused in the center of the room and not sort of dispersed to the edges. So, please come forward, sit at the
table, and fill the seats -- or not.

(Laughter.)

Well, let me just start, then, by way of formal introduction. I am Bob Brauneis. I'm currently serving as the Abraham L. Kaminstein Scholar in Residence at the United States Copyright Office.

And I am also very pleased to be accompanied here by two of my colleagues at the Copyright Office. Zarifa Madyun is the head of the Recordation Section of the Copyright Office, and Joanna Corwin, to her right, is a Project Manager in the Copyright Technology Office.

And all three of us are delighted to be here, and we are looking forward to spending this time with you. We want to particularly thank Columbia Law School for providing us with this wonderful space.

And June Besek is here and all the administrative staff that is making sure that
is recorded and videoed and we have got a screen, and everything is good in order. So, that is wonderful, and we want to thank them.

And I want to welcome you and thank you for coming and for spending some time that I know you could be doing other important things with, and in many cases for traveling distances to get here. We are really, really grateful for your participation and input, and we are committed to using that input to improve document recordation at the Copyright Office.

Let me set the stage and set the expectations for this meeting. I think I said it at UCLA a few days ago, that I think of this is as kind of lopsided dialog, which is to say we have some things to say to you and to set the stage for the dialog, to give you some factual background about where recordation is right now and some ideas that we have for changing that. And those are going to come at the beginning. And so, it may sound like we are lecturing to
you, but the fact is that we are most interested
in listening to you.

And so, for the rest of the day, it
is going to be our ears open and I will
occasionally perhaps ask additional clarifying
questions, if I don't understand your concerns
as clearly as I think I should. But listening,
for us, is the largest order of the day.

I also want to say that we very much
think of this meeting as one stage in a larger
process. We started with a Notice of Inquiry
in January. Many of you very generously
contributed important comments to that Notice
of Inquiry. We thank you for that.

We think of this as continuing after
this meeting as well. For me, this is a chance
to get to know many of you, and for Zarifa and
Joanna as well.

So, please write, call, continue to
communicate your concerns and your knowledge,
and that is going to be very, very helpful to
Let me just do a quick run through the agenda, so that we understand how the meeting will proceed. We have packets with an agenda and some slide copies for each of you out there at the table, if you didn't get them.

We are going to start by going around the table and having us each introduce ourselves.

Then, we will have two background presentations. Zarifa Madyun will give a presentation on the current state of recordation at the Copyright Office, the current process. And I will give you some statistical background about recordation over the past 35 years.

And then, we will start turning to asking your input on a series of topics that roughly correspond to the topics listed in the Notice of Inquiry. So, we will first be discussing a proposed guided remitter
responsibility model of electronic recordations and structured electronic documents. We will have a coffee break at some point mid-morning. And then, we will go into linking recordation and registration records. We will have a lunch break. And then, after lunch, we will be talking about standard identifiers, other standard identifiers, and additional incentives to record documents.

I should say that at both the UCLA and Stanford meetings, in fact, our discussion of electronic recordation models has brought us close to lunch, and we have talked about the other topics after lunch. And so, that may well happen here because there are many more subcategories underneath the electronic recordation model topic.

Finally, you will notice that we have recording equipment of various kinds here, I think of audio and audiovisual. And we have a court reporter who is going to transcribe the
comments. So, I would just like you all to take notice of the fact that your participation in this meeting constitutes a release to use those comments and to publish them because the transcript will be a public document.

Are there questions about the agenda or anything that I have said so far?

(No response.)

Okay. Well, if not, then I would like to proceed to having us each introduce ourselves around the room.

As I said, I am Bob Brauneis. I am serving currently as the Kaminstein Scholar in Residence at the Copyright Office, but I am also a professor of law at George Washington University Law School. I have taught and wrote about copyright for more than a decade there.

And I have a particular interest in copyright information about works and how the sort of ecosystem of copyright information works and how we can make that system work
better. And so, this year I have a couple of projects that are in different ways looking at that, but this is at the center of those projects, this project to improve recordation. And I will pass on to Zarifa.

MS. MADYUN: Good morning.

I'm Zarifa Madyun. I'm the Section Head of the Documents Recordation Section. I actually began my career at the Copyright Office in 2005 as a document specialist, and I have been the Section Head now for a year and a half.

MS. CORWIN: Joanna Corwin. I have been working in the Copyright Office since 2001. I spent a little over ten years in Registration and then I became a Project Manager. I worked on the Register's Special Project for Technical Upgrades, and I am happy to be part of this project.

MS. BLAKEY: My name is Rhonda Blakey. I'm with BMG Rights Management.

MR. PERLMAN: I'm Vic Perlman. I'm
General Counsel and Managing Director of the American Society of Media Photographers.

MR. RUSSELL: Maurice Russell, Senior Vice President, Client Services, the Harry Fox Agency.

MR. BORKOWSKI: George Borkowski, Senior Vice President, Litigation and Legal Affairs, at the Recording Industry Association of America.

MR. BADAVAS: Christos Badavas, Deputy General Counsel, Legislative and Policy Concerns, with HFA.

MS. McKIERNAN: Tricia McKiernan, Executive Director for the Graphic Artists Guild.

MS. ROBINSON: Claire Robinson, Copyright Manager, W.W. Norton.

MS. REID: Heather Reid. I'm Senior Director of Data Services and Standards at the Copyright Clearance Center.

MS. FERTIG: Rachel Fertig with the

MR. KAUFMAN: I thought I wasn't going to get called on.

(Laughter.)

Roy Kaufman, Managing Director of New Ventures at Copyright Clearance Center.

MR. BENGLOFF: Rich Bengloff from the American Association of Independent Music. We are the organization that represents independent music labels in the United States, which makes up, per Billboard, 34.6 percent of the music market.

MR. BENDER: I'm Jon Bender. I'm the Chief Operating Officer for Sound Exchange, a performance rights organization out of Washington.

MR. PRENDERGAST: I'm Brad Prendergast. I'm Senior Counsel at Sound Exchange.

MR. GRBIC: I'm John Grbic. I'm with the Copyright Office, an intern for
Professor Brauneis.

MR. HACKETT: Good morning.

I'm Andy Hackett. I'm from National Corporate Research. We are the nationwide corporate services company that provides search and filing services, including at the United States Copyright Office.

MODERATOR BRAUNEIS: Great.

Thanks.

And if any of you in the back want to introduce yourself, not that I would cold-call on you -- (laughter)

MS. BESEK: June Besek from the Columbia Law School.


MR. DURANT: Brian Durant. I manage the Data Management Team at the Harry Fox Agency.

MR. TREPOZ: I'm Edouard Treppoz professor, University of Lyon, in France and
Visiting Professor at Columbia.

MR. DASHER: Beau Dasher, Counsel at SAG-AFTRA.

MODERATOR BRAUNEIS: Great. Well, thank you very much. It is humbling to have so much expertise and experience represented in this room.

And I would next like to turn over the podium to Zarifa Madyun -- and the clicker (laughter) -- who will tell us a little bit about the current recordation system at the Copyright Office.

MS. MADYUN: Okay. So, I am just going to give you a brief overview of how currently the system works with regards to recording documents.

So, the Document Recordation Section is responsible for the examination and cataloguing of documents submitted for recordation, following the requirements established in the Copyright Act and in
Copyright Office regulations. My section creates and issues official Certificates of Recordation for those documents that meet the recordation requirements.

As many of you know, currently, all documents are submitted in hard-copy paper form. Each document is assigned to a Document Specialist who begins by examining the document. The specialist checks whether four requirements are satisfied, and those requirements are: legibility, whether or not it can be read and easily scanned into our imaging system; completeness, whether the document contains all of the elements that it says it is supposed to contain; signature, one, that there is a signature, and if it is a photocopy signature, if there is some sort of certification that indicates that it is a true and accurate copy of the original. And then, of course, the fees, making sure that the proper filing fees are there.
With regards to data entry, the Document Specialist enters information about the document into an electronic record that forms part of the Copyright Office Catalogue. And that information will include the date of recordation, and that is the date that the document is actually received in our office; the dates of execution and certification, and that is the information that is provided in the document itself; the parties that are involved in the transaction; the heading of the recorded document, whether it is a security agreement, an assignment, a short-form option; titles of the works listed, and then, registration numbers, if provided and applicable.

And I know you are probably looking and saying, okay, that is not a lot of information to enter; it should be a quick, fast process. Well, here is an example of just one of the basic documents that we receive in our office. The process actually requires close
reading and interpretation of the document.

Here is just a simple, two-page assignment of copyright. Well, when a specialist gets this, they are trying to figure out what parties are involved in the transaction. If they were just to look at the signature line, they would say, "Okay, it's just Nicholas Spencer. I'll just add that information in the record and keep moving." But if they actually take the time to analyze this paragraph, they see that not only is Nicholas Spencer the assigner, he is also the Vice President of Epitek, who is also an assigner. So, if they didn't pay close attention, they would miss that very important information.

With regards to titles, again, in the first paragraph we see registration numbers. But if a specialist isn't looking carefully, they wouldn't know exactly what titles are associated with these registration numbers.
We see that it says that they are registration numbers for work product, but what those work products are, they would have to go in a little bit deeper and see that, okay, for the first registration number the title is "Epicontrol". And then, for the second registration number, we see "Pyrocontrol". But, then, again, further down there is another registration number that appears that is title "EpiFlow". And so, again, if the Recordation Specialist was just doing a cursory review, they may miss, also, this information and that might not enter into our record.

The majority of documents received concern a single work. But between 2 to 5 percent concern 100 works or more, and documents can concern over 50,000 works. We do receive documents that have large catalogues. I think, to date, maybe the largest we have received had over 70,000 works. And someone has to actually manually enter in all of those titles.
Document Specialists count the work titles contained in the document to confirm that the document is complete and that the correct fee has been paid.

A separate catalogue record is created for each work in a multi-work document.

Recordation Specialists currently immediately enter work titles for documents that concern 100 works or less. So, as soon as they create that basic record, they are typing at least 100 titles.

If a document concerns over 100 works, then the initial record is placed on hold, the document is numbered, it's imaged, and then, it is mailed back to the remitter along with a Certificate of Recordation.

A copy of the list of work titles is made and set aside. And then, specialists enter these titles at a later date.

With regards to our document numbering and scanning, currently, the
recordation staff numbers each page of a
document by manually attaching stickers. And
if any of you have actually filed documents with
our office and received those original back, you
know exactly what I am talking about.

Staff, then, scan the document and
upload the digital scan file to the copyright
imaging system. And right now, unfortunately,
the copyright imaging system is available to the
public onsite at the Copyright Office, but not
on the internet. So, external users aren't able
to actually access these images.

The staff creates certificates and
badges and matches them to their corresponding
documents. And then, the Copyright Office
returns the original document to the remitter
accompanied by the Certificate of Recordation.

With regards to staffing and
workload -- and again, if some of you have filed
documents with our office, you know that we do
have a slight backlog -- but between 2008 and
2012, we had four Document Specialists working and two Support Specialists. In 2013, we were actually able to acquire some new employees. So, now we are at nine Document Specialists and still two Support Specialists.

These specialists, on average, can do about 35 to 45 documents per week. I do have a few that could some days do about 60 a week, but that's just about average, 35 to 45 documents per week.

So, with regards to labor estimates, how long it actually takes a specialist to go through a document, a simple document like the one I showed you earlier, just a two-page assignment of copyright, from beginning to end, meaning the time the Document Specialist gets it, they examine it, to the end process where the certificate is created and mailed back out, it takes about an hour.

For an average document with maybe a couple of parties, a couple of extra pages,
it could take about two hours per document. And, of course, the more complex the documents are, times can vary depending on number of titles and number of pages. So, you can imagine a document that comes in with 70,000 titles, it is not going to take an hour to actually process all of that and get that certificate created and mailed back out.

So, the staffing and workload, again, for fiscal year 2013, we actually received 11,900 documents in the office. Out of those, we were able to process 7,879 documents. And out of those, 566 documents contained over 100 titles, and some of those, again, could have contained thousands of titles.

And because of the amount of time that it actually takes to process some of these documents, fees have, of course, increased over time.

So, in 1978, the basic filing fee for
a document was $10, and then, it was 50 cents per additional title.

In 1990, the office raised its fees again, and it was $20 for the basic filing fee, and then, $10 per additional titles.

In 1999, we raised our fees again. So, the basic filing fee was $50 plus $20 per 10 additional titles.

In 2002, of course, we raised our fees again. The basic filing fee was $80 plus $20 per additional 10 titles.

In 2006, we raised our fees again. The basic filing fee was $95 plus $25 per 10 additional titles.

In 2009, where the fees are currently, we raised our basic filing fee to $105, and then, $30 per additional 10 titles.

May 1st -- and some of you may be well aware -- our fees are raising again. And for recordation, the basic filing fee will stay the same, but the per 10 additional titles is going
to raise slightly with an additional $5 added.

And so, that is the end of my presentation. Are there any questions about the information that you saw, anything that may not have been clear, or any additional information I could provide anyone?

MR. HACKETT: You mentioned in fiscal year 2013 11,900 documents received, 7,879 catalogued. Were those almost 8,000 part of that 11,000 or were they from the previous year?

MS. MADYUN: I would say some of those may have been from the previous fiscal year, but I believe the majority of those were from that fiscal year.

MR. HACKETT: And then, the difference just --

MS. MADYUN: Carries over into this fiscal year, yes. Hopefully, my goal is by the end of the year to not have such a large turnaround time. And I am hoping that maybe we
have the ability to hire some more staff. But the staff that I have right now, they are really good, and I think we can get that down significantly by the end of the year.

Any other questions?

MR. KAUFMAN: So, do you know how many works that was in that 7879?

MS. MADYUN: Well, Bob, actually, in his presentation, he has done, yes, he has done that. But I don't know exactly as far as that how many works that may have concerned.

MODERATOR BRAUNEIS: Yes, and I don't have information, which you will see, for fiscal year 2013, either, because the information is complete -- since we've got a backlog, incomplete since we've got a backlog. But I will show you the progress over the last 35 years of the number of works as well as the number of documents.

MS. MADYUN: Jon, did you want --

MR. BENDER: Yes, that was my
question. And I'm sure we will get into this, and it is probably a good reason for hearing from you. Do you feel like the process suppresses downward for the number of registrations you receive?

MODOERATOR BRAUNEIS: Sorry, that the --

MR. BENDER: That the process itself suppresses the amount of registrations you receive?

MODOERATOR BRAUNEIS: We will get into that for sure. And I will show you some correlations between cost data, increase in cost and possible decline in recordation. And I can't say that we can say definitively right now, but it does, of course, stand to reason that, if we substantially lowered the cost and increased the ease of recordation, that some documents would start getting recorded that are not currently getting recorded for sure.

MS. MADYUN: Any other questions?
MODERATOR BRAUNEIS: So, one of the things I have been doing this year is building a database that allows me to gather large-scale statistics about recordation and registrations and, then, do some analysis of those statistics. And I want to present you some of the first results of that database.

As I said earlier, I am going to cover not to the present day, but from 1978, which is the year in which the Copyright Office Catalogue became electronic, and so that we have got electronic records dating back to then through 2009, which is the last year that I think I can be pretty sure that the records are complete and not incomplete due to backlog and other reasons.

So, during that 31-year time period, there were a total of just over 450,000 documents reported, and those represent about
8 million identified works. There are, of course, a small percentage of documents that don't have any identified works. Some of them might record a will that just says, "I leave all of my copyrighted works," without identifying any particular work that is in them. But most documents do identify at least one work and some of them identify many, many works that they pertain to.

Lots of different types of documents are found in the Copyright Office Catalogue, and those include assignments and grants and releases of security interest most prominently, but also licenses of various kinds, options, notice of terminations of transfers, notice of intent to enforce under the Uruguay Round Agreements Act, and at least about 20 more types of documents, specialized documents, that we can pull out and identify.

All of those 450,000 documents that were recorded, we think we are reasonably able
to classify about 85 percent of them, or about 385,000 documents, representing about 7,200,000 and something like 300,000 identified works, or 91 percent of the works, using information that is in the Copyright Office Catalogue. And that information is the title of the document that is entered by the recordation specialist into the Catalogue, as Zarifa mentioned.

So, we haven't gone back and read 450,000 documents. And indeed, the current copyright imaging system, the digital system, has been in place since 1996. So, documents after that time are in the system. Before that and back to about 1960 or so, they are all on microfilm in various quality. So, it is difficult task to go back and actually read all of the documents.

All those classifiable documents, the two lines cited are assignments and financing documents representing grants and
releases of security interest. The assignments are the largest number in terms of document. About 60 percent of the documents are assignments, representing about 44 percent of identified works. The documents that are grants and releases of security interests are a much smaller number of documents, only about 17 percent of the documents, but the average size of those documents in terms of the number of works represented is much larger. And so, grants and releases of security interests actually currently represent a slightly larger number of works, slightly about 400 or 350 thousand more works than assignments in the Catalogue.

So, here's a first look at the documents reported, that 450,000 number spread out over the 31 years between '78 and 2009. And so, we begin here with about 11,000 documents. We end with about 11,000 documents. We have somehow this big peak in the middle and, then,
a decline.

And I am going to take a few cracks at sort of breaking that down and understanding what those trends mean. The first crack at breaking it down kind of slices off one peak and a little bump at the beginning. The big peak in the late 1990s is due to the two-year period during which copyright was restored in foreign works and we had Notice of an Intent to Enforce under the Uruguay Round Agreements Act. And so, if we take that peak off, then we are left with still this curve, but nothing quite so dramatic in the middle.

At the very beginning years of the Copyright Office Catalogue, the office was cataloguing something called Section 508 Litigation Statements. Under Section 508 of the Copyright Act, litigants who bring infringement suits are required to notify the office of the filing of the complaint, and judgments entered in the litigation are also
required to be filed with the Copyright Office. And for about three years, the Office was entering information about those filed statements in the Copyright Office Catalogue.

For my purposes, I really wish that the Office had continued to do so. It would be great to have 30 years' worth of registration information in the Catalogue, but I assume for resource reasons the Office made a decision back in the early 1980s to discontinue reporting those Litigation Statements. And so, we have got a situation where a little of the bump at the beginning is caused by a category of documents that is no longer part of the catalog. And if we take that off, then we are only starting with 10,400 reported documents in 1978.

So, if the number of documents looks the same at the beginning and the end, the number of works represented in those documents looks a little different, right? It looks like there's this sort of bumpy, but more or less
continuous upward trend of the number of works represented in the filed documents. And so, right, we can extrapolate from that, obviously, that the average size of transaction that is underlying the documents reported is getting larger. And the peak year so far is in 2008, when we had 470,000 works represented in the documents that were recorded.

Here is a look at that same work curve. So, that green line you saw on the previous slide follows the tops of those bars, but it breaks it down by the size of document. So, the top blue parts of the column represent documents that contain 10,000 works or more. And then, the purple is documents that contain between 1,000 and 999,000 works. Then, we are down to 100 to 999, 2 to 99 in the red, and the single-work documents are at the very bottom.

So, we have had this kind of inverse relationship, right? Zarifa mentioned at the beginning that most documents contain less than
100 works. And indeed, most documents contain
or pertain to a single work. About 75 percent
of all documents filed pertain to only a single
work. Nonetheless, in terms of total figures,
the very large documents account by far for the
largest number of works. And some of the big
peaks and oscillations that we see in the years
are evidently due to a single or a very small
number of transactions which were very large and
which affect the overall figures.

But we can see that, even in the
1,000 to 999,000, the 100 to 999 bands, that
those have increased substantially over the
last 35 years. And we had very few of those in
the early 1980s, and they now represent a much
larger proportion of the total works that are
involved in recorded documents.

Here is taking out the two largest
categories that I mentioned earlier and taking
a look at them separately in terms of the number
of documents filed. So, you can see that the
financing documents pretty steadily gained in importance or in number of documents filed all the way up into the 2000s, over the last decade; whereas, the assignments sort of bopped around in the 8 to 10 thousand range but, then, experienced a decline in the early 2000s and are now hovering just below 6,000.

Just to give us some sense of what might be causing at least the increase on the financing document side, back in 1990, Judge Kozinski, sitting by designation in the Central District of California, decided in re: Peregrine Entertainment, in which the Court rules that security interests in works under copyright are perfected not by filing financing statements under the Uniform Commercial Code, but by recording those documents with the Copyright Office. And that seems pretty clearly to that, and really preexisting speculation about whether that is what should be done, contributes to the serious increase in
the importance of financing documents in the Copyright Office Catalogue.

Then, a decade later, in 2002, the 9th Circuit decides to clarify this and says, actually, you record the documents with the Copyright Office to perfect the security interest only if the underlying works are already registered. And if they are not registered works, then you file a financing statement under the Uniform Commercial Code. I am sure many of you are painfully familiar with that distinction.

And so, you know, does that flattening-out of that upward curve correspond to that or is there some other reason why we have got a flattening-out? We are not sure, but there is at least some kind of coincidence there at the very least.

So, if you took out financing documents and, then, just consider all other documents, we have got this phenomenon of this
sort of 12 to 14 thousand range for many years, but, then, a steady decline for a couple of years in the early 2000s, losing about a third of the documents that are recorded. And now, we have got kind of a new normal of about 8,000.

I will come back to thinking about why that happened, but I will leave that as an open question now, and we can think about whether there is some explanation for that that we can give or not.

Going back for just a moment to the number of works represented, because remember that the green line I showed you earlier, in slides earlier, showed the sort of steady rise. If we broke that down into types, the major types of documents, what is accounting for that steady rise? And it turns out that it is financing transactions, not assignments, that the number of works represented in assignments, recorded assignments, has gone down and is now sitting about where it was in the mid-1980s; whereas,
the number of works represented in financing documents has dramatically increased and accounts for most of the increase that we see over time.

One of the additional details that I was curious about is whether we are getting some distortion because a financing transaction can generate two documents, right. It could generate, the same transaction could generate both a grant and a release. And so, we have double of the number of works that were actually involved in the transaction showing up in the Catalogue.

So, we strip out the documents that mentioned release to see how much of that doubling was going on. And there's some, but certainly not half. So, the pink line underneath represents grants only without releases. And some years, a few years, it accounts for a lot of the number, but, as I say, releases account for a large percentage of the
number. But most years we are seeing maybe 10-20 percent, some years less.

And so, it does seem that financing transactions really have become important in some cases in terms of works represented, the most important part of what is happening with the Recordation Catalogue. And that is something that I simply didn't understand before I started looking at these numbers, that recordation these days currently is as much about security interests in copyrighted works as it is about assignments, licenses, everything else that is going on with works.

Now that doesn't mean that that is the most important thing in the transactional world. That means that that is the most important thing that is getting into the Copyright Office Catalogue. So, we still have to ask, are there barriers to people recording, and if we lowered them, would we see the mix of documents change? But, as it stands, that is
where it is.

So, let me, then, pause now and ask for questions after that data dump. Anything in this led you to be curious about, to reflect on, to comment on?

Yes?

MR. RUSSELL: Could you talk a little bit more about the incremental workload that you have when you have numerous works associated with a document as opposed to one or two?

MODERATOR BRAUNEIS: Yes. I mean, we can both talk about that, but, Zarifa, you can start talking about that.

MS. MADYUN: As far as?

MR. RUSSELL: So, let's say you have, you know, 100 as opposed to 1. What is the incremental workload if it is all tied to one document?

MS. MADYUN: Well, okay, so if it is just one, you know, the specialist is just
entering that information and the record can go up just automatically.

When we deal with, let's say, maybe, for example, like a 10,000-title document, the specialist is taking the time to go through, count all those titles, making sure that they are all there; that if you say 10,000 is there, 10,000 is there.

Unfortunately, right now, the way our system is set up, we can't upload all of those titles at once. So, a specialist has to actually segment portions of those titles and create basic records for those portions. And that can take a lot of time.

I could say like, for example, maybe a 5,000-title document could take a specialist in some cases a week to complete from beginning to end because they are segmenting all of that out, creating those individual works. And that is not even saying that the titles are being entered. That is just creating those basic
records, doing the counting of the titles, and segmenting those works.

MODERATOR BRAUNEIS: Yes, you know, in terms of the actual, gee, how many minutes would it take per total extra, and so on, I think that the best we can do is point you back to the fees, because the fees are actually based on pretty detailed cost studies. I have sat down for hours working through with the woman who does the fee studies, understanding how she calculates the workload involved as a basis for setting the fees.

And so, I think it is a relatively-good estimate to say that, if it is $105 for the basic document and, then, now as of May 1st, $35 for each additional 10 titles, then each title is costing about $3.50 worth of time to enter. And that is about as good as we have in terms of the labor involved in doing that.

Yes?
MR. HACKETT: You were describing the classification of documents and identifying the works involved, about 10 percent of the filings you don't identify the works, and that is, I guess, because the document just doesn't specify a work, is that right?

MODERATOR BRAUNEIS: Well, about 10 percent of the documents we don't identify the type of document. I think that's what --

MR. HACKETT: I think it is 15, the type of documents. That was going to be my next question.

MODERATOR BRAUNEIS: Okay. Right.

MR. HACKETT: How are those recorded? How is that described in the Catalogue?

MODERATOR BRAUNEIS: Yes. So, where are you getting the 10 figure from? Let me just go back to --

MR. HACKETT: Well, you said it was 90.88 percent had identified works.
MODERATOR BRAUNEIS: Right. Yes.  
Exactly.  
Well, when we classify -- let me go back to the 10 documents. So, we are classifying the type of document by looking at the heading on the document that has been entered into the Copyright Office Catalogue. And so, that heading usually says something like, "Mortgage of Copyright," "Grant of Security Interest in Copyright," "Assignment of Work in Copyright," "Licensed". And so, we do word searches -- and John, my intern, is intimately and faithfully familiar with those searches -- to classify the documents.  
Now about 15 percent of the documents don't have a title that helps us. Either they have no title at all or they had a title that was something like "Appendix A". And it was "Appendix A" that was entered into the Copyright Office Catalogue, and "Appendix A" doesn't help us to classify the type of
So, the 90-percent figure comes actually just from looking through this 85 percent of the documents to all the works associated with those identifiable, classifiable documents.

And so, I have built this relational database in which all of the records that are about specific works that are tied back to a particular document, we have counted each of their -- we have just got a field that counts how many works are identified with each classifiable document. And it turns out that those 385,000 classifiable documents represents or are associated with records about 7,200,00 works. Okay?

So, just to take an example, let's say one of these documents has a document number and that document number is associated with 250 separate works records in which the title of each work associated with that document is put
into a separate record, but that record carries
the same document number. And so, we can relate
it back to that document.

Yes?

MR. BENDER: So, those 7 million
works may or may not be associated to a
registered work?

MODERATOR BRAUNEIS: That's
correct. That is absolutely correct. And it
is jumping around a little bit, I will tell you
that about, I think it is about 3.7 million of
the 8 million works records have registration
numbers associated with them.

MR. BENDER: Okay.

MODERATOR BRAUNEIS: So, about 46
percent of the Catalogue the works records do
have registration numbers. They aren't
necessarily post-1978 registration numbers.
Many of them are registration numbers that
relate back to paper records, but they have some
kind of registration or another.
MR. BENDER: Linkage, yes.

MODERATOR BRAUNEIS: Yes.

Exactly.

Other questions?

(No response.)

Okay. So, you have heard the present. Let's start talking a little bit about what is possible in the future, and start getting your thoughts about that.

So, we want to talk about models of electronic recordation, moving away from the current paper-based system, but certainly not just duplicating the paper-based system in electronic form, but thinking about how to take advantage of that electronic form and to sort of readjust costs and benefits, to hopefully dramatically lower the cost of recording the document.

So, what we have proposed is this so-called guided remitter responsibility model on the very highest level. And I want to talk
about what each of those terms mean, what does it mean to be guided and what does it mean to be remitter responsibility, and then, get your input on that.

So, what do we mean by guided? We mean that a document remitter is going to submit cataloguing information about a document through interaction with electronic forms or with electronic guidance that, hopefully, will serve to minimize mistakes.

And what kinds of guidance are we talking about? Some of these examples are going to come from our current electronic registration system. So, we start with a structured submission process in which the various stages of submission are clearly laid out and separated. We take advantage of such techniques as enumeration, where we have got dropdown boxes or radial buttons or other kinds of forms that will give a limited number of choices, rather than an open text field that
leads to all sorts of possible miscategorizations and mistakes.

Here we see examples of dropdown boxes for a type of work and for a type of international standard number in the registration system.

Validation, so that any data that is inputted might be validated against preexisting indexes or catalogues of terms or calculations.

So, when I try to enter the year "19,785" as the year of completion of a work, I get back an error message and it tells me, "Here's the format that that needs to be in." It has to be greater than 1900 and it can't exceed whatever the current year is.

We could do that. We could do validation for various other kinds of data. We could do, for example, address and zip code validation. We could validation of registration numbers.

If we started doing really fancy
things of connecting with other databases, we could do validation of other standard identifiers, and we could do validation that would ensure consistency of repeat remitter name and contact information.

Other standard techniques that you are all familiar with, because you have had to do this hundreds of times, you repeat the information. So, you re-enter information like your email address to minimize the chance that you have entered it wrongly.

We provide definitions and other possibility for help. So, if you are unsure what citizenship or domicile means or how they relate, you click on the Help button and get some additional information about that.

We have the capacity to save templates or repeat information. So that, once you have entered carefully your name and contact information, and maybe other repeated information, you don't have to re-enter it; you
just come back to the saved information.

   We use review screens at the end of the process right before submission. We present you with all the data you have submitted and say, "Take a look at it carefully before you press the Submit button."

   And then, possibly -- we are not doing this currently with registration -- but we could send out a confirmation that includes a copy of all the data submitted. And indeed, we could have a delayed entry into the Catalogue, at your option, and provide you, if you want it, a couple of days to circulate the confirmation to other parties involved in the transaction before you actually press the Submit button and it is entered into the Catalogue, and to allow for some kind of limited time for closed submission correction before the data is published.

   So, that is some of the examples of what kinds of guidance can be provided that were
not possible in the old paper world.

What do we mean by remitter responsibility? Well, we mean three things, and these are sort of three important things that we are going to start asking you about, and whether you are sort of ready, willing, and able to do this, those of you who do remit documents, and what your concerns are about having the responsibility for remitting.

So, the first is just sort of a labor issue would be that the remitters of documents, rather than a Copyright Office staff member, will submit cataloguing information.

Secondly is a legal issue. If there is a discrepancy between the cataloguing information and the remitted document, are there some circumstances under which it would be the cataloguing information rather than the document itself of which the public has constructive notice?

So, to take a kind of drastic error
example, suppose that a remitter mistakenly entered the wrong list of titles into the Copyright Office Catalogue. And so, the titles in the document and the Catalogue didn't match. What would happen in that case?

Well, obviously, from the point of view of somebody who is trying to find what transactions have occurred with respect to particular works, if you tried to search for a work that is actually in the document, you would never find the document if the Catalogue is the only means of accessing the document. And we can talk later in this session about the possibility of full-text searches of documents as well.

But this is just to sort of alert you to a possible legal liability or disability, that it is possible that you would give no constructive notice or sort of different constructive notice than would actually be provided by the document itself if it were
mistakenly catalogued due to remitter error. And then, finally, remitter responsibility may also mean that the Copyright Office is not examining the documents anymore. And so, we can talk about whether the office would continue with some examination or not, but any examination is going to mean more time, and more time is going to mean more money, and more money is going to mean higher fees for recordation.

And so, we mentioned completeness, legibility, and signature here. Of course, implicitly and currently, the document is also examined for the names of the parties and the title, since it is the specialist that is entering that information into the Catalogue. And in a fully-automated system, there would be no examination for completeness, legibility, or signature, either. And so, it would be up to the remitter to ensure that the document was legible, that it contained whatever appendices
or all the pages were there; they weren't missing a page, that sort of thing, and so forth.

All right. So, we mentioned also in the Notice of Inquiry the concept of a structured electronic document. What is that and how does that possibly add additional modes of submission?

So, if we are talking about a document that is a native electronic document here, not scans of paper documents, it is possible for that document to contain its own indexing information. Though there are lots of different kinds of implementations of that concept, I am just going to present one of them to give you some sort of concrete example to imagine what it means for an electronic document to be self-indexing.

So, we can imagine a document or a short form that contains the basics about a transaction, but maybe not the financial details, that is drafted using a fillable PDF
form that could at the end of the drafting process be locked and then, electronically signed. And what would come out at the end would look in this completely simple mockup something like this.

So, you would have a document that sort of could be read as a textual narrative, legal document, right, with sentences in it that is accomplishing the transaction, but parts of that document are either literally in the graphic sense or figuratively boxes that are being filled in with information like the names of the grantors and the grantees and the titles of the works, the type of a document, the registration numbers, the date of execution, and so forth.

And underneath this visible layer of the document you've got tagged cataloguing information that can be automatically received. So, the box that says "assignment" that might have been selected from a dropdown box at the
top of the document becomes a piece of information that is tagged. And as that document is submitted, this information can be automatically adjusted into the system and can form the recordation part of the Copyright Catalogue.

Advantages of this mode of electronic recordation: it means that all the information is reviewed by the parties during the negotiation and drafting process. As that electronic document is circulated, everybody sees who is listed as party one and party two and what the titles are, and so forth.

It also means that there is no -- or at least a greatly-reduced -- possibility of discrepancies between the document and the submitted cataloguing information. Only in the case of technical difficulties with the tagging and electronic adjustment of that information would you have discrepancies with not having any manual re-entry of information.
Disadvantages: well, certainly the chief disadvantage is that I think most people aren't using those kinds of documents these days. And the question is whether in the copyright industries it would be easy or difficult to introduce those kinds of documents.

I can tell you that in real property recording much of it is done these days using structured electronic documents, but the recording offices that have built these systems are recording millions of documents a year, not thousands. And the parties who are filing them are large, repeat players like title companies and lending banks who, since they are using the system very often, they can distribute the cost of developing standards and implementing technology over a much greater number of transactions than would be the case in the copyright.

So, sorry for talking so much, but
that is sort of the end of my presentation. In fact, I am going to blank this screen, so that I don't get it in my face.

And I would now like to turn the floor over and start the discussion going. Any questions?

Yes?

MR. BADAVAS: I'm sorry, but --

MODERATOR BRAUNEIS: Please.

MR. BADAVAS: -- before we start the discussion, in your analysis of cost or time spent on recording a record, did you identify a sweet spot in the number of works associated with a recorded document that would cut some substantial amount of time or money off of the process?

So, for example, if you were able to deal with every document that is recorded that had over 1,000 copyrighted works associated with it, how much money would that save the Office or how much time would that save the
Office?

MODERATOR BRAUNEIS: Okay. So, in other words, if we were to segment the documents into the small ones, maybe we deal with a different process; the larger ones, we build something that we can deal with it more efficiently.

I think, I guess, again, going back to the cost studies is the best information that we have so far about that. So, you know, I guess I'm not sure what that would tell us.

The point at which the extra titles, sort of the labor involved in entering extra titles equals and then, starts to exceed the labor involved in cataloguing a document, no matter what number of titles it has, is at about the 30-to-40-title range, right? That is when it turns out that the cost of title entry is getting greater than the cost of creating the basic document.

I'm not sure what that says, though,
about whether there is some sort of natural breakpoint at which you develop a different system for large documents than you would for small documents.

MR. BADAVAS: Only because if you could in an automated fashion in just titles with --

MODERATOR BRAUNEIS: Yes.

MR. BADAVAS: -- limited review or limited quality control --

MODERATOR BRAUNEIS: Right.

MR. BADAVAS: -- in large title documents, instead of costing $35,000 to introduce 10,000 titles --

MODERATOR BRAUNEIS: Right.

MR. BADAVAS: -- it might cost $200 --

MODERATOR BRAUNEIS: Right. That is absolutely for sure.

MR. BADAVAS: -- before you get into all the other stuff you are doing.
MODERATOR BRAUNEIS: Yes. No, I think that's right. That, then, affects a very small number of very large transactions, right. And that would help out very much with us with those transactions. It wouldn't do much about the smaller transactions in which we have got a limited number of titles.

But, yes, I appreciate that comment. And we will talk about some interim steps which may involve some variation of that, of attacking the title problem separately from the base document problem.

Other questions?

(No response.)

Well, let's start by working our way into this idea of the guided remitter responsibility model.

The first question I ask in the sort of list of questions is: so, are document remitters willing to submit their own cataloguing information, assuming that there is
some substantial reduction in fee associated with it? But are those of you who remit documents or who are responsible for hiring people to remit documents ready to take on that responsibility and input your own information into the Catalogue?

Yes, Richard.

MR. BENGLOFF: Well, the organizations we represent, small and medium-sized enterprises who our resource talents in terms of both staff and guidance, we surveyed over 20 of our members of all different sizes, from one employee to sixty employees, not administrative employees but total employees.

MODERATOR BRAUNEIS: Right.

MR. BENGLOFF: We don't have any members that have one hundred employees just to put in respect to “medium size.” They are not complying now with either the initial registration or the subsequent recordation process.
Interestingly, there is a number of them who are recording the recordation as the initial registration, again, just because it is simpler.

So, when we discuss it, they are very much in favor of a streamlined process where they can present the data. If it is going to be made available to the public, which they would like, they obviously don't want the financial terms disclosed. So, the initial application would be very important. They are a growing part of the segment and they are a group that needs their rights protected and referenced, which is not happening now.

So, in general, we still have luddites. So, we still would like the manual process to be available as well.

MODERATOR BRAUNEIS: Right.

MR. BENGLOFF: But, for the most part, having a process used like this was very well-received by the people we surveyed.
MODERATOR BRAUNEIS: Right. Well, I appreciate that.

And I should mention, because that has been an issue that has come up in earlier roundtables, that the paper process I have no doubt will continue to be available. I can't imagine that it will be discontinued for decades because I think there will be people who want to submit paper. And so, I don't think there is any imminent danger of discontinuing the paper alternative, but the paper alternative is going to carry a much bigger sticker price than the electronic.

MR. HACKETT: Our clients are familiar with similar electronic filing systems through the Patent and Trademark Office, and are familiar and comfortable with that system. And I don't think it would be a concern, especially if there were a payoff of faster recordation.

MODERATOR BRAUNEIS: Right.

Faster and less expensive. Okay. Great.
Yes, Rachel.

MS. FERTIG: We also did a survey with our members. And just so everyone knows, what we represent is trade, academic, and book and journal publishers. So, we have really have four different business models of publishing that this survey would have covered. And we have large multinational publishers and, also, about three-quarters of our members are small and medium-sized enterprises. So, it really spans the gamut, but overwhelmingly they were in favor of a guided remitter system for submitting recordation.

MODERATOR BRAUNEIS: Great.

Thanks.

MS. REID: If I could just follow that up --

MODERATOR BRAUNEIS: Yes.

MS. REID: -- by saying that so many of those publishers participate in CCC's products and services, and we essentially have
a guided remitter model in place today for that, where rights-holders can come and upload a set of titles or enter manually a set of titles. The vast majority of them are uploading files in a fairly-simple, structured format that we make available, although we can also accept data in a number of industry standard formats.

And then, there is a guided process there where they can indicate which products and services they are signing up for. And in our case -- this obviously wouldn't be the case with the Copyright Office -- but also enter fee and terms and conditions-type information to go along with that. And that has been very, very well received by our rights-holders.

MODERATOR BRAUNEIS: That's great.

And we would love to talk to you particularly about the standards for submitting titles. Because to the extent that remitters already have data in those formats because they are already using that with you --
MS. REID: Yes.

MODERATOR BRAUNEIS: -- then we would love to have them not to have to switch formats, but to submit the same data to us --

MS. REID: Sure.

MODERATOR BRAUNEIS: -- as they are submitting to you.

And we will talk a little later about a pilot project that we have already started with accepting electronic titles, titles submitted in electronic form. We may continue to build that out before we even implement the entire electronic system, and having sort of common data formats would be very, very useful.

MS. REID: Yes.

MODERATOR BRAUNEIS: So, we will come back to that this morning and talk about that further.

Yes?

MR. RUSSELL: Yes, obviously, HFA works with the publishing community. And we
actually have a guided remitter structure and tools, a tool that we call ESONG that allows smaller publishers and medium-sized publishers to submit song information to us. And it has been very successful.

MODERATOR BRAUNEIS: Okay. And the same thing about data standards --

MR. RUSSELL: Sure.

MODERATOR BRAUNEIS: -- we would love to talk about how to coordinate those.

Yes, I'm sorry, I need peripheral vision.

(Laughter.)

MS. BLAKEY: That's okay.

MODERATOR BRAUNEIS: Rhonda?

MS. BLAKEY: We are definitely in favor of having a legal system that is going to add the cost of damages and exclusion, but to have some sort of meaningful receipt the titles have to be involved in the process.

MODERATOR BRAUNEIS: Okay. Great.
Others?

(No response.)

The constructive notice issue. So, as I said, there is not only the labor involved with submitting the titles, but there is a question of what happens in, one hopes, those rare cases when remitters make mistakes in entering the information into the Catalogue. So that perhaps the document can't be found under the relevant party names or title names.

Obviously, one of the great incentives to record is that you provide constructive notice of the document for a variety of purposes. You perfect a security interest in the works. In the case of conflict between transfers, you may gain priority over even an earlier executed transfer if you have recorded. But if it turns out that the information is entered erroneously into the Catalogue, there will be a question about whether one can say that the document that is
in the electronic document repository is actually giving constructive notice if no one can find it under the title of the works or the names of the parties.

So, I guess I want to ask, what kind of worries might there be about that legal issue? I should say that we have looked for case law on what happens when there are discrepancies between the Catalogue and the documents currently, and we can't find any. That issue appears not to have arisen. But it could and we have got to worry about it.

So, thoughts or comments or expressions of worry, innovative ideas, anything along those lines?

MR. KAUFMAN: Doesn't the fact that you found nothing tell you that, if you come up with a reasonable rule, it is really not going to matter that much?

You know, I mean, you always have a burden when you fill out something that you fill
It would seem to me that the person filling it out, if they make the mistake, it is probably their -- you know, I would put the burden on them.

But, you know, I'm not aware of any cases. And if you have researched it and aren't aware of any cases, I wonder how much time you really should spend on that.

MODERATOR BRAUNEIS: Yes. One, it may happen rarely. But, of course, two, it has got to happen with something very valuable in order to show up in a decided opinion. But the parties aren't just settling it out early in the day.

MR. KAUFMAN: Yes.

MODERATOR BRAUNEIS: So, the fact that it doesn't show up in a reported opinion, it doesn't mean it doesn't happen. It means it hasn't happened with something worth six figures or more. So, we have to think about the possibility, and if there is any way of
minimizing it, right?

I mean, I mentioned earlier the possibility of full-text searching of documents as a parallel method of accessing documents. Currently, the Copyright Imaging System is just flat images of the paper document. There has been no optical character recognition done. They are not text-searchable. Nothing like that available.

(Phone rings.)

And that would be a big mistake for me, not to have silenced my phone at the beginning of the session.

(Laughter.)

So, currently, it really is only the Catalogue that enables the finding or it is the only finding tool that is available for documents. It would be technically possible, of course, to do optical character recognition even of image documents. And if we establish standards for submitting native electronic
documents that are not simply images, but that
have text embedded in them, we could do
full-text, we could possibly build full-text
searching of those as well.

That doesn't provide the same kind
of tagged information where, if you come across
a word, you know the field it has been entered
into and what it means in the context of the
document, but I throw it out there in connection
with this problem as, well, there may be
different ways to get to those documents if we
are worried about constructive notice.

Susan?

MS. DAVIS: I just had my hand-- I'm
sorry.

(Laughter.)

MODERATOR BRAUNEIS: It's okay; we
can stretch here, too.

Yes, Heather.

MS. REID: This doesn't speak to the
legal issue, but one practical issue there that
may help to reduce the error rate is if you can have some sort of back-end database that, if you are going the structured document route, when people are entering metadata, you are searching against and bringing back results that a human being can look at and say, "Hey, this is what we think you're recording. Is this correct?"
That may help to reduce your error rates.

And to the extent that people are either uploading or inputting, hopefully, fairly-standardized metadata with standard numbers, that is actually -- I don't mean to minimize the effort involved there, but it is very doable to create a repository of the requisite graphic data there to search against. It probably won't be 100 percent complete, but it could cover a lot of the bases.

MODERATOR BRAUNEIS: Right. I want to add some clarification. First, I thought you were talking about a kind of review screen where, after somebody had input data, you
would --

MS. REID: Yes.

MODERATOR BRAUNEIS: -- sort of visually show it up and say, "Here's what we think you inputted. Is that correct?" Right?

Which is a standard part of many input processes.

MS. REID: This is a little step further, I think.

MODERATOR BRAUNEIS: Okay. So, what's the "goes further step"?

MS. REID: So, what I am suggesting is -- let's assume you are going that structured document model, right?

MODERATOR BRAUNEIS: Right.

MS. REID: People are inputting the data. Yes, it makes sense to present it back to them, then, and say, "Okay, this is what you just input."

What I am suggesting is, if, in addition, as part of that workflow, you are able
to bump that data up against a bibliographic database repository in the document --

MODERATOR BRAUNEIS: Oh, yes, okay.

Okay. Yes.

MS. REID: -- that is probably publicly-available information.

MODERATOR BRAUNEIS: Right.

MS. REID: Think, for example, of the Library of Congress.

MODERATOR BRAUNEIS: Right.

MS. REID: And obviously, I'm thinking text here. So, the non-text people in the room bear with me.

But, you know, if you can bump it up against that and come back with a standard Catalogue record and say, "Okay, this is what we think you're recording" --

MODERATOR BRAUNEIS: Right.

MS. REID: -- it is just an additional human verification step --

MODERATOR BRAUNEIS: Yes.
MS. REID: -- that might prompt someone to say, "Oh, yeah. You know what? That's not actually the work I meant to record. I need to fix something."

MODERATOR BRAUNEIS: Yes. It is certainly technically possible. That would take one heck of a lot more, I think, programming and coordination to actually coordinate the Copyright Office document recordation system with the Library of Congress Catalogue and pull out records from the Catalogue.

But I appreciate the suggestion. I mean, certainly, in a world of abundant resources, definitely doable.

MS. REID: Yes. And again, I don't mean to minimize the effort involved there, but it is, again, just looking at the text end of the equation here, the good news there is that there are very well-structured, high-quality bibliographic databases that are publicly available, in many cases either these days for
free under creative commons licenses or available for low cost, that could be used in those circumstances.

And we at CCC have taken advantage of that ourselves and acquired many of those databases to drive this kind of a quality of function for our similar automated recordation, if you will, process.

MODERATOR BRAUNEIS: Right. So, particularly for published textual works.

MS. REID: Yes. And again, I realize that leaves a whole lot of the domain, right --

MODERATOR BRAUNEIS: Right.

MS. REID: -- but just looking at that one piece, it is something to think about.

MODERATOR BRAUNEIS: Yes. Yes. I appreciate that.

Andy?

MR. HACKETT: Well, I realize this goes into I think the next section on linking
recordation and registration records. But one
way of reducing errors in the recordation
process would be if, say, you enter a
registration number and it links to the
Catalogue, and the Catalogue title comes up.
I mean, the Trademark Office,
Trademark Assignments has a similar system.
You enter the registration number, and it pulls
the trademark from the Trademark Index. So,
that is one of the ways that we verify that we
are entering the right numbers in. It pulls the
title, it pulls the trademark from the
Catalogue.

MODERATOR BRAUNEIS: Right. Okay.
So, for registered works, to validate against
the registration record.

MR. HACKETT: Right.

MODERATOR BRAUNEIS: No, I think
that is an important and useful tool.

Yes, George.

MR. BORKOWSKI: When you are
talking about constructive notice, though, I think we need to be careful in those instances in which there may be a discrepancy between the underlying document and the data that have been entered by the remitter. And maybe it doesn't come up very often, as you said, but the reality is I think it would be problematic to base constructive notice on the secondary source, the entered data, because that is, under this hypothetical, by definition erroneous. And so, I don't think you can take constructive notice of a document you know is erroneous or a document you know is erroneous.

MODERATOR BRAUNEIS: Right. So, it is not necessarily that you're holding the remitter to a phantom transaction that never occurred, but the actual transaction, which is represented in an unfindable document might not be giving constructive -- that somebody might not be getting constructive notice of that underlying transaction.
I mean, we mentioned at Stanford there is no constructive notice at all at that point.

MR. BORKOWSKI: Right. I mean, that's one possibility, yes.

But the other thing is, right, if you can't find the document, it is hardly constructive, not actual notice.

MODERATOR BRAUNEIS: Right. Yes.

MR. BORKOWSKI: But, again, my document can't be ignored. Either you don't get presumption of constructive notice, if there is an error, but if you do, you certainly don't get it from the erroneous data that has been entered.

MODERATOR BRAUNEIS: Right. Yes.

Others?

MR. PRENDERGAST: Bob, just to clarify --

MODERATOR BRAUNEIS: Yes. I'm sorry. Yes.
MR. PRENDERGAST: You're not proposing a change to the current standard for what constitutes constructive notice in the Act?

MODERATOR BRAUNEIS: No.

MR. PRENDERGAST: Okay. Yes.

MODERATOR BRAUNEIS: I'm just wondering about what happens. I am wondering about how this relates to, how this system would relate to the current standard, I guess. If the current standard is stated in abstract-enough terms, I think that there is some room for judicial interpretation of what constitutes an adequate search.

Section 205 says something about identifiable according to its title or registration number. And so, what if you don't get that document under the title or registration number search because it wasn't correctly entered into the Catalogue?

MR. PRENDERGAST: Yes, I think like
the standard seems to be that you only get constructive notice of the facts that are in the recorded document, and it never says anything in the section, because the situation hasn't existed yet, where there might be constructive notice of the inputted data referring to that document. And so, I think what you are getting at is that there would be no constructive notice of anything.

MODERATOR BRAUNEIS: That might be the case.

MR. PRENDERGAST: And that seems fair.

MODERATOR BRAUNEIS: Yes. Okay. All right.

Upon the topic of inadvertent errors, there were a couple of suggestions in the comments to the Notice of Inquiry that there be an opportunity to later correct inadvertent errors at any time that they were discovered, not just in a short post-entry one or two days,
but if it was discovered a month or a year later.

   Currently, if an error, an inadvertent error, is discovered, there is some ability and there has been some occasion for the Office to go in and be able to correct the record simply by adjusting the electronic data. But that assumes actually, given the current process, that the error was made by a recordation specialist and not in the underlying document.

   When we are working with the remitter responsibility model, now we have got an error that has been made by the remitter. And the question is, under what circumstances and what sort of mechanism would that error be able to be corrected? Or would at some point we need to have a new document recorded to correct the error?

   So, any thoughts on error correction opportunities or mechanisms?

   Yes, Jon.
MR. BENDER: It depends on the magnitude of the error, first of all. I mean, I think you are going to have different categories. I think there are clearly errors that can be readily fixed that are insubstantial.

Our model -- we receive a lot of data -- is, however, the corrections always need to come from the remitter. So, in this case, I would not want the Recordation Office to go in and make changes, right? So, if there is a mistake in the remitter responsibility model, it needs to come from the remitter.

And then, I think the second point, based on the magnitude of the error, certain kinds of changes to the data might require submission of a new document.

MODERATOR BRAUNEIS: Uh-hum.

MR. BENDER: So, I think there would be, you know, what that threshold would be I think would be part of what we would look at.
MODERATOR BRAUNEIS: Uh-hum.

MR. BENDER: But there would be a threshold, I think, where you would want a new document.

MODERATOR BRAUNEIS: But if you have misidentified a work and you actually had a different work involved in the transaction, then, you entered in, then that might be an occasion for a new document because now we are talking about --

MR. BENDER: If it is a different work, but if I entered the identifier wrong, but the title of the work is correct --

MODERATOR BRAUNEIS: It's correct. And so, you've got partially-correct information.

MR. BENDER: That's right.

MODERATOR BRAUNEIS: All right.

Okay.

Yes, Vic.

MR. PERLMAN: I think that there is
value to having a complete archive of records.
So that, if a correction were allowed, I would
think we would want to have two documents, even
if the two documents are this is what it was and
this is what it is now.

MODERATOR  BRAUNEIS:  Uh-hum.
Right. Well, one would accomplish that maybe
short of two separate documents. It is to have
a log, essentially, a log, a correction log
where any record that has been corrected,
there's a note that comes up that says, "This
record has been corrected. Here's the log of
what it looked like before the correction and
what date the correction was made."

You know, those of you who are
familiar with places like Wikipedia, you can go
behind the term. When you do the entry, you can
see the log of each day that somebody entered
the current entry.

And I could imagine a system
something like that, to make sure we understand
what the record looked like and perhaps critical
dates in the past when somebody was trying to
find something and didn't. So, I think that
makes sense.

MR. BENDER: I think that is a given.

MODERATOR BRAUNEIS: Yes. Right.

MR. BENDER: You have to do that
anytime anybody makes a change.

MODERATOR BRAUNEIS: I will tell
you that we do not currently have that, the
ability, at the government office. When we go
in to correct records, there is no log kept of
the previous data. So, it is something that we
have to be conscious of for sure.

I am going to come to construction
of electronic documents in a minute, but let me,
let's get where we talk about the issue of
examination which would occur no matter what the
method of data entry.

So, currently, we do have
specialists who are looking over the documents
and examining them for so-called completeness. And completeness doesn't mean that a specialist is reading the document very thoroughly and is catching if there is any grammatical error or missed term in the document. But it does mean that, if the document is labeled as an attachment or the document contains references to attachments, the specialist will make sure that those attachments are there.

And if the document is labeled an attachment, the specialist will go back, and if the remitter hasn't already said, "Please go ahead and record this, even though it's labeled an attachment," we will go back and ask for that, that specific request.

And there are examinations for legibility as well to make sure that this is a document that hasn't been photocopied so many times that some of the titles, for example, are beyond the point of being legible.

How important is it to have some kind
of human review of each remitted document before
it is accepted for recordation? Or can we move
to a fully-automated system and spot-checks,
but not a routine review, which would decrease
the cost but would not provide that kind of
review service to remitters?

MR. BENGLOFF: What's our way to
find out?

MODERATOR BRAUNEIS: I am going to
turn to Zarifa for initial answer to that
question about finding error rates and finding
errors in documents.

MS. MADYUN: I would say during our
quality assurance maybe 2 to 5 percent. I mean,
most of my staff, they are at about 90-percent
accuracy rate. And so, if there are errors,
sometimes they will come back -- actually, the
remitters themselves, they are going into the
Catalogue record. They may see a misspelling
or something.

MODERATOR BRAUNEIS: So, that is
data entry errors. What about how often do issues of legibility arise, for example, where the recordation specialist flips it and says, "Wow, this list of titles is so smudgy that I'm not sure what they actually are."

    MS. MADYUN: I would say each specialist gets about a bundle of ten documents. And out of that ten, probably three are going to have issues. They can be corrected, though. So, that may be missing an attachment. It's a photocopy signature and there's no certification that it is an accurate copy of the original, and there is an attachment missing. I would say about three out of the ten that they receive would have some type of issue.

    MODERATOR BRAUNEL: So, that is quite large.

    MS. MADYUN: Yes.

    MODERATOR BRAUNEL: Now we will talk about signatures, I think, separately because we may well move to a system where -- I
think we will in an electronic recordation system, move to a system where we are not requiring a signature. So, that is not going to be, that would not be a point of review.

But, as far as completeness is concerned, I guess now there are documents that come in that are either missing something or that are labeled as if they were not a complete document, and you have to confirm with the remitter that the remitter really wants just this Appendix A remitted, and not other parts of the document.

MS. MADYUN: Yes, and I would say the biggest is just with titles. Sometimes they are illegible or the remitter is not quite sure what constitutes a title. And the fact that we do count things like additional -- we do count additional titles like “aka,” that the title is known as something else, formerly known as something else, now known as. A lot of remitters still don't know that. And so, when
we are doing a title count, the filing fee that was provided is often short. And then, we have to call the remitter to get additional funds.

So, if I would say what the biggest issue would be, that would be the biggest.

MODERATOR BRAUNEIS: The title count?

MS. MADYUN: Yes, the title count, uh-hum.

MODERATOR BRAUNEIS: Right. So, hopefully, that would be resolved in an electronic system because you would be uploading or entering titles, and a computer could do the title count. And before you ever got to the fee-paying requirement, you would have a calculation of fees based upon the number of titles entered.

So, I don't know if that helps with your question about how often.

MR. BENGLOFF: I was surprised with the 30-percent correction, but, as you said, the
electronic process will weed out some of that. As I said earlier, we don't want to attach the full documents. We think it should be available to be able to cross-reference properly the documents, or at least the titles, but we don't have to --

MODERATOR BRAUNEIS: Yes. Well, I mean, I should say right now that we know that the vast majority of documents recorded, submitted for recordation, are short forms of one kind or another. That is to say, they are usually extra forms, which is why they sometimes come in as Attachment A, because the short form was Attachment A to the full underlying document.

It is something we can talk about. Redaction, that is another issue where documents come in and they may be the full document but with lots of marker over parts of the document. And there's a question about when we can and will accept those. Actually, they
cannot omit any of the essential terms of the deal like party names and title names.

And the Office currently has a rule based on a percentage that is not tied to the sort of type of information, which I think that the rule of thumb is that at least 80 percent of the document submitted has to be legible, that you can't have more than 20 percent of the document marked out.

That is not by statute. I am not even sure that is by regulation. That is by internal practice. I am not sure there is a reason to continue that as a sort of strict percentage rule. It seems to me that a rule that is tied more to what's there, but, again, without examination, if we are talking about going to a world in which we are not adding any human examination of the documents, then it is up to the remitter to ensure that, if you are redacting a document, make sure you mark out maybe the financial terms parts but you don't
by mistake run over one of the party names while
you are doing that redaction. Otherwise, we
have got a document that is missing one of the
essential terms of the deal.

MR. HACKETT: Well, I was just
wondering, for the three out of ten that you find
problems with, that is your staff that finds
those?

MODERATOR BRAUNEIS: Yes.

MR. HACKETT: Because aren't some
documents rejected at the Public Information
Office, too, sort of before --

MS. MADYUN: Yes, before they even
get to us, yes, some will be.

MR. HACKETT: Yes. So, it is an
even higher percentage of problematic
documents?

MS. MADYUN: Yes.

MR. BORKOWSKI: I mean, it might be
worth considering -- and it would depend on the
timing, because one of the reasons -- the time,
I should say -- because one of the reasons you are trying to move towards electronic recordation is to save time and resources.

But it might be, if there are such problems with documents, it might be worthwhile to see whether there is at least some sort of validation of the filed document. It may be a Document Specialist just making sure that what is entered in the fields on the electronic document really does exist in the underlying document. And that, I think, would take a lot less time than the current process. It would be more time than the fully-automated, obviously.

MODERATOR BRAUNEIS: Yes.

MR. BORKOWSKI: But just letting the thing be fully automated, it strikes me there should be some kind of check, and more than just a spot-check because spot-checks never catch too much, because it doesn't necessarily tell you anything about other documents. It
tells you about the one that you are spot-checking.

But I don't know if that would add so much additional time beyond the automated time to make --

MODERATOR BRAUNEIS: Well, I guess I kind of caution. I do think that the checking for names of parties and identification of works probably would involve the most time as compared to checking for things like legibility.

As you saw in that one example we showed, it actually takes close reading of the document to see that there's one signature line. That individual is signing both in his individual capacity and as an officer of the corporation. And not titles or registration numbers mentioned in a document may necessarily be the subject of the assignment.

The last title and registration number that you saw in one of the paragraphs of the document actually was just a warrantee that
that was a separate work that wasn't involved
in this transaction, right? So, the checking
of the substance of the deal in a document which
is -- these documents are not standard forms;
many of them are one-off drafting
exercises -- that actually may be the single
most time-consuming kind of checking as opposed
to checking things like legibility, where you
don't have to really go into the substance of
the transaction at all.

So, it would certainly be possible
to set up a system in which we had Recordation
Specialists essentially and a two-screen or a
large screen having the document and the entered
data side-by-side, and going back and forth
between them and checking where this piece of
the entered data fits into the document, and
that it actually is the name of the grantor, the
grantee, and so forth. But I think, actually,
it turns out relatively time-consuming.

Yes?
MS. MADYUN: I just want to add something about, also, some of the errors. What we are also seeing now is the filings of Notices of Termination. We are finding that we are having to correspond a lot more with remitters because it seems that there is still some confusion as to how all of that should take place and how those documents should be drafted.

So, we are spending a lot of time with those documents as well. So, if I would say, the error rate right now would be with titles because there are issues there, and then, that second category would just be with Notices of Termination. We are spending a lot of time working on those.

MODERATOR BRAUNEIS: So, another possibility is to break out some specialized financial documents and say, "You know what? We're actually going to charge a slightly-higher fee for filing Notice of Termination because we actually are going to
review it, because we notice that there's a much higher error rate --

    MS. MADYUN: Yes.

    MODERATOR BRAUNEIS: -- in these particular kinds of documents than in run-of-the-mill assignments.

    MS. MADYUN: Yes, and especially because, you know, you have to file those with the Office, where with the other documents, the regular 205 documents, you are not required to.

    MODERATOR BRAUNEIS: Okay. Any other comments about this?

    Yes, Rachel.

    MS. FERTIG: I guess another way to approach trying to minimize the error rates that would be important to our members is doing a circular, an FAQ, some sort of education to help people on the front-end know what you're actually looking for.

    So, if you see common mistakes and you can identify those and give people, you
know, some step-by-step instructions --

MODERATOR BRAUNEIS: Notice.

MS. FERTIG: -- then maybe you would actually reduce that problem from the beginning.

MODERATOR BRAUNEIS: Yes, I think it would be great. And that is kind of another kind of guidance, is simply, as part of the input process, just show a screen that "Here's the most common mistakes," so that you alert the remitter that here's where you might have to or should pay special attention when you're entering data. I think that is a great idea. Thank you.

Other thoughts?

(No response.)

Okay. We need a coffee break. So, I am going to head us back here at about 11:05.

(Whereupon, the foregoing matter went off the record at 10:52 a.m. and went back on the record at 11:09 a.m.)
MODERATOR BRAUNEIS: Okay, our next topic is listed as electronic signatures. And that stands for a kind of broader inquiry of what do we do to replace the ink signature in an electronic recordation model, and what forms of authentication and guarantees of integrity do we adopt in an electronic recordation system?

We can rely on images of hand signatures. We can work with simply typed-in names between slashes input in real time into a web form. Or we could also accept more technologically-sophisticated forms of digital signatures which consist of essentially very large numbers that may be a guarantee of authenticity because they correspond to a certificate that has been issued by an authority that has identified an entity or an individual, and may also work to guarantee the integrity of a document because they contain calculated hash values that would change if a document has been altered.
So, as we enter the electronic recordation system, what should we do with signatures? That is the kind of largest-scale issue here.

Comments or reflections? Are signatures an issue? Should we worry about them? If we do have standards, should we have the ability to accept certain kinds of signatures, whether or not we require them?

(No response.)

Well, not much of a problem.

(Laughter.)

All right. Well, we have some written comments on the issue, and we have had some comments at some of the other roundtables.

I guess, are you comfortable with the replacement of the actual ink signature requirement with something else which may just be an image or a typed named between slashes? Comfortable? Okay. Give some noddings of comfort then.
MS. McKIERNAN: You jump through hoops. I mean, we do a document for the Department of Labor. And when they first did it electronically, the signature, you had to go get these crazy certificates from an outside company that had to be downloaded specifically to the computer of the person who was signing. And if it wasn't done correctly, the signature got all messed up, and it was crazy.

So, as long as it is simplified and it is clear --

MODERATOR BRAUNEIS: Okay. So, I mean, the purpose of such a requirement to go get a digital certificate obviously is to have a higher guarantee of authenticity that you can go back and say --

MS. McKIERNAN: Sure.

MODERATOR BRAUNEIS: -- "We are the people who actually signed this document."

And maybe the lesson is that, at least for the Department of Labor, if they have
changed that requirement, that they found that it is actually not -- inauthentic documents being submitted by people who are trying to commit fraud there is not such a problem. And that would be great if that is not such a problem and we can keep it simple.

MS. MCKIERNAN: Yes, because they did change it. They got rid of the certificates because it creates other problems.

MODERATOR BRAUNEIS: Okay. Yes.

MR. BENDER: So, question for the Recordation Office: do people have to be registered with you in order to submit documents?

MS. MADYUN: No.

MR. BENDER: Okay. So, anybody can just -- a document can just show up on your doorstep and you'll record it without any information about who the person is, who created the document?

MODERATOR BRAUNEIS: Currently,
that is correct.

MS. MADYUN: Yes. As long as it pertains to copyright.

MR. BENDER: Okay. I mean, I would suggest in the electronic world you would want a registration of the submitter. So, you would want the person -- because we haven't really talked about data feeds yet, and I hope we are going to talk about a process where it is not just a guided form that you fill out or a scan, or whatever, but it is actual data feeds --

MODERATOR BRAUNEIS: Yes.

MR. BENDER: -- which won't have this whole electronic signature for each document because it will be a stream of multiple documents coming in a feed. What you would need in that situation is a registration process whereby the person who is providing the data feed would be registered with you, and you would have verification with them and you would have a validation procedure, again, for certain
threshold activities where you would want to email confirmation on that.

MODERATOR BRAUNEIS: Right. So, yes, we could have a system where we create user accounts for every user of the system. Currently, we do -- many of you know -- for purposes of payment, some remitters do maintain deposit accounts with the Copyright Office. They actually have deposited money in advance against which recordation fees are debited.

And those folks who have deposit accounts certainly do have information that has been submitted to the office. The purpose of that is to facilitate payment, not for other purposes, but it certainly is also something to guarantee authenticity if you are acting with an existing deposit account.

One of the issues with creating user accounts might be -- we'll get to this I think a little later, but to keep it in the background of your mind -- whether user accounts could also
be mechanisms for informing people of current contact data, so that you might change your user account and update your contact information, and older documents would be linked to that user account, so that you could get the current contact information. But, then, that goes also to the extent to which folks who put in information to their user account want that information, like their home address and telephone number, to be made public or not. So, we would have to coordinate that if we were making that information public.

Other comments?

Vic?

MR. PERLMAN: That kind of user account could also be used to solve the problem that was mentioned earlier where people have counted the numbers of titles incorrectly and have sent in the wrong payment. It will lead to an automatic payment account that could be done instantly without having to go back and
forth between the remitter and the office.

MODERATOR BRAUNEIS: Right. Okay.

So, you pre-authorize the office to draw from
an account, that could be done for sure.

Material returned to remitter. So, currently, you heard, well, what does the
remitter get back? A remitter gets back a paper
certificate of recordation and, then, the
original document which has been manually
stickered with the document number and the page
number of each page in the document. That is
not what we would plan to return to remitters
in an electronic system. Hopefully, we would
be able to, in most cases, not use the postal
system to be returning paper to you.

But what do you want returned back
in an electronic recordation system?

(No response.)

I will give you some options. Okay.

Door No. 1 -- (laughter) -- you get back a copy
of the document you submitted, but each page has
been sort of electronically embossed with the document number, the recordation number, and the page number, as we just counted from forward to back the pages that were in the document. All right? So, that is certainly a possibility.

Door No. 2, which is not exclusive, could be additive, we mentioned hash values earlier. We calculate a hash value for the electronic document. So, we calculate a value that is of smaller size than the entire document, but that would change if any change to the electronic document were made. So, we keep that. You get that as well. That ensures both of us that, if the document is ever altered, that we know it has been altered and it no longer matches the hash value. A little more technologically sophisticated, a different kind of guarantee of integrity of the document than the kind of stickers that we currently place on paper documents.

Thoughts about that?
MR. HACKETT: No. 1 is fine.

MODERATOR BRAUNEIS: You get back a document with on each page you get the document number plus page number electronically.

Richard?

MR. BENGLOFF: For me, I would like a notice that it was received and posted, and a link to where it was posted in it. It just makes it easier.

MODERATOR BRAUNEIS: Okay. So, in addition, right, in addition to a notice that it was received, here's where it was posted. Or I should say, in addition to maybe a copy of the document itself with the number on each page, the notice that we have gotten it, et cetera.

Now, currently, because of the time of processing, those two could be widely-spaced in time. You might get a confirmation now and you wouldn't get the paper document back for months or maybe even over a year.

We would hope that we would bring
those closer together in time. It still might be the case, or is likely to be the case, that you get a confirmation email that your document was submitted immediately. And then, maybe at a second time either you get both, well we have recorded and here is a copy of the document back or we have recorded it; here is the recordation date, and you will get the copy of the document later.

I would hope that we could compress those second and third together, so we would be getting back everything at that same second time. But I understand that, at the very least, you want a confirmation that the document has been recorded; here is the recordation date and here is the document number; here is a link.

Other thoughts about what you get back?

(No response.)

Let's talk a little bit about this idea of structured electronic documents and,
alternatively, as Jonathan mentioned, data streams. All right?

So, there is sort of a basic web model of data entry in which much of the information is being manually entered into web fields. It is likely that, at least when there are multi-work documents or multi-title documents, that we would provide the ability to upload a file containing the titles rather than have to enter each title and registration number and other identifier number manually or separately.

But there are other ways in which we could start to decrease the amount of manual entry and increase the amount of data that we are receiving electronically, and that as already existed in electronic form before the time of entry. And so, there is this notion of structured electronic documents where the document is sort of self-cataloguing. Self-cataloguing is one version of not having
to do manual data entry.

Another version is accepting, having a data standard to accept data in some format, even if it is not in a fully-integrated structured electronic document.

What would remitters like to see? Do you think that folks in copyright industries are ready to start using structured electronic documents? Are you likely to still be submitting image scans of paper documents? Are you going to be submitting native electronic documents that are not image scans, but that would not contain tagged data? So, you would need to separately submit that tagged data.

That is a series of questions, but it is a question about what capability would best correspond to your needs in terms of having a system that accepts something more than manually-entered data from your end.

MS. REID: Well, I will go first.

As I mentioned before, we have this
kind of model in place and have had for quite a few years with our participating rights-holders where they can submit electronic data to us for registration of their titles in our programs and services.

And they can either do that by submitting data in -- and this is one piece of advice I would give you -- in a very simple, just comma-delimited; it is a pretty dumb format at one end of the spectrum, all the way up to fairly-rich records of what they are registering with us that comes in in an industry-standard format. And we can accept any and all of those.

We get much of our data in those kinds of industry-standard formats because publishers are sending that data to other third parties, and we can just sort of piggyback on top of that. But we do also have a fair number of rights-holders who elect to go submit it in a simple, comma-delimited format model.
We process very, very few. When I started working at the Copyright Clearance Center nine years ago, the vast majority of our title registration process was manual. So, we were at that point getting paper catalogues from our rights-holders, and people on my team were keying them in, a very familiar process.

(Laughter.)

A lot of the workload, Zarifa, that you described resonates a lot with me. It sounds very familiar.

We now do very, very little of that. Rights-holders are overwhelmingly using our rights-holders' portal to go there, indicate the action that they want to do, and upload a set of titles that corresponds to their registration, so to speak.

So, I think the text publishing industry, I would say, is fairly well ready for that kind of model.

Do you have anything to add to that?
MS. FERTIG: No, I think that pretty much sums it up. There are industry-standard ways of submitting a lot of the title and standard identifier information. And it would be nice to have a consistent way to input that information with CCC or with the Copyright Office and not duplicate work for anybody.

MS. REID: Right.

MS. MCKIERNAN: The visuals are not ready.

(Laughter.)

The PLUS System is working on, of course, standardized licensing terms and language. And actually, I don't even remember exactly where it is. I remember we have objectives in the process. But we don't have cataloguing entities like the text people do. So, we may be a different nut to crack.

MR. RUSSELL: Yes, I would say the same for music publishing. We don't have the structured electronic documents. I would say
the highest level, we have large flat files, tab-delimited. Any documents are images.

MR. BORKOWSKI: That is the same in our industry, too. We really don't use structured electronic documents in any significant manner.

MS. McKIERNAN: And plus, the visuals, it would make sense to have an image attached, too.

MR. BENDER: I'm sorry, George, I missed that about the record industry. What is your take on the record industry?

MR. BORKOWSKI: That there isn't a lot of use of structured electronic documents, whether it be negotiating deals or otherwise. We really are not --

MR. BENDER: Oh, for contracts, yes, but --

MR. BORKOWSKI: Pardon me?

MR. BENDER: In the contracts area, I guess?
MR. BORKOWSKI: Yes.

MR. BENDER: Okay.

MR. BORKOWSKI: Yes.

MR. BENDER: Because the metadata is highly-elevated, right, and highly-structured data. So, the exchange of recorded metadata, for example, between iTunes and records is fully automated. And there is actually a standards body which organizes the data standards that we all use. It's not contracts.

MR. BORKOWSKI: Right. That's what I was referring to.

MR. BENDER: Yes.

MODERATOR BRAUNEIS: So, it sounds like when we come back down to recording a document+ that is memorializing a transaction, the works involved and the titles and standard identifiers associated with those works, it sounds like we can work standards for submitting those electronically. The details about which
parties are involved in this particular transaction and what type of transaction it is, that is likely not to be preexisting in some standard data format that would, then, just be sent in.

That is likely to have to be generated for this recording purpose, right? You've got the data out there about the titles of works for other purposes, quite irrespective of whether you are engaged in this particular transaction, but not who are the parties and what kind of transaction is this, and so forth.

MR. BENDER: Yes, the transaction, yes, for contracts or licenses, you know, when you are licensing, that is not -- for the lawyers in the room, yes.

MR. PRENDERGAST: But one thing to consider there is that, if you do have some sort of like user registration system in place, and maybe that part of the process becomes a little bit more streamlined as well.
MODERATOR BRAUNEIS: Right. Okay.

You know, I talked about saving templates as part of the process, but there is a way in which generating, having a user account and being able to pre-populate data from your user account into the recording process may be parallel or different, a slightly different mechanism for having a template in place to pre-fill-out some parts of the document. Okay.

Yes? Sorry.

MS. FERTIG: I just wanted to clarify. It is not that publishers are using the structured electronic documents across the board. So, I think we would still be in the situation where our members would want to have a scanned copy of their short-form assignment, or whatever document, and then, also, be able to use an ONIX feed or some other type of metadata stream to upload the title and identifier information. So, it would be two separate sort of ways of getting that data into the Catalogue.
MODERATOR BRAUNEIS:  Right.
Right. So, tying that, again, to an online
title and identifier, we may be dealing with
differently than other details of the
transaction.

MS. FERTIG:  Right.

MODERATOR BRAUNEIS:  Yes, Susan.

MS. DAVIS:  I would just like to
comment. Many of our members are increasingly
doing self-publishing. So, anything, any
changes or the way things are structured, we
just would hope that they would not limit what
individual writers or authors can do within the
system. We want to make sure that there is easy
access and use.

MODERATOR BRAUNEIS:  Okay. So,
that it is accessible even by low-volume users.

MS. DAVIS:  Right.

MODERATOR BRAUNEIS:  And I think
that is important.

Yes?
MR. BADAVAS: To piggyback on that and what Maurice said, and my guess is he knows this is the exact same thing, but our systems are all structured to start with individual self-published music, you know, self-published songwriters who are themselves music publishers, up to the four biggest music publishers in the world.

MODERATOR BRAUNEIS: Uh-hum.

MR. BADAVAS: And that is why we actually do have a system where you type in following a form or a Wiki your information and your song, and you can upload them one at a time. And ASCAP and BMI do the same thing. Or you can submit an Excel spreadsheet that is associated with your account that you have that lists all of the titles.

And it is very simple. It is just, you know, you have rows and you have columns predefined, and you put in the information and it comes in. It is quite useful. Many, many
small and mid-sized publishers, particularly
newer ones, are very familiar with how to use
an Excel spreadsheet; it is not a big deal. We
get a lot of information that way, up to large
commercial entities that have, we call them CWR
files, but, you know, have predefined data files
that they shoot information around the world in.

We accept all of those. We call it
a three-tiered approach to deal with our client
base, which is varied. And I am not saying
anyone should do all of them at once in any way,
but I think anyone who is dealing with copyright
information always has to think, at a minimum,
in small, middle, big.

MODERATOR BRAUNEIS: Yes.

MR. BADAVAS: And those different
types of users have different characteristics.
Sometimes small and middle works for big. You
know, you can do an awful lot with Excel files
because they have many lines now, many rows.
So, if you have a convoluted file, it can be put
into an Excel file, or whatever.

And so, it is not necessarily important to go to the biggest first, particularly when you are talking about files and certain titles.

MODERATOR BRAUNEIS: Yes. Just to reiterate what was mentioned earlier, it would be great to get details from you, and even examples, if you have enough, what your Excel spreadsheet template looks like.

Obviously, we will have to deal with information coming in that is about textual works and that is about musical works and that's about visual works, and all sorts of works. Gee, to the extent that we could work off of existing templates and coordinate them, so that the first column is always the title and not sometimes the first column is the standard identifier and the second column is the title, you know, that would be great.

And so, I would appreciate
getting -- now that we have identified the sort of submission or title information as a possible area for standardization and reduction of work, to the extent to which we can build on existing practices, it makes a lot of sense. It makes a lot of sense.

Okay. Availability of recorded documents on the internet. Zarifa you heard say earlier that we currently only make the images of the documents available to members of the public who physically come to the Copyright Office. That system is fully a web-based system. You access it with a browser when you come to the Copyright Office.

I don't think that there would be any technical difficulties with essentially flipping a switch, so that tomorrow that server would accept web queries from browsers that were all over the world, instead of located in the Copyright Office. We haven't done that yet.

But should we do that?
MS. REID: I'm just curious, why not? Why isn't that database -- is it a policy issue that it is not on the internet?

MODERATOR BRAUNEIS: Well, I will say that, as there have begun to be discussions about doing that, either retroactively or at least prospectively, we have thought about issues like what information is in those documents and who might be concerned or wasn't expecting that information to be available around the world.

So, you might have recorded a document that has your home address and telephone number on it. And you were aware that it was only going to be available to people who would physically come to the Copyright Office, so you weren't worried about publicizing that to the world.

Or virtually all documents have image -- excuse me -- signature images on them. Should we be worried that, once that signature
is made available to all the world, all around
the world, not only might it be used to forge
documents for recordation, but to the extent
that those are signatures of individuals who are
not only officials in corporations, and so on,
but who also have private bank accounts, and so
forth, then people would love to access those
signatures and put them on completely unrelated
documents that would end up making it look as
though you just took out a loan from somebody,
but the proceeds went to somebody else.

So, those are some of the concerns
I think that have kept the Copyright Office from
simply saying, "Yes, what the heck, let's just
make it all available."

On the other hand, the benefits to
both the remitters themselves of having those
documents easily delivered when they have
forgotten where their copy of it is, and the
benefits of making some of those public are
clearly there, too. So, that sort of opens the
table for discussion of that process and how/when that should be done, or whether it should be done.

Yes?

MR. BADAVAS: Well, to start with, making them easily available to remitters, that can also be addressed by having password-protected accounts. So, it isn't necessarily true that you can't make them available to the people who might want to go back and review them and have to at the same time put them up to the public-at-large.

What Rich was concerned about before, I think, a hurdle to getting people to record documents is a concern that, even if I ignore the forgery and fraud aspect, the material confidential business terms of certain transactions would be included in those documents. Publishers do often use short forms, but I always worked on the record side of business a long time ago, and I don't remember
seeing the short form for an assignment.

And then, often, large corporate transactions acquire copyrights, and you might not actually have an assignment, right? And you might want to run most of that through the database at the Copyright Office, but you probably don't want --

MODERATOR BRAUNEIS: The entire merger, right?

MR. BADAVAS: -- a corporate transaction put in.

Sorry if a smart lawyer is going to think to make a short form.

MR. BENGLOFF: If you are not going to make it public, why bother? Make it read-only, so they can't lift the signature. And I understand there will be hackers who will find a way around that, but to the best you can make it read-only.

I mean, the whole purpose of this is so you reference this recordation to the
original, if there is an original registration. A lot of our members don't do original registrations. But if there is an original registration, you reference it, and vice versa.

And it is searchable. So, someone can go in and say, "Who owns XYZ's version of ABC today?", so the proper person is getting paid, which is always an issue for the community I represent.

If they buy a catalogue, they want to reference the original registration and say, "That person no longer owns it; we own it today, and we are the ones who should get paid" on a read-only basis. So, someone can just read the document, but not lift the signature or do something else.

And I don't think -- typically, it is not going to be the person who sends it in, and the contact isn't going to be the person of authority who has all the assets. It is probably going to be some lower-level person,
or some of our labels are only one person, but we'll take our chances.

(Laughter.)

MODERATOR BRAUNEIS: Okay.

MR. BORKOWSKI: I also think it's -- oh, I'm sorry. I just was going to say, I think it is easy to obscure those signatures, though, probably. I mean, there are ways.

MODERATOR BRAUNEIS: So, in terms of the signature itself, we could technologically provide some system that we could blot it out or otherwise redact the signature.

Susan?

MS. DAVIS: One of the concerns that individual writers have is that often publishers go out of business, and the assets of that company are bought by another company or another company or another company. And at some point the rights have to revert to the author.
So, authors who would not be a remitter would need to have access to the records if they know that sequence happens, so that they can go in and check the contract, if they have lost it -- I mean, there are all kinds of possibilities here -- to make sure that they can, then, assume that they have the rights to that work.

So, somehow that problem has to be built into the system, so that individual authors -- and I am assuming artists and musicians -- can also have access.

MODERATOR BRAUNEIS: So, a creator might not be either party to a downstream transaction, and yet, want access to that transaction.

MS. DAVIS: Right. Right. In order to reclaim the rights to their work.

MODERATOR BRAUNEIS: Right.

MS. DAVIS: And that speaks to the issue of so-called orphan works --
MODERATOR BRAUNEIS: Yes.

MS. DAVIS: -- which have to be taken into account in any system because we want to make sure that the original creator's rights are validated and respected, and no one is allowed to assume their work is an orphan without some elaborate process, a search process. So, it all needs to be taken into account.

MR. BENGLOFF: We can go down a rabbit hole today if we get into that discussion.

(Laughter.)

I agree with Susan on works and derivative works in terms of being able to watch out for our community. We can get into the Whack-a-Mole process of the DMCA.

But all these things interrelate, obviously, to what your database is creating --

MODERATOR BRAUNEIS: Right.

MR. BENGLOFF: -- so we can protect ourselves.
MODERATOR BRAUNEIS: Yes.

Roy?

MR. KAUFMAN: Yes. So, I was just going to reinforce what Susan said. Because, you know, having been on the other side, on the publisher's side of these, you know, if there is a system and it is somewhat closed, the author may very well have not been the original registrant. They would be listed as the author, but one publisher would have registered it. Chain of title may or may not have been recorded. I often just chose not to because I figured everyone knew we bought that company.

And I do think allowing certainly, if it is limited, it should include the author, so that the author can go in and claim their work and record and do terminations and transfers and everything else. That is pretty important.

MR. HACKETT: Well, I just would say, you know, as a service company, we appreciate that these documents are not readily
available and that someone has to go into the Copyright Office to obtain them, because people may ask to go into the --

(Laughter.)

But that being said, you know, this is a public record, and I don't see it -- I mean, these concerns about bad guys doing things or information that shouldn't be included in these documents; it is a public record. Anybody can go into the Copyright Office and obtain these documents. So, I honestly can't see a reason for not making them available online, except my selfish financial interest.

(Laughter.)

MR. BADAVAS: Just to be clear, I wasn't suggesting that they not ultimately be made available, but at the moment there is a rule of practice in the Copyright Office related to the percentage that has to be legible. If it were clearly allowed for that confidential/financial information or
confidential business information more
generally, it would make people more
comfortable with putting in certain types of
documents in that affect copyrights that they
might not otherwise be putting in.

MODERATOR BRAUNEIS: Uh-hum. No, I
really have to appreciate that comment, that
given the existing rule, that may be a reason
to worry about that. Thanks.

Yes, Rachel, and then, Jonathan.

MS. FERTIG: Sure. I think at this
time we would agree with -- I'm sorry -- the
records --

MODERATOR BRAUNEIS: Christos.

MS. FERTIG: -- Christos, that our
members would definitely like to have their full
document that has been scanned available within
their account. So that, if they can't locate
their copy, they have a copy.

And they would also like to be able
to print that off as an official version of that,
say if they did lose their copy. But I think we would want to have clear guidelines on being able to redact information, like you said, before making those widely available publicly.

MODERATOR BRAUNEIS: Uh-hum.

Jonathan?

MR. BENDER: This may not be anticipated, although it is something we deal with all the time. It is overlapping claims. And, I mean, the Copyright Office wouldn't anticipate itself getting involved in any sort of overlapping claims process? I am hearing, you know, kind of a system whereby people can challenge the documents that are recorded.

MODERATOR BRAUNEIS: Right. Yes.

MR. BENDER: That is really outside of the scope of --

MODERATOR BRAUNEIS: I think it is unlikely. I think that the Office does this problem through court orders, and we have from time to time gotten court orders to cancel a
recordation or cancel a registration because the court has determined that that was incorrectly or fraudulently registered or recorded.

But I don't think there is any contemplation, because that would require an enormous framework to develop, that we would somehow develop a dispute resolution process within the Copyright Office for determining, then, issues of misrecordation or misregistration. I think that, unless you all tell us that that is the No. 1 priority or something, I think we are likely to leave that to the courts and to respond to whatever the courts tell us to do.

MR. BENDER: Then, I would encourage you to --

MODERATOR BRAUNEIS: Yes. Okay.

The last two topics, notice of recordation to others. So, several of the comments to the Notice of Inquiry said, you
know, it would be helpful if the Copyright Office notified the registered owner of a work whenever there were a document recorded against that work.

That does assume that we have a system in place that identifies electronically the registered owner of every work out there. We clearly don't. We absolutely don't for pre-1978 registrations.

And as we will discuss after lunch, we don't currently formally link registration and recorded documents records, either. So, we would have to start doing that before we could do that, even with respect to post-1978 registrations.

Alternatively, and perhaps practically more easily, we could provide a system whereby anybody could come in and sign up for email notification of any document that was recorded against any particular work. And so, I am interested in knowing what kind of
document notification would be ideal, and perhaps if there is a second-best solution, if the ideal situation can't be delivered due to information deficits.

MR. BORKOWSKI: Well, I will get it started then.

(Laughter.)

That's what I said the last two runs.

I think that the function of the Office is really to be the database of record for copyright transactions, and I think it needs to have the most robust systems that it can afford to have that makes it easier to search for documents, makes it easier to access them.

But I don't think it is the Office's duty or position to kind of push out information to people. I think that if you have a Catalogue, and a Catalogue that works, then if somebody is interested in searching for a particular work, then they can access that Catalogue and do that.

But I don't think that the office should be in
a position or allocate resources to just kind of sign up for, you know, "Let me know when something happens on this copyright registration. Let me know if something happens on this recordation." I just don't think that is the place of the office.

MODERATOR BRAUNIEIS: Okay. Thank you.

So, by the way, we talked about some interim steps that the Office is taking and possibly that the Office could take. And I am actually going to turn the floor over to Zarifa for a minute to discuss steps that the Office has already taken or is imminently about to take.

MS. Madyun: So, right now, we are implementing three interim steps, kind of to get the process moving a lot faster.

One Rhonda could tell you about, specifically because she actually was a part of the initial pilot program, where we are
accepting flash drives of those documents that come in with extremely large titles. We take that information, cut and paste those titles, and then, upload them into the system.

It is still a manual process and it still takes time, but it definitely takes less time to do than actually sitting there keying in all that information.

It is not an official program. So, we haven't said anything out there. There is no notice to say, "Hey, bring your flash drives in." But, if remitters do have them, then we encourage them to submit them along with their documents, whether it is a flash drive or a CD.

We understand, also, that our processing times aren't conducive with the industry and the deals that are being done on a daily basis. And we have heard time and time again that, you know, "A deal is closing today and I don't have any confirmation that our document was received or recorded. We need
something."

So, to kind of alleviate that problem for remitters, we are going to provide an email confirmation when your document is received in the Office, just to let you know, hey, we received it; here is what that document related to, so that you can have it in case that issue comes down the road.

And then, the third process that we are implementing to save time is we are implementing some of what we do in the current electronic system used for registration. That is only going to be internally.

So, instead of someone actually manually labeling each page of the document, the system that we have, it is allowing us now to do that electronically. And so, it will save a lot of time from the Document Specialist's perspective and, also, from our Support Specialists, who, then, will have to take that document and upload it and scan it into the
system.

So, those are just three of the things, but if there are any other interim steps that you think we could take to make the process move faster, we are willing and open to hear those ideas.

(No response.)

No?

(Laughter.)

MR. BADAVAS: Well, I mean, if you are going to email a confirmation that you have received the document for recordation, in that you could provide a link to a location that they could upload the file that you are otherwise getting by flash drive or CD, and that is not a particularly challenging technological thing.

MS. MADYUN: Yes, we definitely can consider that. We do have an internal email address that we do when staff members within the Office are typing titles for us that they send
it to. So, that could be something that could be used if we are sending out that confirmation, that email link where you could just send those digital files, if you have them. That actually is a good idea.

MODERATOR BRAUNEIS: We have had some security concerns about email attachments, as you might imagine. Not all email attachments that come in are, you know, friendly. And that has been one of the reasons why I think the Office has been reticent just to publicly announce, "Send us all your titles by email attachment."

MR. BADAVIDAS: Just to be clear, I wasn't actually suggesting an email attachment.

MODERATOR BRAUNEIS: Yes. You were suggesting a link to an uploading, a place for the uploading. That is a kind of alternative means where we could, then, scan the file before opening it and make sure we are not getting some virus on the machine.

Yes?
MR. HACKETT: The email confirmation of filings, that is something that you are doing now?

MS. MADYUN: Well, when I get back, we will start, yes.

(Laughter.)

MODERATOR BRAUNEIS: Monday morning.

MS. MADYUN: Yes.

(Laughter.)

MR. HACKETT: And will it be upon receipt of the filing, a hand-delivered filing as well? I mean, I know just from the process that there is a several-month period between a filing being dropped off at the Public Information Office and reaching the Document Section. Where in that process is this email sent, going to be sent?

MS. MADYUN: This is going to be from the process right before the filing fees are drawn. So, as soon as those documents come into
our Maintain Accounts Division, someone is going to be there to actually get that information from those documents and send that confirmation out.

MR. HACKETT: So, it will be some period of time after the filing is physically delivered to the office?

MS. MADYUN: It could be, but I think now, because of the fact that the filing fees are going to be increasing, that I don't think it is going to be that long of a period of time in between that, because they will try to process these a lot faster, so that they don't have to have a backlog of those documents coming in that came in after that May 1st fee increase.

So, I wouldn't say months; maybe a few weeks, but it is better than, as you know, now where you don't get the confirmation at all or, if you do, you are calling in and having to have someone do that search for you.

MR. HACKETT: Right. But I would
just say, in those instances when immediate
evidence of a filing is helpful, the Public
Information Office will date-stamp a document
that is submitted with the filing. That can be
returned to the filer the day a filing is made.
So, that is a nice interim step that is already
in effect.

MS. MADYUN: Yes.

MR. HACKETT: Yes.

MODERATOR BRAUNEIS: Excellent.

Well, thank you all for a very
productive morning session.

Time to adjourn for lunch. Since we
have adjourned a little late, I propose we come
back at one o'clock to continue in the
afternoon.

In the meantime, enjoy your lunch.

Thank you.

(Whereupon, the foregoing matter
went off the record at 11:59 a.m. and went back
on the record at 1:11 p.m.)
1:11 p.m.

MODERATOR BRAUNEIS: Okay, in spite of the fact that not everyone has returned from lunch, we are going to start the afternoon session now, in the interest of also being able to end on time and, yet, have enough time for discussion of these important afternoon topics.

The next two discussion topics that
we are going to group together look at document recordation from a different perspective. And narrowly speaking, they are both asking about types of information that document records should contain. Should they contain registration numbers, and should they contain other standard identifiers?

But, more broadly, they are both also asking about the role or the place of the Recordation Catalogue and the Copyright Office Catalogue within the larger ecosystem of information about copyrighted works.

So, asking about whether there should be registration numbers in document records is really a question that is asking about how the Document Record Catalogue should relate to information inside the Registration Catalogue. And asking about the use of standard identifiers is asking about the way that information in the entire Copyright Office Catalogue could or should relate to other
databases that might be out there about copyrighted work. So, I very much want to get your reaction to some of those broader issues as well as the particular issues.

I do have just a couple of additional fact sets to show you that give a background for the discussion of registration numbers and standard identifiers. I want to show you what the current state of affairs is.

And I mentioned this this morning in response to a question, but recall that, between 1978 and 2009, we have about 8 million works that are represented in recorded documents, and about 3.7 million of those have registration numbers in those records. So, that represents about 46 percent of the works represented in recorded documents are identified not only by the title of the work, but by a registration number.

That, of course, doesn't mean a post-1977 number which we could easily somehow
electronically link to within the Catalogue. That includes lots of pre-1978 registrations that are only on paper. So, it doesn't mean that we could suddenly integrate 46 percent of those recorded document records with an existing electronic registration record, but it does mean that those numbers are very available.

How does that look over time and in percentages of documents broken out between the two largest types of documents represented in the recordation panel; namely, assignments and financing documents? You can see a bunch of oscillation, and especially in the early years. We think that represents, in part, single large transactions in which there either were or weren't registration numbers that kind of dominate the data.

It may also represent changes in practices in the 1980s with respect to whether and how registration numbers were transcribed with the electronic records. We have to do a
little bit more research about that.

The other small sort of trend is here about 1994 or so in which you get the percentages of registration of works in financing through the registration numbers in financing documents increasing, crossing over, and then, from that point on, remaining above the percentage of works represented in assignments with registration numbers. So, financing documents are getting from 60 to 80 percent of their works in with registration numbers. The assignments are only getting between 20 and 50 percent.

And recall, as I mentioned in the morning, the two court decisions that might be influencing those trends in financing documents in 1990 in re: Peregrine Entertainment that says that, essentially, all works that have security interests perfected in them, the security interest grant should be recorded at the Copyright Office.

And then, you have got in 2002, the
9th Circuit saying, absolutely no, only registered works should have security that is protected by Copyright Office recordation. And that's the point, or that is near the point at which you see a much higher percentage of financing documents are coming in with registration numbers included in the works.

Just to give you a sense about the lack of integration between the Registration and Recordation Catalogues that are part of the Copyright Office Catalogue, here is just an example that I pulled out, a novel called Damascus Gate by Robert Stone. If you searched for it now by registration number, you would only get the original registration. It would not pull up any of the documents that have been reported that pertain to that work. There are a series of such documents. Some of them did have registration numbers at the time they were reported in the document. So, we have got a registration number in the Catalogue for a grant
of what looks like motion picture rights for Damascus Gate to Paramount Pictures. That would come up if you searched by title, although there is no guarantee that Damascus Gate is a unique title for this particular work.

There are other documents, though, that came in without registration numbers, and those are not available, then, in the Catalogue. So, the termination of the assignment that we just saw, which had a registration number, didn't have a registration number. So, it is not available. And then, there are additional grants of rights, it looks like, also, probably motion picture options that were recorded without registration numbers.

So, we have got these two halves of the Copyright Office Catalogue that aren't talking to each other much now, although certainly a title search would turn up those records. And we have got the potential for doing some further integration, but we don't
have registration numbers, even for all of the registered works that are in the Recordation Catalogue.

Just a couple of facts about the use of other standard identifiers in the Copyright Office Catalogue. Records pertaining to recorded documents currently do not store any other standard identifier. So, we don't currently place standard identifier information in recorded documents records.

We do currently accept certain standard identifiers for registration records, three different types, actually, only three different types at the moment. But those, it turns out, are of relatively little use. So, out of 16.7 million registration records in the Catalogue, 565,000 of them, or a little over between 3 and 4 percent, contain ISBNs, and that's just standard book numbers. This, I think, is a percentage that is a statement that should be a little bit down. About 400,000
contain International Standard Serial Numbers.
So, this is for serial publications. And then,
3/100ths of a percent, 5,510, registration
records contain International Standard
Reporting Codes. We aren't at this point in a
position to accept International Standard
Musical Work Codes or any other standard
identifier in the Registration Catalogue.

So, that is some sort of the factual
background. And I would like to open the floor
up for some discussion about the use of, I guess,
first, just the use of registration numbers and
other standard identifiers in the Recordation
Catalogue. Would that be useful? How would
that be useful, and the like?
Suggestions? Comments?
MS. REID: Yes, I think it would be
useful.

(Laughter.)
MODERATOR BRAUNEIS: Okay. Others
could say, "Yes, "Me, too."
MS. DAVIS: Me, too.

(Laughter.)

MODERATOR BRAUNEIS: Three, okay, onboard. Four?

I guess, just to provide a little more background with that, which is to say, you know, before we build something, I guess it would be useful to, when you are making a budget request, to say, "It would be useful for the following reasons."

And if you can envision uses that would be made of that information or typical scenarios in which it would be helpful to have registration numbers or other standard identifiers included in the Recorded Documents Catalogue, that would be helpful to have on record.

Susan?

MS. DAVIS: I gave that example before. This would be about a publisher who goes out of business. The assets of the firm
are sold to another publisher. At the same time, I am assuming that the ISBN would continue along with that. So, it would be helpful for a writer to be able to track down where his or her work is in the process using an ISBN number.

MODERATOR BRAUNEIS: Okay. Yes. And, I mean, I actually haven't done a search in the Catalogue to see whether Damascus Gate turns out to be a unique title that no one else has ever used for a work or not, but there are many titles that are not unique. And so, a search would have to be at least more involved to try to pin it down to a particular work; whereas, a standard unique identifier would make it a lot easier. That's for sure.

MS. GINSBURG: I just want to ask a really boneheaded question.

MODERATOR BRAUNEIS: Yes.

MS. GINSBURG: Why wouldn't we want these standard identifiers in the records?

MODERATOR BRAUNEIS: Yes, I'm not
sure that there is any -- yes?

MR. BENGOFF: As I said in my earlier remarks, there is, of course, anything. Okay?

MODERATOR BRAUNEIS: Right.

MR. BENGOFF: In the music industry I don't know if the number is small because there are not that many music filings or that there's a lot of music filings without the ISRC code.

But it is one of the pop-up screens. It asks for -- you know, when you're doing it, it is an easy process to enter. But if you have to hire someone to put all that data in, then, of course, the benefit is narrow and we are not interested. In other words, we are asking use, with both personnel as well as financial resource limitations. That would be the only reason.

MODERATOR BRAUNEIS: So, you're saying, if we had the capacity to accept these
standard identifiers, those fields might go unpopulated in many cases because of the cost of entering that data, even if it was available?

MR. BENGLOFF: Right, unless you can create some sort of interface that is easy enough that can be populated from a system that already exists. That's the only reason you wouldn't do it, is because you say, "Hey, I have to hire someone. I have to spend money."

MODERATOR BRAUNEIS: Right. I mean, we talked a little bit this morning about how some organizations already use Excel spreadsheets.

MR. BENGLOFF: That's what I'm saying, an interface. That's my point.

MODERATOR BRAUNEIS: And one could imagine you've got one column for the title and one column for the various standard identifiers.

It is a question of sort of practice in industries whether that information is
already maintained in electronic form, and therefore, simply needs to be transferred into the right format to be provided to us, or whether it is not maintained in electronic form. So, you need to hire somebody to key-in manually each title.

MR. BENGLOFF: So, you're saying in an electronic filing that is standard use established, so there is an easy interface where you say: check, check, check, check, check?

MODERATOR BRAUNEIS: Right.

MR. BENGLOFF: It's 180 titles. Hit a button. So, it's not mandatory. I think you want to support it for sure, but I think you're saying it can't be mandatory.

MODERATOR BRAUNEIS: So, build the capacity, but don't require it?

MR. BENGLOFF: You can design it so that it is friendly to the creative community.

MR. BORKOWSKI: Rich also knows that there is an issue in the music industry,
in particular, with the ISRC codes because there are versions of whatever work is registered, depending on whether it could be, you know, a clean version, a radio edit, or something of that nature.

So, frequently, with respect to one best edition of the work, there could be several ISRC numbers associated with somewhat different versions of that work. And so, those often are all kept in the same place, and it is kind of hard to be able to populate, let's say, one recordation or one registration with all of those ISRC numbers.

So encourage, but not make mandatory I think is a good idea.

MODERATOR BRAUNEIS: Okay. Yes, go ahead.

MR. BADAVAS: I think there is an additional concern that is related to transactional cost, which is we have publishing clients who buy large catalogues of songs. And
the due diligence that copyright lawyers are
paid a lot of money to do is done on the highest
amount of titles. And they determine the amount
of due diligence that they do based on the value
of the purchase and the cost of doing it, right?

I'll make up numbers. But it could
be 200 titles out of 10,000 because those are
the ones that earn 85 percent of the market, or
something like that. And the rest of the
catalogue which they are buying, it might be
songs from 1935 to 1967. And the information
might be sitting in manila folders in boxes in
a warehouse at Iron Mountain, because that is
where the warehouse is.

(Laughter.)

And, you know, offsite pretty far,
and are you really going to (a) pay to pull the
box back; (b) pay a lawyer or a paralegal to go
through the paper, which we all know is an
expensive process, and then, get it keyed-up
into the document that needs to be reported or
keyed into the electronic file that will be provided to the office? For those types of transactions, you would be adding significantly to the transactional cost of purchasing the catalogue. And that's the type of venture capital money that funds the creation of --

MODERATOR BRAUNEIS: Okay. So, I'm hearing we don't want it required because sometimes the cost/benefit isn't there. But there is also sort of a technical issue of there is not always going to be a one-to-one relationship between work in the registration sense, in the registration number sense, and International Standard Recording Code or some other standard identifier that might identify a group of closely-related versions of that work.

And part of that would simply be a technical issue of allowing the entry of more than one standard work identifier per recordation number, if you want to do that,
especially if that's one -- and it turns out that
is one of the high-yield works.

MR. BADAVAS: And it is useful to
have standard identifiers even if they don't
accept it. It is an issue of can we actually
reasonably afford to provide it in the first
instance. In some cases, yes; in some cases,
no.

MODERATOR BRAUNEIS: Jane? And
then, Susan. Or Susan. Then, Jane.

MS. DAVIS: Would it be possible to
require it for textual work, written work, and
not for other genres, for lack of another term?

MODERATOR BRAUNEIS: Technically,
sure.

MS. DAVIS: I mean, you could set up
the --

MODERATOR BRAUNEIS: I guess, then,
what would be the rationale for distinguishing
between requiring a standard identifier for
textual works but not for musical works, sound
recordings, audiovisual --

MS. DAVIS: Well, because of the exceptions that other people have raised within other industries. But requiring it for textual work would help writers, would help authors immeasurably. So, that is the only reason why I am raising it.

MODERATOR BRAUNEIS: Okay. Jane?

And then, Rachel.

MS. GINSBURG: That relates to a question I had: there are three different categories here. The easy one concerns future registrations and recordations. Is there any good reason not to include in the registration records a fill-in-the-blank for a standard identifier if there is a standard identifier?

The second category concerns works that have already been created and registered. As to those, how many of them have standard identifiers? I take it that in the book context it is already widespread, not necessarily in
others. But as to those sectors for which standard identifiers are already in use, is it feasible to add that information retroactively to the records?

The third category would be those works for which there is no standard identifier, the ones in the “manila folders.” Those are the ones that now seem to be the most intractable.

But I don't see a reason yet why going forward one couldn't request, indeed require, standard identifier information. And as to that intermediate category, to try to ascertain if there is a way to input information that already exists.

MODERATOR BRAUNEIS: Yes. And currently, I think the only sort of small mechanisms for doing that in that intermediate category would be to file a supplementary registration. That seems like something of a cumbersome vehicle to add a particular standard identifier. But I think that if somebody did
want to do that right now without any changes, I think you would be filing supplemental registrations that would add information.

MS. FERTIG: Can I let Heather go first, and then, I will follow up?

(Laughter.)

MS. REID: I think that some sort of a tiered approach like that is probably the way to go. Because I think you do want to require them as much as possible. But, also, on the registration side, you are registering some works that are unpublished, right? At the point of registration, they were unpublished. So, they may not at that point in time have an ISBN, for example, for a book.

So, I think we need to leave open the window of possibility that someone can actually go through that process with like having a standard number.

But I do need to go back to your original question. I think that some of the
benefits of having standard numbers to the
greatest extent possible is that, ideally, you
want the system that you build here to be one
that machines interact with as well as humans,
right? That is the way that information systems
are going, have gone in the world. And standard
numbers are going to facilitate that in a way
that free text just isn't.

So, the extent to which you can push
things in this direction, the more you are going
to be able to exploit the system that you build
and have other systems be able to interact with
it, which, in turn, leads to efficiencies,
right? So, I think that is the primary reason
that I could think of why you really want to try
and get them there in as many cases as you can.

MODERATOR BRAUNEIS: Uh-hum.

MS. REID: The other thing is that
I think -- and this kind of relates back to a
point I made this morning -- I think it will
assist in sort of quality control, to the extent
that you want to keep this database, for example, linking back to your registrations or linking to other systems.

I acknowledge the costs involved in this, but I still think building your system based on currently-existing data that you can get and license or connect to in a programmatic way is going to give you the greatest sort of footprint to make sure the quality is there in the records that you are recording, and a standard number is going to facilitate that.

MODERATOR BRAUNEIS: If I could just ask a follow-up question on the question of machine readability of records, I understand that that is the way the data is moving generally. And so, there may be unforeseeable uses of that data right now, but they are probably going to involve machine or computer interactions, and not human reading.

But, again, when we are thinking about justifying budget requests, it would be
helpful to have some foreseeable and immediately-beneficial uses to point to, rather than just say, "You know, you should develop this because sometime in the future we know everybody is heading in the direction of computers."

MS. REID: Right.

MODERATOR BRAUNEIS: So, to the extent that you could talk a little bit about those, that would also flesh-out some comments that have been made in the written comments about you should facilitate interoperability and linkage, and those terms cover a multitude of possible concrete models. So, if there is any concrete, immediately-beneficial uses of having it be in that form, it would be great to get those on the record.

MR. BENGLOFF: Yes, we like the idea of the ISRC code. The thing that I am trying to do here is to make it simple. Someone can get carried away and have 80 fields of data or
you can have eight fields of data. We vote for

eight fields of data. It is probably enough.

That can build some sort of
interface, so everyone is used to this template
as opposed to the flat that you just showed
there. And people, again, will attempt to do
that.

We are not going to register
everything, you know, because we only register
the higher-velocity items typically to keep
down our costs. That is our issue with like
having to register for statutory damages, which
I'm sure everyone in the music industry is
against that, that it be a requirement to get
statutory damages. Everyone in the room is
against that. It seems like the Register is
also, having read her speech.

But we want to register. We want to
correspond. We think the data is good. It is
just how it is designed. People get carried
away sometimes, and they design something that
is too complex that is not usable by the creative community.

And we don't want it to be used as a tool. In our industry -- I don't know about the other industries -- YouTube has become an example of over-claiming. You can't get into claim conflicts, but everybody is claiming everyone's stuff on YouTube nowadays. It is not misinterpretation of rights. There are people -- you know, the whole mass digitization doesn't just apply to Amazon and to Google. It applies to individuals who are going out there.

I am saying there's a lot of complex issues going on within the marketplace right now.

MODERATOR BRAUNEIS: Thanks.

Rachel?

MS. FERTIG: So, a couple of points. I think Jane's suggestion for sort of a three-tiered approach, what you can do going forward, and recognizing the challenges that
are posed by those that don't have ISBNs or they are old and it would take too much investment in order to provide that information, or it doesn't make sense -- I think that publishers already are providing their ISBN in the title information template that we talked about submitting to the Copyright Clearance Center earlier this morning. And so, that could be something that publishers would be able to implement easily. If the Copyright Office does use that same template, then that information is already there to be used and could easily work itself into the recordation process.

I don't know at this point whether the publishing industry would be happy to be the guinea pig for making that required and watching how it works, to see if everybody else wants to join us. But I think that we are in favor of incentives to create more pressure to move the system into including more standard identifiers because we do see that that is a benefit.
And concretely to Susan's point, if somebody can put in an ISBN number and more easily find a record of what happened to that publisher and that work, then that does help solve the orphan works problem going forward and avoid that.

So, there are concrete benefits for including the standard identifier as yet another way to simply look on the back of a book and be able to have a quick way to find a record, the chain of title for that document.

MS. McKIERNAN: That is the key phrase, creating a chain of title.

MS. FERTIG: Right.

MODERATOR BRAUNEIS: Uh-hum.

Other comments specifically on registration records and identifiers?

(No response.)

Let me open this up to include standard party identifiers as well as standard work identifiers. I am sure many of you know
that there has been work done on creating International Standard Name Identifiers, and a subset of those are Open Research Contributor IDs, or ORCIDs. The musical work industry uses interested party identifiers. Those also lead to more machine readability and unique identification of parties.

Are people using those now? Should we be accommodating or requiring those in the context of recorded documents? Should we say that, when parties record a document, they should obtain one of these identifiers and include it in the document recordation record?

MR. BENDER: I think it is the same point. I think you need to make it available because it helps with accurate identification.

We have, with registrations, we have 80,000 artists' name in our database, and we have multiples of John Smith. You literally have names that are so similar that, without an identifier, you literally can't separate them.
So, having a performer identification is crucial for us.

Similarly, on the label side, you know, we have some over 30,000 labels and the variations on Sun Records. So, you get into a lot of ambiguity with just text-string names.

So, I would say, absolutely, you need to be able to accommodate it and support it. I don't think you can require it because it is not universally adopted.

MODERATOR BRAUNEIS: And have you developed your own identifiers or are you making use of an existing name identifier?

MR. BENDER: Where available, we use as much as possible -- there's the International Performer Database Number. There is a European ISO standard for artists' name. We are pushing for a similar code for labels. But, again, not every artist has registered with ISNI.

To answer your question, yes, if
they don't have one, we have an internal number just for our own purposes that we assign.

MS. REID: Do you accept the ISNI if they have one?

MR. BENDER: Yes.

MS. REID: Do you run into that frequently or infrequently?

MR. BENDER: Run into?

MS. REID: That artists do have ISNIs assigned? Is that a frequent occurrence?

MR. BENDER: Frequent, no, I wouldn't say frequent. We have the International Performer Number, the IPN, more frequently.

MS. REID: Uh-hum.

MR. RUSSELL: And also, for music publishers, the IPI number is not something that they would necessarily have. In many cases, I think it is worth collecting, if it is available. I think it adds value to the database. But I think it is kind of a marginal
thing.

MODERATOR BRAUNEIS: Okay.

Thanks.

Any other comments on party identifiers?

MS. REID: I think this is a tricky area just because it is, compared to some other standard identifiers, the area of author standard identifiers is in its infancy.

MODERATOR BRAUNEIS: Uh-hum.

MS. REID: You know, when you think of ISBN, it was introduced in the mid-seventies, and ISNI and ORCID are the last couple of years. So, it is just not as mature as other identifiers, but they're --

MODERATOR BRAUNEIS: Yes, although they are maturing quickly.

MS. REID: Maturing quickly, yes.

MODERATOR BRAUNEIS: I believe there are over a half million ORCIDs that have been issued.
MS. REID: Yes. Uh-hum.

MODERATOR BRAUNEIS: And I know that one of my publishers required me to get one, you know, when I submitted a work. He said, "Get a number. You need it."

MS. REID: Yes, it is definitely, it's on a hockey stick in terms of adoption. And ISNIs, too. I think I read somewhere there's like 10 million ISNIs, I think, that have been assigned at this point.

So, yes, I would agree that accepting them would be a very good thing to do.

MODERATOR BRAUNEIS: I mentioned a little bit the sort of general question of interoperability and linkage between the Copyright Office Catalogue and other copyright databases. And I would like to discuss a little bit sort of models for what that would look like. What kind of interoperability and linkage seems to be possibly beneficial, beneficial enough that we would actually get a stab at
implementing it?

Thoughts about --

MS. GINSBURG:

We talked earlier concerning the ISBN number or its equivalent for other sectors. Ideally, once you input the ISBN or equivalent identifier, the search results would tell you if there is a copyright registration, if transfers have been recorded.

MODERATOR BRAUNEIS: Okay. So, that is certainly sort of an enhanced search function, that if we have that data in our database, then somebody can use the ISBN to search for something.

Sometimes when I hear the phrase used "interoperability and linkage," it sounds sort of more formal, and that there should actually be a way that either one could be directed from Copyright Office records through a link directly into another database or that, to take another model, the copyright
information should be made available with an application programming interface, so that other data aggregators could aggregate data from the Copyright Office Catalogue, which they could query automatically, and maybe various other catalogues that have data query possibility, to present it in a single, accumulated set of returns for a search.

And so, I am just curious if any of you have thought about those models and the possibilities that would be opened up by engineering things in that way.

MR. RUSSELL: In music publishing, one of the issues that we have with licensing when you are dealing with Notices of Intent, when you can't find a publisher to serve the Notice of Intent on for the compulsory, your last resort is to file it with the Copyright Office, but you have to do a search of the Copyright Office's records.

And often, we are dealing with very,
very high volumes of new releases on digital services. So, it is not really practical to do those on a one-off basis. So, an API would be extremely helpful.

MODERATOR BRAUNEIS: Okay. So, an API for your search purposes connected with Notices of Intent.

Other thoughts? Vic?

MR. PERLMAN: Yes, it is the same thing in the photo space, particularly if you could integrate seamlessly with a registry like the PLUS registry that Tricia was mentioning earlier.

MODERATOR BRAUNEIS: Okay. So, here there is a case where there is a developing privately-operated registry for photographs.

MS. MCKIERNAN: No, it's for images.

MODERATOR BRAUNEIS: Excuse me?

MS. MCKIERNAN: It's images. It's inclusive.
MODERATOR BRAUNEIS: I'm sorry. Images, right. So, it is more inclusive than photographs, right.

And so, you are suggesting somehow integration of that with the Copyright Office database. And I am wondering if there is any more concreteness to the way you are imagining integration between those two, what sort of model of data linkage you would envision.

MR. PERLMAN: You need somebody with a much higher tech level pay grade than me.

(Laughter.)

MS. McKIERNAN: Yes. Jeff is the perfect person. So, I mean, he can explain it to you. But it is kind of a cool system.

MODERATOR BRAUNEIS: Formulating metadata standards. Obviously, there have been, and there is continuing to be, many initiatives for developing metadata standards. Is there a role for the Copyright Office to play in those formulations or in promoting
particular standards, once they have been adopted in other forums, fora?

MS. REID: I would think it would be useful for the Copyright Office for its own purposes to be participating in those standards development efforts and to be aware of them.

I'm not sure that -- I mean, there are obviously many drivers of those standards today. Some of them are coming out of the library side of the equation. Some of them are starting to come out of the publisher's side of the equation. Some of it is driven by the retail book trade. So, there is a variety of players there, and I would definitely think that the Copyright Office would benefit from having a seat at the table.

MR. RUSSELL: And I think just by simply accepting the standards you are supporting them in a lot of ways, but I think in driving the development of the standards it might distract from all of the other things that
you are trying to do.

    MODERATOR BRAUNEIS: Uh-hum.

    MR. BORKOWSKI: I mean, these standards are being developed in various industries already. So, I think the idea, the notion that you would be aware of the development, except the ones that have come to the fore, I doubt that it would be very useful. But I do agree that your resources would better be spent not in driving the bus, but actually just riding along on it.

    MR. BADAVAS: These standards get developed when the economic encouragements cause all of the businesses that need to transact with digital information to develop them and adopt them. And even when organizations within an industry start a push to develop standards, they often aren't adopted. And so, if the economics around it aren't good, you can be pushing forever, but it isn't going to happen. Conversely, if
something is suddenly needed very quickly, and
a process like this is what is required in order
to get it adopted, I'm not sure that that is going
to be quick enough.

MODERATOR BRAUNEIS: The last two
questions under the metadata standards
discussion are: is there a specialized role for
the Copyright Office Catalogue to play that is
different from the roles that
privately-maintained databases play? And does
the Copyright Office have a core field of
expertise that should guide its role in
collecting and providing copyright information
about works?

So, this suggests, okay, the
Copyright Office Catalogue is a source of
information about copyright in works. There
are other sources of information out there.
Does this sort of information that the Copyright
Office is busy collecting, maintaining, and
promulgating, does that information pool have
a particular role to play that we can define in a way that guides us in spending our resources, so that we are not duplicating the effect, the efforts of others, but that we are providing some key information that others aren't providing, right?

Yes, Susan.

MS. DAVIS: I think the operative term here is "neutrality". Because it is a government function, a government office, it doesn't have any of the bias of possible private databases. So, I think it is absolutely essential, the role that the Copyright Office has to play in this as a neutral entity.

MODERATOR BRAUNEIS: Yes?

MS. GINSBURG: Once upon a time, there was CORDS --

MODERATOR BRAUNEIS: CORDS, yes.

MS. GINSBURG: That was a great idea. It never got any funding to go anywhere, but it was generated out of the Copyright
Office. And the idea would have been that the registration records also would have provided information about licensing. So, that once you ascertained who had the rights, you could then push buttons or make requests in order to, then, clear rights.

It was anticipated that for some works or grants of licenses the system would be totally automated, that there would be kind of a menu of rights and prices for rights. And then, for other works or rights, you might have to negotiate directly with the rights-holder. But the possibility of automated licensing would have simplified rights clearance.

Perhaps that kind of information could still be linked, either through Copyright Office records linked to other databases or through the copyright records themselves providing that information.

It struck me as a good idea 20 years ago, and it is still a good idea.
MODERATOR BRAUNEIS: Jonathan?

Thanks.

MR. BENDER: Yes, let me, setting the standards, I mean, after years of struggling with this, actually, the adoption of data exchange standards in the music industry is really maturing much more rapidly because of the proven benefits to the whole ecosystem.

So, the Digital Data Exchange, DDEX, is the organization. Now the industry participates and they set these standards, and they create message standards for all different types of interactions. So, there is a particular message suite for communicating to a retailer your new recording. "Here's my new release." There is a message standard for publishers to communicate to rights-owners. And so, there is a whole suite of message types that DDEX creates.

It would seem to me that an obvious message type would be a message type to register
your registration process, and possibly, also, the recordation process.

And in that case, this industry group works within working groups, where literally it is interested parties coming together, and they have forums, and online forums, where they work through and hash out what the standard is.

So, having a seat or having an interest and visibility to that I think would be a useful role.

MODERATOR BRAUNEIS: Okay. So, the possibility of adding registration messages and recordation messages which would be accepted by the Copyright Office would be an interesting expansion of the current DDEX standards.

Other thoughts?

MS. REID: Yes, I think that whole function that Jane was referring to there -- and this kind of ties back to your question before, "So, what are the actual examples of linking and
APIs that could actually put some meat on the bones or on the desirability of that?"

MODERATOR BRAUNEIS: Right, right.

MS. REID: I mean, this may sound trite, but it seems like what the Copyright Office should focus on in terms of your area of expertise is the copyright information, right? So, you know, being heavily involved in developing rich bibliographic metadata standards, probably not so much. Being involved in knowing what's going on, yes, but there are other people for whom that is their core area of expertise.

But that idea of adding to current and existing standards messages or messaging capability to do the copyright-related functions I think makes a lot of sense.

And I think, then, being able to -- I mean, I think one of the grand challenges here is being able to facilitate the sort of commercial exploitation of works that are under
copyright, right, and being able to have systems interact with the systems that the Copyright Office has to facilitate that I think is really an area to focus on.

So, it is not just maintaining that data for the beauty of it, right? It is to enable people to find out what is, in fact, copyrighted, and, then, pointing people to licensing services that are already available, many of whom are represented around this room, and again, having that standardized metadata, the standard numbers, is what is going to make that possible. And ultimately, that would, I think, facilitate that economic exploitation of those works.

Does that make sense?

MODERATOR BRAUNEIS: Yes, it does.

It does. I mean, you know --

MS. REID: It is still not concrete enough?

(Laughter.)
MODERATOR BRAUNEIS: Well, I think I do want to provide a concrete example to sort of imagine this in more concrete terms. So, if one could imagine a system in which the Office allowed certain registered users to add a linkout from a registration record to a licensing database, we could say, "Well, Copyright Clearance Center, we've got these 16.7 million registration records." We create a new field in each one of them. It says, you know, link in terms of URL out to licensing data and licensing capabilities. And then, certain registered users would be able to simply populate that field.

And so, when you go into a registration record, in addition to the lines that we saw up on the screen earlier, there would be another line that would look like a hyperlink. And you could click on it through to the Copyright Clearance Center.

So, is that the kind of capability
that you're talking about?

    MS. REID: Yes, I think that and, also, the other way around, right? For us or other agencies around this table here to be able to link into what you have to determine also. So, if someone comes to us and says, "I want to license this work," and we don't have rights-holder information about that work currently in our system, it would be great for us to be able to go to the Copyright Office, search your databases, and find out, oh, here is a recordation record where these works were sold to so-and-so, because it would start us off down a path by being able to identify that rights-holder and, ultimately, enable the transaction for the user there.

    MODERATOR BRAUNEIS: Okay.

    MS. REID: So, I think being able to do both sides of the equation there would, from my perspective, be ideal. I don't know what other people around the table think.
MR. BADAVAS: And there might be one other tertiary application that is more like Professor Ginsburg is referring to, which is, if you had an open API where you could communicate directly with the Copyright Office database, and you were collecting unique identifiers that are used in different industries and, then, adopted, the marketplace that she describes already exists in many instances.

And all people would have to do is -- let's assume someone comes to the Copyright Office database to look, as opposed to the ASCAP or BMI, for a music performance license, right? They could have an app that immediately links in, and you could have an API that allowed them to tunnel-in very quickly and push to the licensing applications that they have, right?

MS. REID: Yes.

MR. BADAVAS: And it could be linked
in a very concrete, technical way, as opposed
to I'm looking at the record and I'm clicking
on a URL that I'm linking back to.

MODERATOR BRAUNEIS: Right. Who's
developing the app that's --

MR. BADAVAS: Not you.

(Laughter.)

MODERATOR BRAUNEIS: I know. I
understand that. Yes. Well, no, and it
enables more rapid development and all that good
stuff.

But in your model it might be a
third-party developer who is neither the PRO nor
the Copyright Office that has just decided to
develop this app that rides on top of that data?

MR. BADAVAS: Yes. And then, you
could, if you want to be a little more academic
about it, I would see a professor developing
some apps or getting some grad students to
figure out how to deal with that, to research
what they have to do, and things like that.
So, the repurposing of the database in ways that we don't know is valuable, but there is also --

MS. REID: Yes.

MR. BADAVAS: -- undoubtedly people who transact on copyrights who would eventually not get to the data unless it is structured properly.

MODERATOR BRAUNEIS: Yes.

MR. BADAVAS: This is about communicating. But if it is structured properly --

MODERATOR BRAUNEIS: Yes.

MR. BADAVAS: -- it could link the services they provide already and are expert in to the core ownership information that you have.

MR. BENGLOFF: I think the point Susan made earlier which would be included in ours, that we are very concerned about, is that the Copyright Office is very involved in both the design of the system as well as the quality
control over the database that the system is run for. Otherwise, we have a long history of constituents that A2IM, the organization I work for, represents where our members ask for certain things. Our requests go down the list behind the publishers or the larger creators. And since our concerns are not considered in either of those areas, it doesn't meet definitions that we need to have done. And only a Switzerland-type-based organization like the Copyright Office can ensure that some of the pockets are taken out of that. And clearly, things that we would like to work on could get sorted out as part of that process.

That's my new friend.

(Laughter.)

MODERATOR BRAUNEIS: Yes, Andy.

Sorry.

MR. HACKETT: I'm sorry if I missed the discussion of this earlier, but your first question under linking recordation and
registration records --

MODERATOR BRAUNEIS: Uh-hum.

MR. HACKETT: -- I just want to be on the record as saying it would be very helpful if just within the Copyright Office's own records, registrations and ownership documents were linked. And I think it would actually go to some of the concerns that have been mentioned here. It would make it a lot easier to do a chain of title or a due diligence search, that you wouldn't have to search by name or by title. If you had the registration number and could see all of the assignments related to it, that would be a real timesaver.

I mean, we see it with various indexes. Like for UCCs, for example, different jurisdictions don't link the original assignment with a release or something like that, and it makes searching a lot harder. To have them linked in the Copyright Office database would be a big timesaver and make
searching a lot more accurate and easier.

MODERATOR BRAUNEIS: Okay. Thank you. Thanks.

Other comments?

(No response.)

Okay. Well, if not, I would like to turn to our last topic of conversation, which is additional incentives to record documents. As usual, I have a couple of introductory slides to introduce this conversation.

You know, one of the first questions is, are there large numbers of significant copyright transactions that are not being recorded? Because, of course, any discussion of additional incentives assumes that there are, and that there needs to be some combination of incentives to bring that number up.

And so, what evidence do we have about whether there are or aren't large numbers of significant transactions that are not being recorded? We have some anecdotal evidence.
Richard said earlier that, not for economic reasons, but because the cost is too high, that some of your members do not record transactions or some of the transactions they don't get into.

Let's see here if I can get this back on.

Just to put a slide back that I had on earlier, you know, we see that the number of documents, financing documents, that have been recorded has gone up. Now that might just reflect an increase in underlying activity. Maybe copyrighted works are being used more as collateral for loans than they were in the 1970s.

But it also may reflect the possibility that there were judicially-invoked or created incentives to record those transactions when the 2nd District of California said that's how you perfect your security interests, and if you don't record them, then if the debtor goes into bankruptcy,
you're out of luck with regard to recovering against those works.

Recall that we had something of an additional incentive to record documents until 1989. Until the Berne Convention Implementation Act, there was a requirement that not only did the work in question that was the subject of an infringement lawsuit need to be registered before the lawsuit would be brought, but the conveyance, if any, if a plaintiff were not the initial copyright owner, the conveyance to the plaintiff needed to be recorded before filing that infringement lawsuit.

Of course, it is hard to say definitively whether dropping that requirement had any effect or not on the number of recordations. It doesn't look, I mean, given the sort of gross data that we have about the number of assignments recorded, the big drop occurs 11 years later. And so, it is hard to
see that that would have been the cause of this big drop.

Obviously, one could posit that the curve would have been a little higher starting here, given underlying economic conditions or other factors that are playing out in those numbers, if the requirement had been kept.

On the other hand, it might easily be the case that works that are the subject of infringement lawsuits are typically quite valuable works. If they are not valuable, nobody is going to file a lawsuit in federal court about them.

And that, with regard to those works, the recordkeeping for most of it is already pretty well established. And so, that particular incentive didn't do much to change underlying behavior because, in fact, it is the underlying behavior that drove it.

Here's just another slide that juxtaposes the figure about the number of
reported documents, taking out financing documents, which you might say have a separate incentive because any transaction in which you are loaning a significant amount of money, and the bank is demanding that the security interest be perfected by recording, it is not highly sensitive to change in recordation fees.

So, taking those out of the equation, and also taking the Notice of Intent to Enforce out of the equation, with the very specialized and the 508 statements that I mentioned at the very beginning of the session, because those weren't catalogued after 1981 anyway. So that juxtaposes the curve, taking out those other documents -- the remaining documents -- against the changes in recording fees, the basic recording fees, and the green lines represent the nominal fee that is actually charged. The scale on the lefthand side there is 100 times less than the scale on the righthand side. It is documents in the thousands and
recording fees in the tens or twenties.

The red bars represent a fee in constant 1978 dollars using the Consumer Price Index. And you can see that even in constant 1978 dollars you have doubled the recordation fee in the early 2000s. And by the mid-2000s, it had tripled.

And that at least raises the question of whether a loss of about one-third of the number of recorded documents is correlated with a doubling, and then tripling, of the recordation fee, and whether we got a good chunk of that back if we were to reduce the fee. We don't know.

You know, we haven't attempted to consider many, many other factors that might be influencing the level of recordation like macroeconomic factors. Is this also the burst of the dot-com bubble? Is something else going on?

But it is at least tantalizing to
think that there is some cost impact being reflected here in the number of recorded documents, and that lowering the cost would be in itself a kind of incentive.

So, we are going to start talking about some more serious legal incentives. So, disabilities that may be imposed on those who didn't record or additional remedies afforded to those who do record.

Before we get to that, I would just like to ask whether you think there are other factors, other kinds of services the Office might provide or changes in the way that recording is done that would act as incentives.

One of the comments said, for example, if we could gain access to the imaged documents and sort of start using it as our own cloud drive for the documents we recorded, we would be more likely to record documents. And so, that is kind of one example of another service that we might provide that would act as
an incentive to record.

Other services, adjustments? Yes?

MS. GINSBURG: What about standardization of the information that is recorded? That is, my own experience searching recordation records is not encouraging: that you don't always find out what works actually have been recorded, because sometimes there has been a transfer of a whole lot of works. The contract of transfer is recorded, redacted, and the works are on Schedule A, and Schedule A wasn't recorded.

So, what self-propelling incentive does recordation offer -- I mean, if recordation isn't actually going to provide the information about the works for which transfers were made, that is not a big incentive.

MODERATOR BRAUNEIS: Right. Certainly, yes, having the works identified in a recorded transfer would be a good thing. Of course, there is an existing incentive in theory
to do that. The Copyright Act says that, you know, constructive notice will only be provided if the document in question can be searched -- I mean, if the works are identified by title or registration number. So, that is something of an incentive to do that. But there may be additional incentives needed.

Now in some cases the Office does record documents that mention no works at all because, for example, they are blanket divisors in a will. So, you record a will, and the divisor says, "I hereby bequeath all of my copyrighted works to my" whomever. And that will is then recorded. It doesn't contain any information about exactly what works that author or otherwise owner owned at the time of death. And so, there you have it. You know, that's that. That was what was there to be recorded. And I don't know whether we could or should require in that circumstance -- like we won't record that will until you find out
exactly which works were owned by the decedent
at the time of death.

So, there are two different circumstances there. One is where there was a
transaction. It did involve particular works, but they weren't specified in the document.

MS. GINSBURG: Or weren't significantly, especially with the visible copyright. The work might be listed, but the
rights might not be. The rights might not be identified with sufficient specificity.

So, it could be that for one work you have multiple copyright owners under the 1976 Act, but that if the recordation doesn't tell you which of the exclusive rights held or narrowly-defined were transferred, then you don't have a decent title search.

MODERATOR BRAUNFELS: Yes, I think that's right. A document that is not specific in that regard, again, may not be held to give constructive notice of that, of whatever those
exclusive rights were. And so, that may be something of an incentive to include information about what sorts of rights were granted.

But what other incentives can you imagine for including that particular kind of information? You know, the recordation staff now does examine for completeness of the document. And what that means sometimes touches on the problem you are talking about because, if the document mentions a schedule of titles is in Appendix A, and Appendix A isn't there, then the Recordation Specialist can send the document back and say, "This document isn't complete."

But there are other circumstances in which, certainly, if there was a particular type of exclusive right that was the subject of the transaction, but the document just said "assigned" and didn't more concretely specify what exclusive right was at issue, then the
constructive notice would be of a complete and total assignment, not of some more specialized transaction.

I assume that would be to the detriment of the grantor who has just announced to the world that he or she relinquished all rights in the work, and that might be a reason for the grantor to want that document to more concretely specify what is being transferred.

But, of course, there are certainly cases in which it would be better to have more information than the recorded documents give us about the underlying transaction that is occurring.

Other comments about other kinds of incentives? Vic?

MR. PERLMAN: Unfortunately, yes, I have a question. I want to make sure that the vocabularies are all the same.

Where we talk about transactions here and documents that reflect the
transactions, we are talking about transactions
dealing with the notion of copyright or
exclusive rights only, and nothing involving
routine licenses or of non-exclusive rights.
Is that correct?

MIXER MAAIIEIS: Well, it is
certainly correct that there are different
rules about priority in the Copyright Act
concerning non-exclusive license, and the
failure to record a non-exclusive license
currently has a very different impact than the
failure to record an exclusive license or an
assignment; that's true.

It is also true as a factual matter
that a very small percentage of recorded
documents are non-exclusive licenses that most
people do not bother to record non-exclusive
licenses. And so, the Copyright Office
Catalogue is almost exclusively a repository of
documents that are about exclusive rights in one
way or another, whether it is assignments in
full, security interests, options, and the like.

MR. PERLMAN: Okay. So, an incentive is one side of a coin, an incentive for doing something. The other side is a penalty for not doing it.

At least in the photo space, nobody records the infinite number of routine daily non-exclusive license transactions that go on. So that, if there were any kind of incentive for recording those, there isn't an incentive high enough to give photographers the time and resources to record them. Therefore, they are being penalized for not following the recordation system. And we would obviously be strongly opposed to that.

MODERATOR BRAUNEIS: Yes. I understand that concern about non-exclusive licenses for sure.

Other questions or comments?

(No response.)
All right. So now, I think sort of --

MS. GINSBURG: Are we going to talk about incentives?

MODERATOR BRAUNEIS: Yes.

MR. BENDER: Okay.

MODERATOR BRAUNEIS: Yes, we are.

We are going to start talking about incentives in earnest now.

Because I guess now I want to talk about incentives that would create some new legal benefit or legal disability that turns on recordation, right? And I will lay out some of them, and then, a kind of a variety of proposals that have been discussed and mentioned. I won't talk about all of them. I will give you a kind of illustrative sample of proposals. And then, you can discuss those proposals.

So, you know, the first one is simply to reinstate in some version or expand on the pre-Berne Convention Implementation Act
requirement of recording earlier transfers if possible. So, here we might say, well, if you are an applicant for registration, and you aren't the initial owner, currently, what we do is we require the applicant who is not the original or initial owner to provide what is called a transfer statement. And it comes from a section of the Copyright Act that details the contents of a registration application that says the owner shall provide a brief statement about how it came to own the work in question.

That brief statement turns out to be pretty formulaic, and it has been simplified into a dropdown box in the electronic registration system where you choose by written agreement I got this, by inheritance I got this, by intestate succession, or other.

That doesn't give us a lot of information because that is, in very broad categories, information about how the registrant who wasn't the initial owner came to
own a copyright in the work. We could, however, require, at the time of registration, the recordation of earlier transfers.

Just to give you a little factual background on how many transfer statements appear in the Copyright Office Catalogue currently, 60.7 million registrations. Of that, 500,000 contain such transfer statements. That is about 3 percent, not a large percentage. I don't know whether that means that 97 percent of registrants are initial owners of copyright in the works they are registering or whether it means they didn't correctly fill out the transfer statement. But that is the figure we have on what is in the Catalogue.

And, of course, if it turns out that 97 percent of registrants are the initial owners, then a requirement to record transfers would have some effect, but it wouldn't have a dramatic effect on the number of recordations.

Other kinds of possible proposals:
I believe I was definitely corrected in this particular formulation of the requirement under the pre-Berne Convention Implementation Act. The requirement was not that every transfer in the chain of title be recorded before filing an infringement lawsuit, but it was that the immediately-preceding transfer to the current copyright owner be recorded. We could reinstitute that requirement.

As I said, we don't see an immediately-dramatic influence on the number of recordations after that requirement was dropped, but it doesn't mean that it wouldn't have some effect on recordations.

MS. GINSBURG: Bob, I'm sorry to interrupt, but --

MODERATOR BRAUNEIS: Yes?

MS. GINSBURG: -- I think the current Form TX requires explanation of how the registrant acquired the rights, if the registrant is not the author --
MODERATOR BRAUNEIS: Yes.

MS. GINSBURG: -- in addition, to give some examples, by written contract, transfer of all rights by author, assignment by will. The registration form then says do not attach transfer documents or other attachments or riders. And that seems to me to be counterproductive.

I know that one overriding concern is that it is, to say the least surprising and disappointing that registration is not already seamless with recordation.

MODERATOR BRAUNEIS: Uh-hum.

MS. GINSBURG: An entry on the registration form that says “Do NOT attach evidence of the transfer of rights” defeats the rights-clearing purpose of registration and recordation. Even if only 3 percent of the registrants are not the initial authors or rights-owners, it is a bad idea to discourage people from attaching the information that
documents how they got the rights.

MODERATOR BRAUNEIS: I certainly understand that perspective. I could imagine somebody at the Copyright Office who is in charge of budgeting for the recordation of those attached documents to say something like, "Hmmm, if those folks who are attaching those documents aren't paying a recordation fee, and, in fact, if the registration fee is quite substantially lower than the recordation fee, which it is, then to provide sort of for free recordation of all documents that are attached to registration applications, though it would greatly further the purpose of building a robust source of information of copyrighted works, we need to figure out maybe how to fund that."

So, you know, there's the kind of budget person whispering in my ear. Probably the reason why somebody was thinking to put that, you know, warning in there, that seemingly counterproductive warning, was that now we have
possession of a document that the only proper way to treat it would be to examine and catalogue it and treat it as if somebody recording it. But they didn't really state their intent to want to record the document. It is just sitting there.

Now there are ways we could do that. We could say, "Please attach the document, and now you pay an additional fee to record it." That would now more than double the cost of registering a work in which you weren't the initial owner. But it is possible.

MR. BENDER: Well, I mean, a two-for sounds like a good idea. And you said you were looking for concrete proposals. If you are seeking a budget allocation, this seems like a concrete and easily-implementable proposal with an actual price tag that you can put in your budget.

MODERATOR BRAUNEIS: Yes. No, I appreciate that. It is an interesting idea.
Yes?

MS. ROBINSON: But it would really affect textbook publishers much greater than any other area because almost all textbooks are owned by the publisher.

MODERATOR BRAUNEIS: So, are you saying you register copyright in one textbook, and now, all of a sudden, you have dozens of transfers of illustrators --

MS. ROBINSON: Yes.

MODERATOR BRAUNEIS: -- and contributors and text, and et cetera --

MS. ROBINSON: Right.

MODERATOR BRAUNEIS: -- to attach and record, and the like? Not one, but many, many, many?

MS. ROBINSON: Right. And almost all textbooks are owned by the publisher. They are copyrighted.

MODERATOR BRAUNEIS: Okay. So, yes.
MS. ROBINSON: So, that would be, you know, quite a burden, I think, on publishers.

MS. GINSBURG: The fact of recordation or the price of recordation?

MS. ROBINSON: Right. The price and the -- yes.

MODERATOR BRAUNEIS: So both?

MS. ROBINSON: Both.

MODERATOR BRAUNEIS: Both the burden, you say, of collecting all of those transfers of all the components of a textbook and, then, the price of a fee for recording all the documents that are associated with those transfers?

MS. GINSBURG: But in the registration record you still say that you acquired the copyrights by transfer.

MS. ROBINSON: Yes, which we have. And you would still have to, if you ever had litigation, you would have to prove that you had
the transfers.

MS. ROBINSON: Right, but you wouldn't have to do it to every book. It would only be those that are being infringed upon.

MODERATOR BRAUNEIS: So, a relatively-small subset --

MS. GINSBURG: Right.

MODERATOR BRAUNEIS: -- in the case of infringements?

Okay. So, just to continue with a kind of a menu of possibilities, currently, as you know, and as Richard mentioned, the Copyright Act conditions the receipt of statutory damages and attorneys' fees on the registration of the infringed work before commencement of infringement. We could extend that, those additional remedial benefits, to the extent it is only if the transfers to the current copyright owner were recorded before commencement of infringement. And so, we could further incentivize recordation in that manner.
Another perspective on additional incentives would be to allow judges who are considering the forms of relief, and, in particular, injunctive relief, to consider so-called diligent recordation as a factor in granting injunctive relief. So, judges currently and traditionally will consider equitable factors in determining whether to grant injunctive relief, and this could be a particular specifically referred factor in that calculation.

And then, lastly, we could require recordation of transfers of copyright ownership, just as Section 204 of the Copyright Act now requires a writing signed by the grantor. And judicial gloss on 204 treats an oral grant of exclusive rights as a non-exclusive license. We could treat an unrecorded grant of exclusive rights as a non-exclusive license and, thereby, create an incentive to record all transfers of exclusive
rights.

And this goes back to Vic's concern, too, right? If we broke it along these lines, a transfer of copyright ownership is defined as a transfer of exclusive rights, not as non-exclusive rights. The particular proposal wouldn't affect non-exclusive rights, but it would give a very significant additional incentive to record transfers of exclusive rights in copyrightable works.

So, there are, then, various variations on each of these proposals proposed. I don't claim to have exclusive catalogue or extensive catalogue of those, but that gives you an idea of some of the proposals that are out there.

So, the floor is open for discussion of such proposals.

MR. BADAVAS: I know an incentive of the RNT representative that would encourage them to break every recorded transfer that they
ever had with an automatic willful damages in
a lawsuit if the transfer is recorded.

MODERATOR BRAUNEIS: I'm sorry,
automatic what?

MR. BADAVAS: Willful.

MODERATOR BRAUNEIS: Willful? Ah,
I see.

(Laughter.)

So, right. Okay. So, you want to
adjust in a different manner, increase remedies
beyond now those that are now afforded rather
than decrease?

MR. BADAVAS: That's what I've been
saying, yes.

(Laughter.)

MODERATOR BRAUNEIS: All right.

Rachel?

MS. FERTIG: I think the documents
you just suggested, instead of going back to
require recordation in order to get a specific
benefit, if you are going to make recordation
possible online, instead of a paper process now, which is very cumbersome for the rights-holders and for the Copyright Office, if you are going to switch to a guided remitter responsibility system where the rights-holder is going to take on the work, and so, hopefully, get a reduction in cost, if you are going to have an easier system that costs less, and you are going to have procedures to verify the information to ensure that you are creating a valuable database, then you are going to have, hopefully, natural incentives for people to want to use the database and put their information in it.

And if you allow open APIs, so that third parties can create and use your valuable database for more useful products in the market, then I think you should start with creating the good nuclear core of a valuable database. And by lowering the challenges to get into that database, see if that is enough to encourage people to start registering. Before you start
doing specific, you know, if you record this, we'll give you this specific benefit, let's just see how the huge change from going from paper to electronic is going to affect recordation in the first instance. And then, if people still aren't using the system, maybe then try other approaches.

MODERATOR BRAUNEIS: George?

MR. BORKOWSKI: Yes, I wholeheartedly agree with that approach. I think that is a true incentive, what we are talking about. It is not a penalty. It is not a situation where the unwary or others can be deprived of very valuable rights that are necessary to combat piracy, which is rampant on the internet in my industry and many other industries.

I'm on record already, both in writing on behalf of the RIAA and in statements I made at two roundtables, opposing all of those. And I am not going to repeat them here.
But I just want to make sure that I am not waiving them by not saying --

(Laughter.)

MR. BENGOFF: You have brought a lot of things up today that are very encouraging. I can say community-based discussions I had with about 20 of our labels, some with three employees, some with sixty, just by putting in this electronic remitter responsibility, it is going to get a much higher level of compliance.

There's a lot of good things that we have discussed today. It is actually a very impressive presentation. And, Jon knows, I normally don't say that.

(Laughter.)

But this is like the stick. I rarely agree with George's constituents, either.

(Laughter.)

But I totally agree with everything --
MODERATOR BRAUNEIS: "Kumbaya" here.

(Laughter.)

MR. BENGOFF: I essentially agree with everything you had to say. This will really hurt the process if some of these -- they are not really incentives; they're sticks, are hurting to the process.

And there is so much good that is being proposed today that will bring those results here that are important.

MS. GINSBURG: Yes, as the proponent of a "stick," I in fact fully agree with Rachel that there is zero point in punishing people for not complying with a system that doesn't work.

(Laughter.)

So, I think while those "sticks" are interesting things to contemplate, they don't make sense without a working system. On the first two of the three sticks, the first two are
clearly incompatible with the Berne Convention --

MODERATOR BRAUNEIS: Incompatible, not compatible?

MS. GINSBURG: Right. If you imposed this requirement, it would have to be two-tiered in order to exempt foreign copyright holders, and there are disadvantages to two-tiered in any event.

MODERATOR BRAUNEIS: You mean two-tiered with respect to U.S. and non-U.S. --

MS. GINSBURG: Non-U.S. works.

MODERATOR BRAUNEIS: -- works?

Okay.

MS. GINSBURG: That's right. You could not deny injunctive relief to a foreign work that hadn't been recorded, and you could not condition -- well, I know that right now we do condition statutory damages and attorneys' fees on registration, including for foreign works. I'm not sure that's compatible as to
foreign works.

But I think the more important point is, rather than refining the “sticks,” let's focus on the carrots.

MODERATOR BRAUNEIS: Other comments? Suggestions?

MS. MCKIERNAN: I think Rachel did a fabulous job with this.

(Laughter.)

MODERATOR BRAUNEIS: Okay. Tricia is on record as supporting Rachel?

MS. MCKIERNAN: Yes.

MODERATOR BRAUNEIS: Okay. Well, we are about 19 minutes away from the official end time. But it is always great to find that you have 19 minutes extra in your day.

(Laughter.)

So, Susan?

Or maybe 18 minutes.

(Laughter.)

MS. DAVIS: I can't promise how long
or short I am going to speak.

        Just two other points. Ideally, in
        this realm, it would be great if there were an
        assumption that all rights reside with the
        copyright-holder unless a recorder registers
        otherwise.

        MODERATOR BRAUNEIS: All rights
        reside with the --

        MS. DAVIS: I mean, we are talking,
        you know, ideal.

        And another thing would be an
        absence of a record should not automatically
        make a work deemed orphan.

        MODERATOR BRAUNEIS: Okay. Well,
        let me just go back to the first presumption for
        a minute. That sounds to me like it might be
        very similar, in other words, to the -- I don't
        know about the presumption business because, of
        course, presumptions, usually, you talk about
        them as being rebuttable. And you say, in the
        absence of recordation, there would be a
presumption that, let's say, an initial owner of copyright continues to own all rights in the absence of a recorded document saying otherwise.

If that presumption could be rebutted by presenting a signed, written document that was evidence of that transaction, then that would be less of an adjustment in law than we just put up on the screen.

It would be interesting just to introduce an incentive in terms of a rebuttable presumption rather than in terms of a rule that says that we simply won't recognize transfers that are not recorded. So, if that is what you mean to propose, that is an interesting sort of additional variation on incentives to record.

And then, the second was about orphan works.

MS. DAVIS: That the absence of a record should not automatically mean that a work is considered orphan.
MODERATOR BRAUNEIS: I see. Okay. Yes. Well, currently, I would say that that is the law, because we don't actually have any particular category of orphan works. Legislation has been introduced that would say that, if you do a diligent search, that you are in a different position with relation to using the work than you would have been. If you do a diligent search, if you do it, fine; you can't find the owner. So, that sounds like a statement of current law. But if it means to be something else, then we would have to get more specific.

MR. BENGLOFF: That filing is not due for another two weeks.

(Laughter.)

MODERATOR BRAUNEIS: Okay. Right. So, that is a different NOI.

(Laughter.)

Well, again, on behalf of the Copyright Office, we would like to thank you all.
for coming. This has been a really productive morning and afternoon session.

And I want to thank Columbia Law School for hosting this and providing, brought us this beautiful room.

And Jane Ginsburg, who is the representative for Columbia Law School right here, and, June Besek, thank you so much for coordinating this.

And the staff who are here videorecording and transcribing and making sure that this all works. We have got AV equipment, and so on.

Thank you all.

As I said earlier, I hope this is a continuing conversation. I hope this is a chance for me to be introduced to some of you and to continue to get to know you better and your concerns better.

And thanks very much. I think that concludes the --
MS. DAVIS: What happens next? What is the next stage here?

MODERATOR BRAUNEIS: My mandate is to produce a report for the Register by July. And so, there will be something formally by then.

In the meantime, I hope to be communicating with many of you. And so, you know, when Heather mentions that there's standards or there's formats we use to facilitate the transmission of title information, I want to talk.

MS. REID: You're going to be knocking on my door.

(Laughter.)

MODERATOR BRAUNEIS: I probably won't physically be knocking at your door because I am not coming up to Massachusetts. But, yes, electronically I will be knocking on your door, and, hopefully, knocking on many of your doors.
So, all right, thanks very much.

(whereupon, at 2:47 p.m., the meeting was adjourned.)