

United States Copyright Office

*106th Annual Report of the Register of Copyrights
for the Fiscal Year Ending September 30, 2003*

Copyright
United States Copyright Office

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The domes of the Library of Congress Jefferson Building and the U.S. Capitol, with a crane being used in the construction of the Capitol Visitor Center.





Message from the Register

I AM PLEASED TO PRESENT this Annual Report for fiscal 2003, which highlights the Copyright Office's activities and accomplishments for the year.

During the fiscal year, the Office provided testimony to Congress on significant legislative issues, including several relating to digital technologies and the Internet, such as piracy in peer-to-peer networks, the broadcast flag proposal, and database protection. The Office also assisted in a number of copyright-related cases before the Supreme Court.

We continued to work with the Executive Branch and international organizations to strengthen copyright systems around the world, thus ensuring protection to creators and contributing to the nation's cultural and economic health. Bilateral and multilateral trade agreements have become an increasingly important part of United States trade policy. In fiscal 2003, the Office participated in the drafting of and negotiations for the intellectual property provisions of several such agreements.

The Copyright Office completed work on a new seal and logo during fiscal 2003. The new look was set for implementation on January 1, 2004.

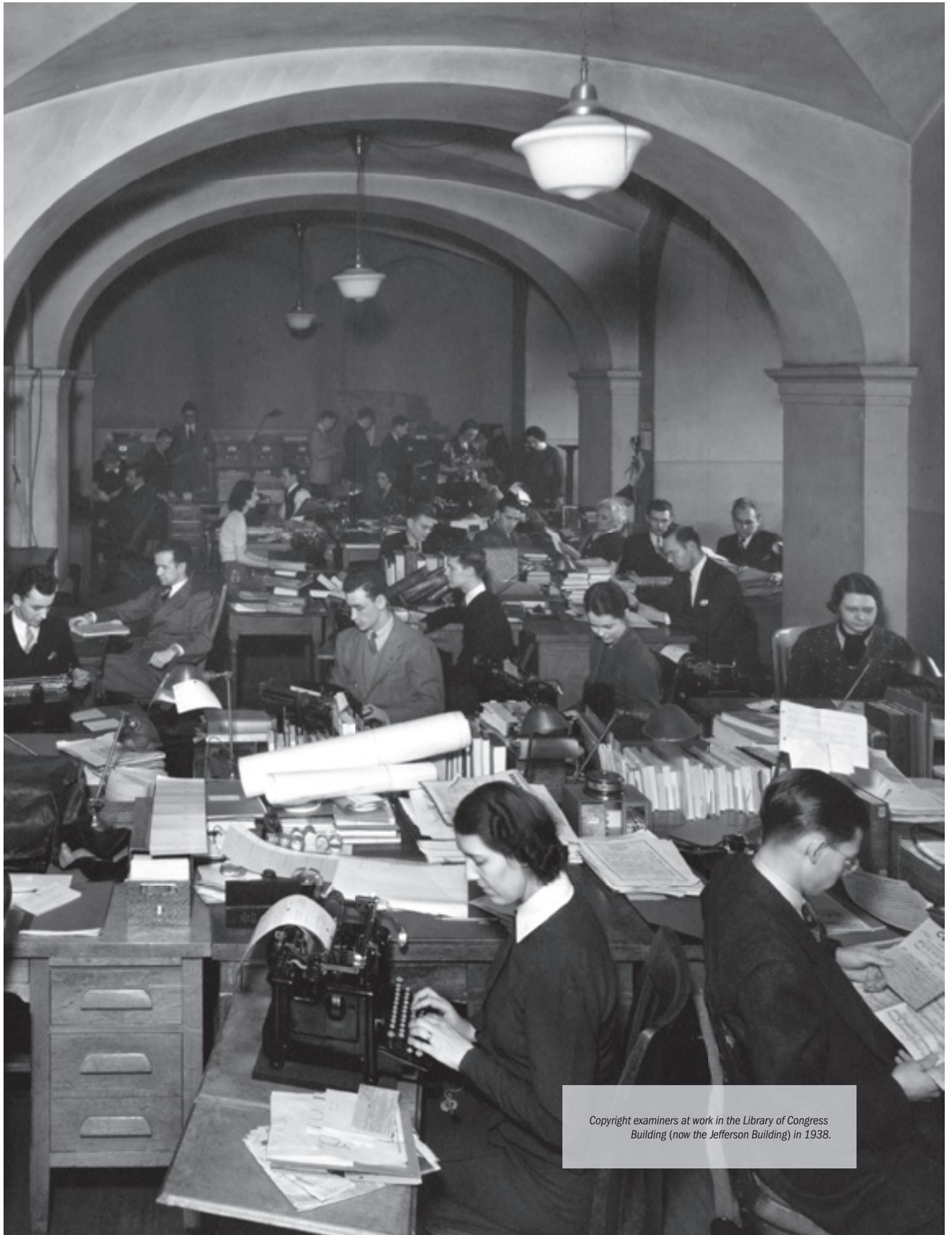
In our main work of administering the copyright law, the Office made significant progress in recovering from the anthrax-related mail disruption of fiscal 2002. We reduced work in process and service delivery times despite the residual effects of the disruption, received and disbursed tens of millions of dollars in licensing royalties, and issued necessary regulations. We completed the bulk of our work on the second section 1201 rulemaking.

Our Reengineering Program is proceeding on pace. We spent the year setting the groundwork for fiscal 2006 implementation, preparing an organization package, completing initial space planning and design work, and awarding a contract to develop a new information technology systems infrastructure for the Office.

Our continuing progress would not be possible without the dedicated staff of the Copyright Office, whose efforts ensured the results demonstrated in this report. I extend my thanks for their achievements and public service.

A handwritten signature in cursive script that reads "Marybeth Peters". The signature is written in dark ink and is positioned above the printed name and title.

Marybeth Peters
Register of Copyrights



Copyright examiners at work in the Library of Congress Building (now the Jefferson Building) in 1938.

The Copyright Office in the Library of Congress

THE COPYRIGHT OFFICE ADMINISTERS and sustains an effective national copyright system. The Office's work includes the registration of works, the deposit of copies of copyrighted works published in the U.S., and the recordation of documents concerning copyrighted works. Registration, deposit, and recordation have served two important purposes: to create a public record of copyright registration and transfers of ownership and other documents, and to enrich the collections of the Library of Congress for the benefit of society.

"To promote the progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writing and Discoveries..."

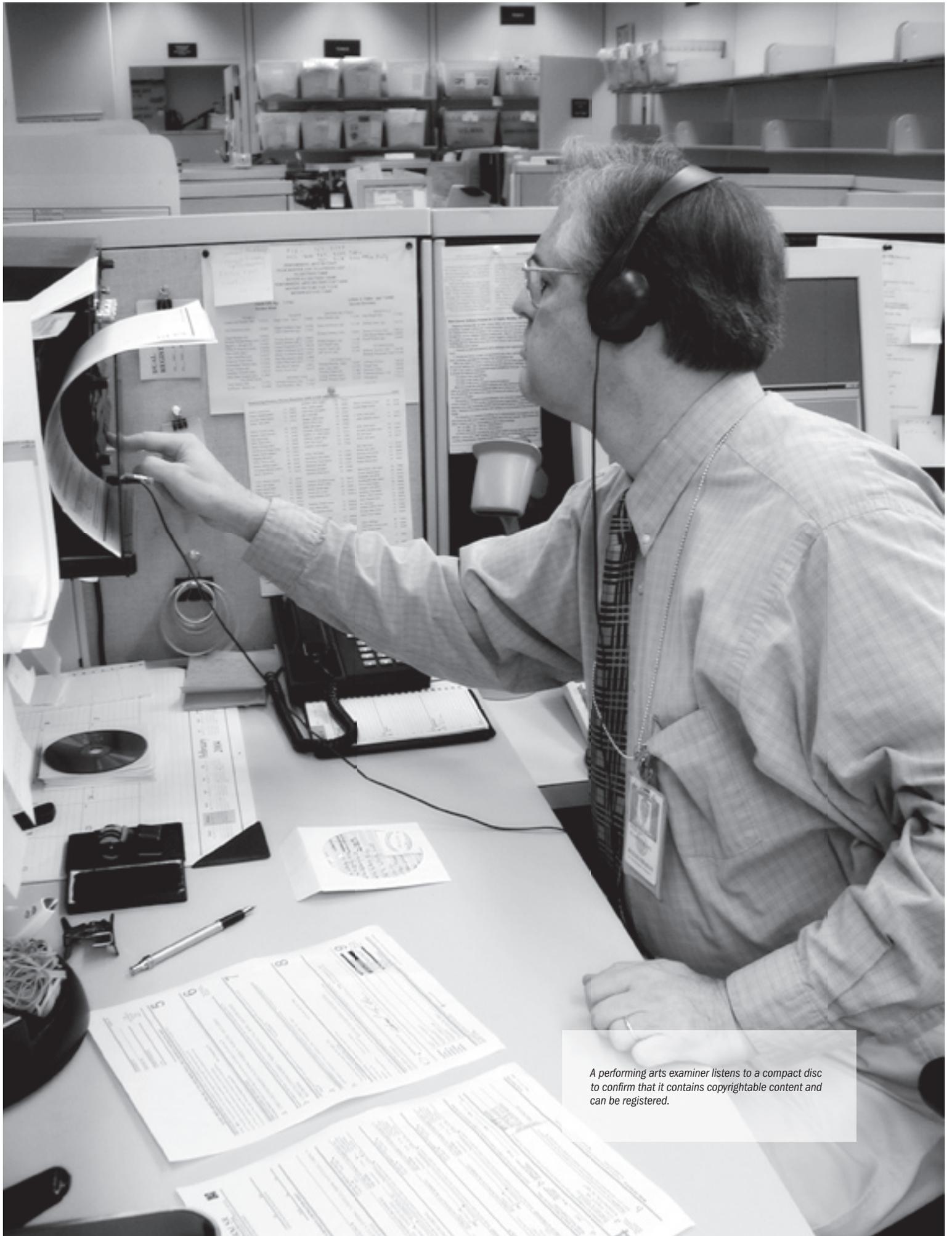
U.S. Constitution, Article I, Section 8

Congress enacted the first copyright law in May 1790. In 1870, Congress centralized the national copyright function in the Library of Congress to meet the requirement to create and maintain records and to receive deposit copies of copyrighted works.

Under current copyright law, copyright registrants and publishers of works published in the U.S. generally send two copies of their work to the Copyright Office, and those copies are made avail-

able to the Library for its collections and exchange programs.

The collections of the Library of Congress, particularly works of American authors, have been sustained largely through the copyright deposit system. The Copyright Office annually transfers to the Library nearly one million copies of works, including books, serials, computer-related works, motion pictures, music, sound recordings, maps, prints, dramatic works, and other types of work.



A performing arts examiner listens to a compact disc to confirm that it contains copyrightable content and can be registered.

Copyright Law Administration

RECOVERY FROM POSTAL DISRUPTION

AS DESCRIBED IN THE FISCAL 2002 REPORT, the anthrax-related postal disruption seriously affected the Copyright Office's processing throughout that fiscal year. Fiscal 2003 was a year of recovery. Though the Office logged in nine months worth of delayed mail delivered between March and July 2002, the mail delivered after that date accumulated while the delayed mail was being processed.

Budget uncertainty in the early months of fiscal 2003 delayed Office processing of the backlog of received mail. When the budget for fiscal 2003 was passed, the Office was able to devote additional resources to mail processing.

The postal disruption regulation, 37 CFR §201.8, permits a filer to be assigned a receipt date based on the date on which the claims or documents would have been received in the Office but for the delays.

The mail disruption created a number of other challenges: a significant increase in inquiries received by mail, phone, and email; record amounts of undeliverable mail and uncollectible checks; duplicate filings requiring reconciliation; many stale-dated checks; and thousands of "no reply" correspondence cases to be closed, which had been held open long past their 120-day limit to allow time for replies to be delivered. Concerted efforts to process work quickly brought these areas to acceptable levels at the end of the fiscal year.

The Office is accommodating the new and apparently permanent reality of mail screening and irradiation.

REGISTRATION OF COPYRIGHTED WORKS

DURING FISCAL 2003, the Copyright Office received 607,492 claims to copyright covering more than a million works. Of these, it registered 534,122 claims.

The Office worked diligently to improve the timeliness of its registrations and to decrease the time needed to make an online record of registrations available.

Two years ago, the Office required an average of about 200 days between receipt of a claim and the issuance of a certificate. Despite the influx of delayed and current mail, the

Office had reduced the processing workload significantly by fiscal 2003, shortening the average processing time to approximately 130 days. In January 2003, the Office began a focused effort, reducing the number of claims awaiting processing by nearly a third over the course of the last nine months of the fiscal year. At year end, the average time to process a claim was 90 days.

Timely availability of records serves copyright owners, users of copyright works, and the wider public with information on copyright ownership. The Cataloging Division made significant progress during the fiscal year in decreasing the time needed to prepare a cataloging record. A combination of processing changes and work efficiencies resulted in the progress. The Office assigned staff to catalog across registration classes and established specific target goals. Throughput time from receipt in the division until the appearance of a public record was reduced from over seven weeks to less than five.

The Examining Division had successfully completed a claims reduction effort in fiscal 2002 and continued to hold its work on hand at manageable levels. In fiscal 2003, the Division reduced its registration work on hand by half and continued toward a goal of currency in correspondence.

Mask Works

Mask works are defined in the Semiconductor Chip Protection Act of 1984 as a series of related images (1) having or representing the predetermined three-dimensional pattern of metallic, insulating, or semiconductor material present or removed from the layers of a semiconductor chip product; and (2) in which the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

The Office received 352 mask works in fiscal 2003. Mask works registered totaled 397.

Vessel Hull Designs

The Vessel Hull Design Protection Act was signed into law on October 28, 1998, as part of the Digital Millennium Copyright Act (DMCA). The vessel hull law grants an owner of an original vessel hull design certain exclusive rights, provided that application for registration of the design with the Copyright Office is made within two years of the design being made public.

The Office received 70 vessel hull designs this fiscal year. The Office registered 45 and either rejected or corresponded on the others.

Appeals of Denial of Registration

From October 2002 through September 2003, the Examining Division handled 217 first appeals covering 479 claims. Of the 479 initial refusals to register, 22 percent were reversed upon first appeal.

The Board of Appeals met five times during the fiscal year and heard sixteen requests

for reconsideration involving 40 works. The Board issued decisional letters responding to fifteen second appeals involving 39 works. It agreed to register one work and upheld the refusal to register the other 38.

Appeals Process

Under title 17, the Register of Copyrights may determine that the material deposited for copyright registration does not constitute copyrightable subject matter or that the claim is invalid for other reasons. In such cases, the Register refuses registration and notifies the applicant in writing of the reason(s) for such refusal. Applicants whose claims for registration are rejected can appeal such decisions in a two-stage process.

The claimant first appeals to the Examining Division. If the Division upholds the refusal, the claimant may make a second appeal to the Copyright Office Board of Appeals. The Register of Copyrights, the General Counsel, and the Chief of the Examining Division, or their designees, comprise the Board of Appeals.

Cataloging

The Cataloging Division created cataloging records for 543,105 registrations in fiscal 2003, including 21,579 submitted electronically.

The Division also processed online service providers' designations of agents. The DMCA amended the law to limit potential liability for monetary and injunctive relief for infringing uses of their services.

To take advantage of this limitation on liability, the service provider must designate an agent for notification of claimed infringement and provide contact information to the Copyright Office.

A directory of agents is maintained on the Office website. During fiscal 2003, the Division posted 880 designations of agent to the website.

The Division also catalogs mask work registrations and vessel hull design registrations.

Copies of Deposits and Certifications

The Information and Reference Division's Certifications and Documents Section produced 3,899 copies of certificates of registration. During the fiscal year, the section produced 2,107 copies of copyright deposits and 1,113 certifications of deposits or records.

Contributions to Library of Congress Collections

The Library of Congress may select for its collections copies of works submitted for registration or to fulfill the mandatory deposit provision of the law. Copyright deposits form the core of the Library's "Americana" collections and serve as a primary record of American creativity.

During the fiscal year, the Office transferred 962,119 copies of registered and non-registered works valued at \$33,749,004 to the Library of Congress for its collections.

Copyright Cataloging

The copyright law requires that the Register of Copyrights keep records of all deposits, registrations, recordations, and other copyright-related matters; make these records available to the public; and prepare indexes of all the records. The Cataloging Division records a bibliographic description and the copyright facts of all works registered in the Copyright Office. The Division also creates a record for all recorded documents.

Records of copyright registrations are important to users and owners of copyrighted works.

Portions of copyright cataloging data are used by some divisions of the Library of Congress.

RECORDATION

THE COPYRIGHT OFFICE CREATES records of documents relating to a copyrighted work, a mask work, or a vessel hull design that have been recorded in the Office. These documents frequently reflect a work of significant economic value.

The majority of documents involve transfers of rights from one copyright owner to another. Other recorded documents include security interests, contracts between authors and publishers, notices of termination of grants of rights, and notices of intent to enforce a restored copyright.

During fiscal 2003, the Documents Recordation Section recorded 16,103 documents covering approximately 300,000 titles of works. The section cut its processing time by more than half.

Public Meeting on Document Processing

As part of the Office's reengineering program, various issues arose relating to the process of recording documents. The Register decided to consult stakeholders—those who submit the documents and those who use the records related to recorded documents.

The Office identified the most frequent filers and those whose businesses relied on the document records. The Office sent a questionnaire to 47 filers and eleven users. Many responded. In addition, the Office convened a discussion on the issues and shared information gathered from the questionnaire.

The Register and several Copyright Office staff discussed the scope of the verification process in recording documents: What should the office review and question? Does this differ depending on the type of document, e.g., a notice of termination of transfer of rights versus a notice to enforce a copyright under the Uruguay Round Agreements Act? Document submitters wanted the Office's verification confined to what is required in the law and the existing regulation—verification of completeness, legibility, original signature, and fee.

The attendees discussed the issue of electronic submission of documents. There was little enthusiasm for this. Filers do not have the documents in electronic form and there was concern about the requirement of original signatures. Additionally, it is the transferor of rights who must sign the document; it is the transferee who submits the document.

The meeting discussed the usefulness of the current document cover sheet, which was created to expedite the process of recording a document. Many filers find the cover sheet confusing. Others use it in unacceptable ways to edit what is in the document or to supplement the document, for example, by attaching a list of titles to a document that when

executed did not contain any titles. Based on the feedback received, the Office decided to redesign the cover sheet and to rewrite the instructions. The new cover sheet will change its focus. It will be used to give information not contained in the document, such as contact information, and to provide certification concerning the authenticity of required signatures on photocopies of documents.

MANDATORY DEPOSIT

THE COPYRIGHT OFFICE IS ENTITLED to receive copies of every copyrightable work published in the United States within three months of publication, as provided by the mandatory deposit provision in §407 of the copyright law.

These copies are deposited with the Library of Congress for its collections, or for exchange or transfer to other libraries. The Copyright Acquisitions Division (CAD) uses the mandatory deposit requirement and Copyright Office regulations to acquire works needed for Library of Congress collections when those works have not been obtained as registration deposits.

CAD encourages copyright owners to deposit or register works regularly and voluntarily immediately after publication; however, the copyright law authorizes the Register to issue demands for the required copies any time after publication.

CAD made demands for 5,208 works, based on recommendations by CAD librarians and Library of Congress recommending officers, and in response to Congressional requests.

Of the 962,119 copies of works the Office transferred to the Library of Congress for its use, more than half—491,219—arrived under the mandatory deposit provisions of the copyright law. The value of these mandatory deposits was \$11,403,673 or one-third of the estimated value of all materials transferred to the Library.

STATUTORY LICENSES AND OBLIGATIONS AND THE CARP SYSTEM

THE COPYRIGHT OFFICE OVERSEES the statutory licenses and obligations in the copyright law. The Licensing Division:

Statutory Licenses and Obligations

These licenses and obligations deal with secondary transmissions of radio and television programs by cable television systems; the making of ephemeral recordings; the noninteractive digital transmission of performances of sound recordings; the making and distribution of phonorecords of nondramatic musical works; the use of published nondramatic musical, pictorial, graphic, and sculptural works and nondramatic literary works in connection with noncommercial broadcasting; secondary transmissions of superstations and network stations by satellite carriers for private home viewing; secondary transmissions by satellite carriers for local retransmissions; and the importation, manufacture, and distribution of digital audio recording devices or media.

- Collects royalty fees from cable operators, satellite carriers, and importers and manufacturers of digital audio recording technology (DART);
- Invests the royalty fees, minus operating costs, in interest-bearing securities with the U.S. Treasury for later distribution to copyright owners;
- Records voluntary licensing agreements between copyright owners and specified users of their works; and
- Examines licensing documents submitted for a statutory license or obligation to determine that they meet the requirements of the law.

Royalty Fee Distributions

The Copyright Office distributes royalties collected under sections 111 and 119 and chapter 10 of the copyright law.

In Fiscal Year 2003, the following distributions were made:

- On October 24, 2002: \$61,112,007.88 comprising 50 percent of year 2000 cable royalties.
- On December 19, 2002: \$4,097,272.58 comprising a partial distribution of 95 percent of the Digital Audio Recording Technology (DART) 1999, 2000, and 2001 Musical Works Fund, Writers and Publishers Subfunds.
- On March 27, 2003: \$216,378.97 comprising a further final distribution of the 1999, 2000, and 2001 Musical Works Fund.
- On March 27, 2003: \$164,775.27 comprising National Public Radio's 0.18 percent of the 1998 and 1999 cable royalty fees adjusted to account for two prior partial distribu-

tions amounting to 75 percent of its share of the 1998 cable fund and 50 percent of its share of the 1999 cable fund.

Financial statements for royalty fees available for distribution in the cable and satellite statutory licenses and in the digital audio recording technology statutory obligation are reported and audited on a calendar-year basis. The calendar year 2002 financial statements are included in the appendices.

Electronic Remittance Collection and Investment

The Licensing Division continued to increase its royalty collection through electronic funds transfer (EFT), including the Treasury Department's "Pay.gov" Internet-based remittance collection system. The remitter gives the Treasury permission to take funds from the remitter's bank account.

This Automated Clearing House (ACH) debit allows remitters to pay a cable television system, satellite carrier, or DART royalty fee from an office computer without contacting the remitter's financial institution. The percentage of remittances made via EFT was 94.5 percent at the end of fiscal 2003.

The Division now uses the Department of the Treasury, Bureau of the Public Debt, online investment website known as FedInvest. FedInvest replaces the old system of faxing investment authorizations to the Bureau of the Public Debt. Any possibility of transcription error is eliminated, since the Licensing Division directly inputs the investment/redemption information into the Bureau of the Public Debt's investment system.

Once the day's market values are input by the Bureau of the Public Debt, the Licensing Division can see immediately the results of the investment authorization.

Licensing Information Technology Systems

The Licensing Division developed a correspondence flag for its automated systems to notify users when a Licensing Examiner has initiated contact with a cable system to obtain or clarify reported information and royalty fee calculations.

The Office completed testing for inclusion of cable subscriber data in its automated systems, which would more quickly provide essential information to authorized users.

The Division facilitated the microfilming of an increased number of official statements of account and associated correspondence. There was increased internal and public usage of automated cable system data, which further streamlined public access to certain records by reducing dependency on paper processes.

Copyright Arbitration Royalty Panels (CARPs)

During fiscal 2003, the Copyright Office administered six CARP proceedings. Five involved rate adjustments and one was a distribution proceeding. Four of the five rate adjustment proceedings involved setting rates and terms for the §114 license for digital performance right in sound recordings and the §112 statutory license for the making of ephemeral recordings to facilitate these transmissions.

The fifth proceeding involved setting rates and terms for the §118 statutory license for the use of certain copyrighted works in connection with non-commercial broadcasting.

The distribution proceeding dealt with distribution of royalty fees collected in accordance with the §111 cable compulsory license.

Below is a summary of the six proceedings conducted this fiscal year and an update on the 1997 distribution proceeding for cable royalties. That proceeding, which began in fiscal 2002, has not been concluded.

Rate Adjustments

Public Performance of Sound Recordings:
Docket Nos. 2002-1 CARP DTRA3 and 2001-2
CARP DTNSRA

As outlined in the fiscal 2002 report, the Copyright Office began the proceeding to set rates and terms of payment for the public performance of sound recordings by means of eligible nonsubscription

Copyright Arbitration Royalty Panels (CARPs)

CARPs determine distribution of royalties collected by the Licensing Division for the cable and satellite licenses and for DART when copyright owners cannot resolve controversies among themselves. They also set and adjust royalty rates and set terms and conditions of payment. A CARP panel consists of three arbitrators. Rate adjustments and royalty distribution proceedings under CARPs are divided into two phases. Phase I is the 45-day pre-controversy discovery period during which the parties exchange their documentation and evidence in support of their cases, in preparation for the hearings before a CARP. Phase II is the CARP proceeding itself, including the presentation of evidence through hearings and submission of proposed findings by all parties. CARPs submit their final decision to the Register of Copyrights. The Librarian of Congress, on the recommendation of the Register of Copyrights, must either accept or reject the panel's determination. If the Librarian rejects the CARP's decision, he shall substitute his own determination within a specified time period.

transmissions and the making of ephemeral recordings in furtherance of these performances for the next license period. The Office also began the proceeding to set rates and terms of payment for the public performance of sound recordings under §114 for new types of subscription services.

In fiscal 2003, the Office consolidated the two proceedings because many of the parties participating in the two proceedings were the same. Rates and terms would apply equally to parties in both proceedings.

After months of negotiations, the parties reached settlement and submitted joint proposals to the Office setting the rates and terms of payment for this license's royalties. Following publication of proposals for notice and comment, objections were reduced to one that concerned the selection and responsibilities of the Designated Agent(s).

The Office issued an Order limiting the scope of the proceeding to resolving the dispute over contested terms in the proposed agreement, published on May 20, 2003, about the selection and responsibilities of the Designated Agent(s), and to making any necessary conforming changes to the uncontested terms of payment set forth in that agreement. Hearings will be conducted during fiscal 2004.

Use of Sound Recordings by Preexisting Subscription Services:

Docket No. 96-5 CARP DSTRA

On May 8, 1998, the Librarian of Congress issued his decision setting the rates and terms of payment for the use of sound recordings by preexisting subscription services pursuant to the §114 statutory license.

During the proceeding, the parties proposed and the CARP adopted a term which gave the Recording Industry Association of America (RIAA) the responsibility for collecting and distributing the royalty fees to all copyright owners.

The Librarian adopted this term and crafted additional regulations relating to RIAA's responsibility including:

- Verifying the accuracy of the royalty payments;
- Establishing the value of each performance;
- Specifying the nature of the costs that may be deducted from the royalty fees prior to distribution; and
- Setting forth a procedure for handling royalty fees in the case where the collective is unable to identify or locate a copyright owner who is entitled to receive royalties collected under the statutory license.

RIAA appealed both the rate set by the Librarian and the additional conditions imposed on the RIAA collective. The United States Court of Appeals for the District of Columbia Circuit upheld the rate set by the Librarian and found that the Librarian has the authority to

impose terms on copyright owners or their agents. However, the court remanded for further consideration certain terms imposed on RIAA because the CARP had not considered them.

On February 13, 2001, the Copyright Office initiated a new proceeding to consider the terms remanded by the court.

In lieu of filing a written direct case, RIAA filed a petition to establish proposed terms governing the RIAA collective under 37 CFR 260. It subsequently revised the petition in order to remove a reference to the §112 statutory license and to clarify terms of membership in the collective.

The Copyright Office published the proposed terms in the *Federal Register* for notice and comment on July 23, 2001. In response to the notice, the American Federation of Musicians (AFM) and the American Federation of Television and Radio Artists (AFTRA) filed a Notice of Intent to Participate and objections to certain of the proposed terms. This caused RIAA to begin discussions with AFTRA and AFM in hopes of addressing union objections.

Subsequently, Congress passed the Small Webcaster Settlement Act of 2002 (SWSA), which among other things, amended §114 in ways that addressed specific issues involved in this proceeding.

RIAA again revised its proposed amendments to 37 CFR 260 to conform the terms in dispute to the new law and, in doing so, addressed the concerns of AFM and AFTRA. In light of these revisions, AFM and AFTRA subsequently withdrew their objections to the proposed terms and their Notice of Intent to Participate in a CARP proceeding.

On April 21, 2003, the Copyright Office published proposed terms that would govern the RIAA collective in its role as the sole agent designated to receive royalty payments from the three preexisting subscription services that were parties to the original proceeding for notice and comment.

The Office received no objections in response to the notice, and therefore adopted the terms as final regulations on June 18, 2003. The regulations became effective on July 18, 2003, and apply to the license period which began on November 1, 1995.

Use of Sound Recordings by Preexisting Subscription Services:

Docket No. 2001-1 CARP DSTRA2

The Copyright Office set a hearing schedule for the proceeding to establish rates and terms of payment for the public performance of sound recordings under §114 for preexisting subscription services, including satellite digital audio radio services, for the period January 1, 2002, through December 31, 2007.

Prior to the filing of written direct cases, the parties reached a settlement and requested that the Office publish the proposed rates and terms for notice and comment. On January 30, 2003, the Office published the proposed rates and terms and stated that these rates and terms would become final unless the Office received objections from a party with a significant interest who also filed a Notice of Intent to Participate in a CARP proceeding.

One party objected to a proposed term concerning designated agents. The Office determined that the company did not have a specific interest because it did not represent copyright owners entitled to royalties from preexisting subscription services under these licenses at the time it filed its objection. It also did not have authorization to lodge the objection and participate in a CARP proceeding from any copyright owners eligible to receive such royalties.

The Office, having received no other objections, adopted the rates and terms as final regulations on July 3, 2003. The rates and terms cover the license period January 1, 2002, through December 31, 2007, and became effective on August 4, 2003.

Non-Commercial Educational Broadcasting:

Docket No. 2002-4 CARP NCBRA

On April 1, 2002, the Copyright Office initiated a rate adjustment proceeding to establish the rates and terms for the §118 noncommercial educational broadcasting compulsory license by announcing a six-week voluntary negotiation period.

The following entities participated in these proceedings and succeeded in negotiating voluntary settlements submitted to the Copyright Office: Broadcast Music, Inc.; National Religious Broadcasters Music License Committee; WCPE-FM; the National Federation of Community Broadcasters; the Harry Fox Agency; SESAC, Inc. (formerly the Society of European Stage Authors and Composers); the American Society of Composers, Authors, and Publishers; National Public Radio; the Public Broadcasting Service; the Corporation for Public Broadcasting; and the American Council on Education.

During fiscal 2003, the Copyright Office published the negotiated rate adjustments and sought comments. Having received no objections to these proposed rates, the Copyright Office adopted the rates as final regulations on December 17, 2002. The rates went into effect on January 1, 2003.

Webcasting:

Docket No. 2000-9 CARP DTRA1&2

The Librarian of Congress issued a decision in 2002 setting the rates and terms for two statutory licenses that allow for the performance of a sound recording publicly by means of digital audio transmission (webcasting) and the making of ephemeral recordings to facili-

tate these transmissions for the license period between October 28, 1998, and December 31, 2002. This decision was the subject of a number of appeals to the U.S. Court of Appeals for the District of Columbia Circuit.

At the end of fiscal 2003, appeals by the following were still pending: the Recording Industry Association of America, the American Federation of Television and Radio Artists, and the American Federation of Musicians; Salem Communications and the National Religious Broadcasters Music License Committee; and five non-party interveners.

Distribution Proceedings

The Office also administered several CARP distribution proceedings:

1998 and 1999 Cable Royalty Fees:

Docket No. 2001-8 CARP CD 98-99

During fiscal 2003, a CARP proceeding was initiated for the distribution of royalties collected under the copyright compulsory license for cable television under 17 U.S.C. §111 during calendar years 1998 and 1999.

The parties to the distribution represented the copyright owners of television programming performed on over-the-air broadcast stations carried by cable systems in 1998 and 1999. They filed their written direct cases with the Copyright Office on December 2, 2002.

The Office oversaw discovery and motions practice on the written direct cases. On April 24, 2003, proceedings were initiated before the CARP arbitrators. They conducted extensive hearings on those cases.

The CARP will deliver a written decision on the division of royalties by October 21, 2003. Then the Register of Copyrights will make her recommendation to the Librarian on whether to accept or reject the CARP's determination. The Librarian's decision will be announced during fiscal 2004.

1997 Cable Royalty Fees:

Docket No. 2000-2 CARP CD 93-97

The Motion Picture Association of America and the Independent Producers Group each filed petitions with the United States Court of Appeals for the District of Columbia Circuit. Petitioners asked the Court to review the decision of the Librarian of Congress to reject both the initial and revised reports of the CARP convened to determine the distribution of 1997 cable royalty fees in the program suppliers category and to remand the case for a new proceeding before a new CARP.

In fiscal 2003, the parties continued to discuss settlement. As of September 30, 2003, no settlement had been finalized.

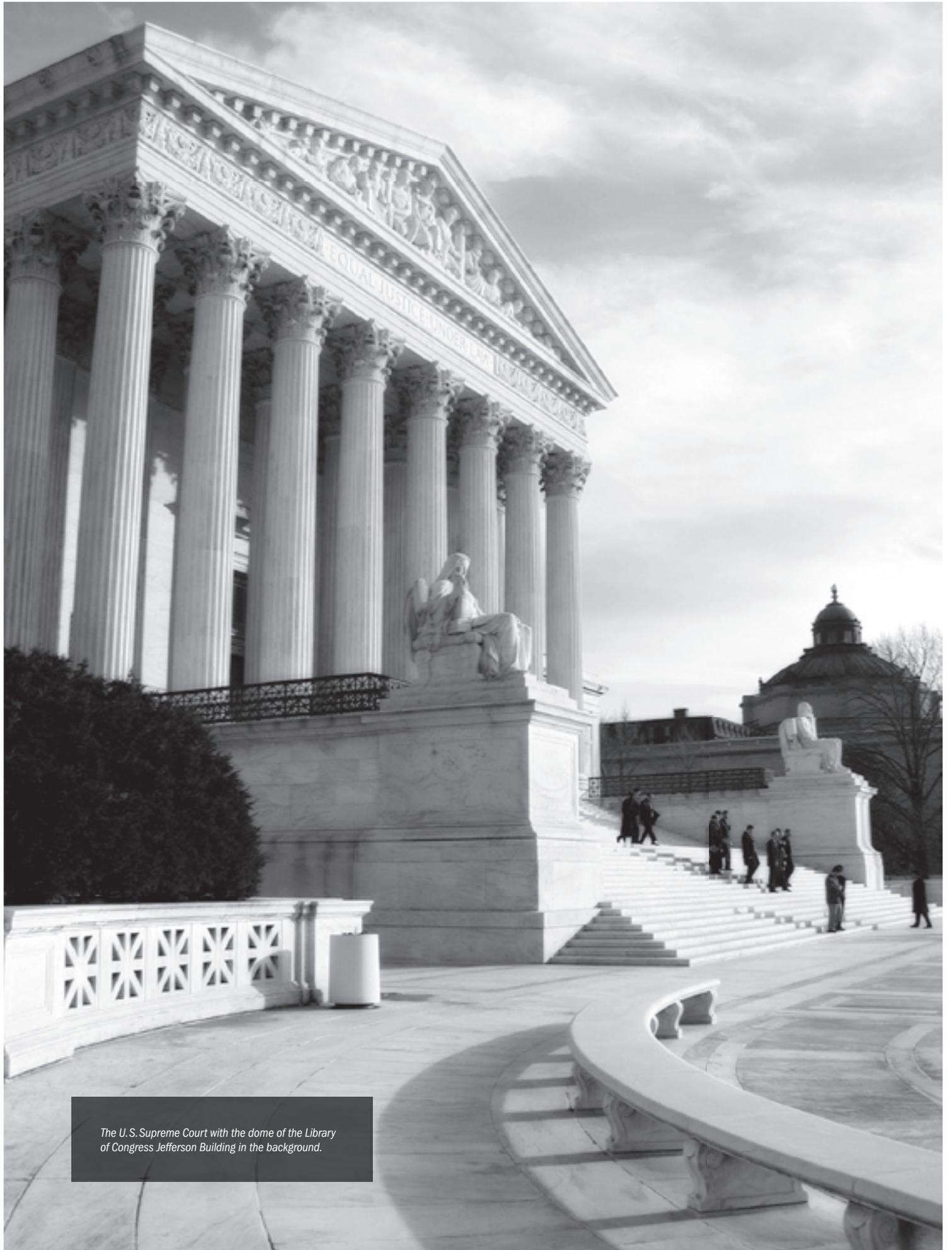
Claims Filed for Royalty Fees

The Copyright Office received and processed claims from copyright owners who are entitled to receive royalty fees generated from the use of their copyrighted works during 2002 under the terms of the compulsory licenses for cable and satellite, and the Digital Audio Recording Technology (DART) statutory obligation.

In January and February of 2003, the Office received 77 claims for DART royalty fees. In July 2003, it received 631 claims for cable royalty fees and 252 claims for satellite royalty fees.

Distribution proceedings will begin for these royalty funds some time after the Office ascertains whether a controversy exists concerning the distribution of the funds among the claimants.

[Regulations related to statutory licenses and obligations are listed in the Regulatory Activities portion of this report.]



The U.S. Supreme Court with the dome of the Library of Congress Jefferson Building in the background.

Regulatory Activities, Policy Assistance, and Litigation

COPYRIGHT OFFICE REGULATIONS

THE REGISTER OF COPYRIGHTS IS AUTHORIZED under 17 U.S.C. §702 to establish regulations for the administration of the copyright law. In addition to regulatory activities discussed elsewhere in this report, regulations issued during fiscal 2003 included the following:

Section 1201 Triennial Rulemaking on Exemption from Prohibition on Circumvention of Technological Protection

The Copyright Office initiated its second rulemaking pursuant to 17 U.S.C. §1201 to determine whether any particular class of copyrighted works should be exempted from the protection afforded by the prohibition on circumventing technological protection measures that control access to such works.

Anticircumvention Rulemaking

When Congress passed the Digital Millennium Copyright Act in 1998, it made it illegal for anyone to circumvent the access controls that a copyright owner had put on the work. Access means to get to the work, as opposed to using a work, e.g. making a copy, performing, or adapting—activities that fall within a copyright owner's exclusive rights. Because of concern that there might be particular classes of works that could not be accessed by users who have legitimate noninfringing uses for the works, Congress provided that the Copyright Office should periodically hold a rulemaking on the issue and make a recommendation to the Librarian of Congress, who would decide if an exemption to the anticircumvention prohibition was needed.

On October 15, 2002, the Office published a Notice of Inquiry in the *Federal Register* requesting those who wish to propose a particular class of works where noninfringing uses have been, or are likely to be in the next three years, adversely affected as a result of the prohibition on circumvention.

The Office received 51 comments that proposed 83 exemptions to the prohibition and 338 reply comments supporting or opposing those proposed exemptions.

The Office held four days of hearings in Washington, D.C. and two days of hearings in Los Angeles, California. Forty-four witnesses representing over 60 groups testified at these hearings.

Subsequent to the hearings, the Office sent follow-up questions to a number of the witnesses requesting additional clarification for the record.

The Register of Copyrights consulted with the Assistant Secretary for Communications and Information, Director of the Department of Commerce's National Telecommunications and Information Agency (NTIA), as required by §1201. The entire record was expeditiously made available on the Copyright Office website.

After the Register reviews the record, she will present her written recommendation to the Librarian of Congress. The Librarian will publish any classes of works exempted from the prohibition on circumvention by October 28, 2003, and those exemptions will be in effect until October 27, 2006.

Section 304 Notices of Termination Covering the Extended Renewal Term

The Office published a final regulation governing notices of termination of transfers and licenses covering the extended renewal term provided by the Sonny Bono Copyright Term Extension Act (CTEA) of 1998.

The original regulation addressed notices of termination made under 17 U.S.C. §304(c) regarding the additional nineteen years added to the renewal term by the 1976 copyright law. The CTEA added twenty years to the extended renewal term, and added 17 U.S.C. §304(d), which created a new termination right covering the additional twenty-year period, limited to those who had not exercised their termination rights under §304(c). The final regulation establishes procedures for terminating transfers and licenses under §304(d) and amends the procedure under §304(c).

These requirements include a statement identifying the section of the law under which termination is being made and, with respect to a termination under §304(d), an affirmative statement that rights being terminated are not the subject of a previous termination.

The regulation makes it clear that termination under §304(d) is available only if federal copyright was originally secured from January 1, 1923, to October 26, 1939.

Digital Millennium Copyright Act (DMCA)

The DMCA was enacted into law on October 28, 1998. This Act revised the law in a number of ways, including adding a new chapter 12 which implemented two World Intellectual Property Organization treaties by prohibiting (1) the making and selling of devices that are primarily used to circumvent access and copy controls used by copyright owners to protect their works, and (2) the circumvention of access controls. In addition, to accommodating service providers' wishes, the DMCA created limitations on secondary liability for certain activities. It also expanded the existing exemption relating to computer programs in §117 of the copyright law; and contained several miscellaneous provisions regarding the functions of the Copyright Office, distance education, webcasting, and other issues. The enactment of the DMCA was the continuation of an ongoing effort by Congress to address the relationship between technological change and U.S. copyright law.

Section 203 Notices of Termination

Under §203 of the copyright law, termination of grants by an author may be made during a five-year period commencing 35 years after the execution of the grant, or, if the grant included the right of publication, the earlier of 35 years after publication pursuant to the grant or 40 years after the execution of the grant.

Termination is accomplished by serving a notice of termination on the grantee or the grantee's successor in title, and recording the notice of termination in the Copyright Office prior to the effective date of termination. The notice must be served no more than ten years and no later than two years before the effective date of termination.

The Office published proposed, interim, and final regulations governing the form, content, and manner for serving notices of termination of transfers or licenses of copyright that were granted on or after January 1, 1978.

Technical Amendment for Works Excluded from Architectural Protection

The Office adopted a technical amendment to clarify the requirements of 37 CFR 202.11, the regulation governing registration of architectural works. Subsection 202.11(d) specifies categories of architectural works that cannot be registered for protection.

The amendment adds language to the effect that unpublished plans or drawings of architectural works created before December 1, 1990, may not be registered if the works were not constructed by December 31, 2002.

Cost of Living Adjustment for Performance of Musical Compositions by Colleges and Universities

Each year the Copyright Office adjusts rates for the public performance, by public broadcasting entities licensed to colleges and universities, of musical compositions in the repertoires of the American Society of Composers, Authors and Publishers (ASCAP); Broadcast Music Inc. (BMI); and the Society of European Stage Authors and Composers (SESAC). The rate adjustment reflects the changes in the Consumer Price Index.

On November 29, 2002, the Office published the new rates, adjusting for a two percent cost of living increase. The revised rates went into effect on January 1, 2003.

Waiver of Mailing Requirement for Cable, Satellite, and DART Claims

Copyright owners must file claims with the Copyright Office each year in order to receive their shares of the royalties collected the preceding calendar year under 17 U.S.C. §111, §119, and chapter 10.

The regulations require that a claimant either mail the claim or hand-deliver it to the Office of the General Counsel during the appropriate filing period.

In fiscal 2002, the Copyright Office waived its mailing requirement and offered several additional means for delivering a cable, satellite or DART claim to the Office. The Office took this step in response to the severe disruption of mail delivery caused by the threat of anthrax-contaminated mail.

By fiscal 2003, mail delivery to the Office had resumed. However, incoming mail continued to be irradiated and diverted to an off-site location for screening. This procedure resulted in mail delivery delays.

Because of these continuing delays in fiscal 2003, the Copyright Office again waived its mailing requirement.

The Office offered additional means for delivering a cable, satellite or DART claim to the Office, including online submission of the claim or, in the case of the DART claims, facsimile submission.

[Docket numbers and dates of *Federal Register* documents issued during Fiscal Year 2003 are listed in an appendix of this Report.]

REPORTS AND LEGISLATION

THE COPYRIGHT OFFICE PROVIDES reliable advice and expert testimony to Congress on copyright matters and proposed copyright legislation, and undertakes studies and provides authoritative reports on current issues affecting copyright.

Hearings

The Register of Copyrights participated in five Congressional hearings during fiscal 2003. They were:

The House Subcommittee on Courts, the Internet, and Intellectual Property:

- The “broadcast flag” issue on March 6, 2003;
- The Copyright Royalty and Distribution Reform Act of 2003 (H.R. 1417) on April 1, 2003;
- The Intellectual Property Protection Restoration Act of 2003 (H.R. 2344) on June 17, 2003.

The Senate Committee on the Judiciary:

- “Pornography, Technology, and Process: Problems and Solutions on Peer-to-Peer Networks” on September 9, 2003.

The House Subcommittee on Courts, the Internet, and Intellectual Property and the Subcommittee on Commerce, Trade, and Consumer Protection:

- The “Database and Collections of Information Misappropriation Act of 2003” (H.R. 3261), September 23, 2003, at which the General Counsel testified on the Register’s behalf.

What is a “Broadcast Flag”?

A broadcast flag—digital bits of information—is a technological solution to the problem of piracy of broadcast digital television (DTV) content. It addresses the issue of redistribution of broadcast content over the Internet. Specifically, it is designed to prevent unauthorized redistribution of digital broadcasts outside a home or other similar local environment.

Broadcast Flag

During fiscal 2003, the Federal Communications Commission considered a proposal to use a broadcast flag to regulate devices used to receive digital television broadcasts.

When a broadcast flag is employed, a few bits of information appended to a digital television signal tell a compliant device that the broadcast is protected by copyright. The flag indicates whether the content may be copied or retransmitted.

The proposal emerged from Congressional roundtables on digital TV at which representatives of the content, information technology, and consumer electronics industries discussed potential technological measures to combat piracy.

The Register of Copyrights stated that producers of television programming have grounds for concern. She said digital broadcasting provides an opportunity for massive piracy similar to that perpetrated by file-sharing services on recording artists.

The Register clarified the relationship between the broadcast flag proposal and important principles of copyright law, and shed light on “fair use” and “first sale” doctrines as they affect the broadcast flag discussions. With respect to fair use, she said that many of the comments in the ongoing FCC proceeding misstated the nature of fair use because the commentators had misread the Supreme Court’s 1984 decision, *Sony v. Universal City Studios*. The Court found that “time-shifting” of broadcast television programs was fair use primarily because time-shifting merely enables a viewer to see what he was invited to see free of charge. She noted that the Supreme Court did not consider whether other activities related to home taping of broadcasts—such as creating a library of recorded shows, making further copies from the initial recording, or distributing recorded shows to friends or others—would qualify as fair use. Thus, she said, the Sony decision did not establish a fair use right for individuals to engage in a wide variety of reproduction and distribution activities. She stressed that fair use should not be confused with consumer expectations, which often go far beyond fair use.

Copyright Arbitration Royalty Panel (CARP) Reform

The House Subcommittee on Courts, the Internet, and Intellectual Property held a hearing on April 1, 2003 on H.R. 1417, the Copyright Royalty and Distribution Reform Act of 2003.

The Register testified that the proposed legislation addresses the concerns of cost, stability, and institutional expertise. She noted that participants in proceedings should not be excluded because they are unable to pay a share of the costs of the proceeding.

The Register also recommended the following in her testimony: that parties be empowered to ask the Copyright Royalty Judges to reconsider their decision before appealing to a court of law; that the judges have continued jurisdiction over rates and terms after they render a decision so that they can address unanticipated matters immediately, rather than delay these matters to the next scheduled proceeding; and, in cases where a rate adjustment proceeding has not concluded before a royalty rate has expired, that royalties be paid at the old rate until the new rate is set.

After the hearing, Copyright Office staff attorneys continued to work with the subcommittee staff on the bill.

On September 24, 2003, the House Judiciary Committee approved and reported the legislation, which was subject to an amendment in the nature of a substitute that made numerous adjustments to the bill as introduced on March 25, 2003, and as reported in May by the Subcommittee.

This bill would replace Copyright Arbitration Royalty Panels (CARPs) with three full-time independent Copyright Royalty Judges appointed by the Librarian of Congress. CARPs are ad hoc panels composed of arbitrators which determine royalty rates, distributions, and conditions of payment. Panels have been operating under Copyright Office auspices since Congress eliminated the Copyright Royalty Tribunal in 1993.

Other provisions of the Act would set a five-year schedule for adjusting the statutory rates for the various licenses; provide a new process for considering voluntary agreements; impose a \$150 filing fee; grant the Copyright Royalty Judges authority to reconsider their decisions and make adjustments during the license period when circumstances warrant a change; and provide for a right of appeal to the United States Court of Appeal for the District of Columbia under the standard set forth in the Administrative Procedure Act.

The current system authorizes the Copyright Office to deduct CARP administrative costs from royalty fees collected by the Office. The new program would be funded primarily by appropriations.

State Sovereign Immunity

During its 1999 term, the U.S. Supreme Court issued opinions in *Alden v. Maine*, *College Savings v. Florida Prepaid*, and *Florida Prepaid v. College Savings*. These opinions reshaped the scope of state sovereign immunity under the U.S. Constitution and Congress's constitutional authority to abrogate that immunity. Under the new framework, by invoking their immunity, states can escape monetary liability for copyright infringement. Ever since those decisions, the issue of how to reinstate full remedies has been pending before Congress.

State Sovereign Immunity and the Intellectual Property Protection Restoration Act

The Intellectual Property Protection Restoration Act of 2003, H.R. 2344, addresses issues raised by two 1999 Supreme Court rulings. The Court had ruled that under the doctrine of sovereign immunity states cannot be held liable for damages for violations of the federal intellectual property laws even though

states enjoy the full protection of those laws.

Under current law, copyright owners are unable to obtain monetary relief against a state, state entity, or state employee unless the state waives its immunity.

The Register testified on June 17, 2003, in support of H.R. 2344 and its three main components:

- A system to encourage states to waive their immunity by granting fully enforceable intellectual property rights only to those states that do so;
- A circumscribed abrogation of state sovereign immunity in the intellectual property field to provide a remedy against states that choose not to waive their immunity; and
- A codification of the judicially-made rule that, notwithstanding a state's sovereign immunity, the employees of a state may be enjoined by a federal court from engaging in illegal action.

The Register testified that the ability of copyright owners to protect their property and to obtain relief when their rights are violated is central to the balance of interests in the Copyright Act.

The Register noted that making copyright owners endure future infringements without the ability to recover damages from states dilutes the incentive for authors to create and disseminate works for the benefit of the public.

Peer-to-Peer Networks

The Register testified as part of a panel addressing the subpoena provisions of Title I of the Digital Millennium Copyright Act (DMCA), now codified as § 512(h) of title 17.

This section created safe-harbor provisions that protect Internet Service Providers (ISP) from secondary liability for copyright infringement. In exchange for this protection, § 512 requires an ISP to provide specific assistance to creators who allege that someone is using the ISP's services or systems to host, locate, or transmit infringing content.

Section 512(h) permits copyright owners or their designated agents to obtain subpoenas from the clerk of U.S. district courts. The subpoenas require the ISP to provide information identifying an alleged infringer. Verizon and others have refused to comply with subpoenas from

File-Sharing

The underlying issue in peer-to-peer network piracy is file sharing, which entails unauthorized distribution and copying of copyrighted works. Pioneered in the late 1990s by companies such as Napster, file sharing initially enabled users to "share" digital copies of songs after being indexed on a central computer. Because file sharing enables widespread distribution of copyrighted material without payment of royalties to the creators, Napster's activities were ruled illegal in 2000 in *A&M Records, Inc. v. Napster* before the Ninth Circuit Court of Appeals. File sharing continues, however, through peer-to-peer networks that do not use a centralized server for indexing. As *Metro-Goldwyn-Mayer Studios, Inc. v. Grosser, Ltd.* has shown, this decentralization makes it more difficult to pursue copyright violators in court.

the Recording Industry Association of America arguing that this section of the law does not apply when the infringing material does not reside on the service provider's computers and the service provider is performing "mere conduit" activities. Verizon has also claimed that § 512(h) violates personal privacy by disclosing an Internet user's personal information without any judicial review and without notifying the Internet user of the disclosures.

In her testimony, the Register defended the relevant provisions of the DMCA. She described them as carefully crafted and said they are a balanced bargain. She said the provisions encourage all stakeholders to work cooperatively to realize the potential of the Internet while respecting legal rights.

The Register said: "The law is unambiguous. Using peer-to-peer networks to copy or distribute copyrighted works without permission is infringement, and copyright owners have every right to invoke the power of the courts to combat such activity."

She noted that if the judiciary fails to enforce the DMCA, Congress must step in to provide protection for copyright owners.

Databases and "Sweat of the Brow"

Databases are protected by copyright as compilations. The selection and/or arrangement must represent some creative expression. A list of the top 10 American poets would be copyrightable because the selection is the result of judgment and choice. The individual facts are not protected, so anyone may copy a particular fact from the list. Copying of the list as a whole is not permitted. If there is no original, creative selection involved, the database is not protected. A telephone "white pages" of subscriber information is not protected by copyright, as it represents a collection of facts, compiled without any of the creativity required for copyright protection. Before the Supreme Court's decision in *Feist Publications, Inc. v. Rural Telephone Service Co.*, courts had granted copyright protection to a collection of facts, if the creator of the compilation expended a lot of effort to collect the facts ("sweat of the brow" protection). This "sweat of the brow" doctrine under copyright law was explicitly set aside in the Feist decision.

Database Protection

H.R. 3261, the Database and Collections of Information Misappropriation Act of 2003, prohibits any person from making available in commerce to others a substantial part of the information in a database generated, gathered, or maintained by another person, without the authorization of that person or that person's licensee.

The legislation is intended to close a gap in protection of databases, which can be copied and disseminated easily and rapidly using today's digital and scanning capabilities.

Without legislation, publishers may react by investing less in database production or disseminating databases less broadly. The public would then lose access to important information.

The General Counsel reiterated the Register's recommendation to restore, under a suitable constitutional power, the general level of protection once provided under copyright "sweat of the brow"

doctrine. Such action would provide a level of protection with built-in flexibility for public interest use similar to the fair use doctrine. Balanced legislation could optimize the availability of reliable information to the public.

Other Legislation

Distance Education

The Technology, Education and Copyright Harmonization (TEACH) Act became law on November 2, 2003, when the President signed the 21st Century Department of Justice Appropriations Authorization Act (Pub. Law No. 107-273).

The TEACH Act provides an exemption for teachers in accredited, nonprofit educational institutions to use the Internet in delivering instruction to enrolled students. It applies to performance and displays made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of systematic, mediated instructional activity.

The TEACH Act created a new ephemeral copy exemption in § 112 and replaced § 110(2) with a much broader exemption. For example, § 110(2) now does the following: allows the delivery of authorized performances and displays through digital technologies; allows reproduction and distribution to the extent technologically necessary to complete a transmission of a work over a computer network; and expands the categories of works exempted from the public performance right but limits the amount that may be used in these additional categories to “reasonable and limited portions.”

The TEACH Act is based on recommendations contained in the Register’s “Report on Copyright and Digital Distance Education,” which was delivered to Congress in May 1999.

Vessel Hull Design Protection Act Study

The Copyright Office administers the Vessel Hull Design Protection Act, which was enacted as Title V of the DMCA and took effect on October 28, 1998.

This law requires the United States Copyright Office and the United States Patent and Trademark Office (USPTO) to submit to Congress a joint report by November 1, 2003, on the Act’s effectiveness. The law specifies certain issues that are to be examined, in addition to any other relevant considerations.

On February 13, 2003, notice was published in the *Federal Register* seeking public comment on the issues and announcing a March 27, 2003, public hearing.

At the end of fiscal 2003, the Copyright Office and USPTO were preparing the report.

Small Webcaster Settlement Act of 2002

On December 4, 2002, the President signed into law the Small Webcaster Settlement Act of 2002 (SWSA), Pub. L. No. 107-321, 116 Stat. 2780. The law amended the §112 and §114 statutory licenses as they relate to small webcasters and noncommercial webcasters.

The Librarian designated SoundExchange as the Receiving Agent in the initial rate setting proceeding that established rates and terms of the webcasting statutory licenses. This law authorized SoundExchange to enter into agreements on behalf of all copyright owners and performers to establish an alternative payment structure for small commercial webcasters and noncommercial webcasters operating under the §112 and §114 statutory licenses.

The Copyright Office is required to publish in the *Federal Register* any agreement entered into pursuant to the SWSA. In fiscal 2003, the Copyright Office published two such agreements.

Technical Amendments Bill

The Office began work in fiscal 2001 on various technical amendments to the copyright law. These technical amendments, along with technical amendments related to the work of other federal agencies, were included in the “21st Century Department of Justice Appropriations Authorization Act” (Pub. Law No. 107-273), which the President signed into law on November 2, 2002.

INTERNATIONAL ACTIVITIES

THE COPYRIGHT OFFICE UNDERTAKES its activities in international copyright matters by offering advice to Congress on compliance with multilateral agreements, such as the Berne Convention for the Protection of Literary and Artistic Works, and by working with executive branch agencies to promote copyright principles and protection throughout the world.

Protection against infringement of a copyrighted work in a country depends primarily on that country's laws. Most countries offer protection to foreign works under the aegis of international copyright treaties and conventions.

The Copyright Office's international activities advance the economic health of the United States by promoting adherence to copyright protections that ensure compensation to American creators, thereby encouraging the creation and dissemination of works to the public throughout the world.

The Office works particularly closely with the United States Trade Representative (USTR), the United States Patent and Trademark Office (USPTO) and other parts of the Department of Commerce, and the Department of State, providing expertise in negotiations for international intellectual property agreements and assisting other countries in developing their own copyright laws.

Although the Copyright Office is not a law enforcement agency and has no direct role in law enforcement liaison, many of the Office's obligations and responsibilities intersect with activities in the law enforcement arena. The Office works with the Federal Bureau of Investigation and the Bureau of Customs and Border Protection to provide information and documentation pertaining to specific copyright claims that are the subject of those agencies' investigations.

The Office's staff also promotes the international protection of copyrights by engaging foreign government officials in multilateral and bilateral forums, training sessions, and educational conferences and meetings.

The Copyright Office conducts or participates in a range of intellectual property training to assist countries to comply with international agreements and enforce their provisions. Such training is in the areas of awareness of international standards and the U.S. legal and regulatory environment; substantive legal training in U.S. copyright law; legal reform; and statutory drafting assistance.

The Copyright Office staff participated in numerous multilateral, regional, and bilateral negotiations in fiscal 2003.

The U.S. prepared and submitted to the World Intellectual Property Organization (WIPO) a proposed treaty text on the protection of broadcasting organizations. The U.S.

drafting team consisted of Copyright Office Policy and International Affairs (PIA) attorneys along with attorneys from the USPTO. The U.S. proposal was considered at meetings of the WIPO Standing Committee on Copyright and Related Rights.

The Copyright Office also participated in the meetings of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, and in the annual meeting of the WIPO Advisory Committee on Enforcement.

PIA staff participated in the U.S. delegation to the Intellectual Property Negotiating Group of the Free Trade Area of the Americas and was instrumental in preparations, including the redrafting of U.S. treaty proposals. The goal of the negotiating group is to prepare and finalize an intellectual property chapter for a Free Trade Area of the Americas Agreement. The overall agreement is due to be completed by 2005.

Staff actively participated in the U.S. delegation to preparatory meetings for the World Summit on the Information Society to be held in Geneva in 2003 and Tunis in 2005.

The Office continued to participate on the U.S. team that has been considering a draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters under the auspices of the Hague Conference on Private International Law.



Participants from eighteen countries at the November 2002 International Copyright Institute.

Copyright Office staff were instrumental in the drafting and negotiating of the intellectual property provisions of bilateral Free Trade Agreements (FTAs) with Chile and Singapore signed in 2003. They also took part in negotiations of FTAs with Australia, Central America, Morocco, and the Southern Africa Customs Union.

Staff also actively participated in numerous additional bilateral negotiations and consultations during fiscal 2003, including those held with Australia, Bahrain, the Dominican Republic, Egypt, Germany, Hong Kong (People's Republic of China), Japan,

Korea, Malaysia, Mexico, New Zealand, Pakistan, Paraguay, People's Republic of China, the Philippines, Poland, Republic of China (Taiwan), Russia, Spain, Sri Lanka, Thailand, Ukraine, and Vietnam, on issues ranging from enforcement to revision of copyright laws.

Office staff met on a regular basis with foreign officials and visitors interested in learning about the U.S. copyright system and exchanging information about topics of mutual concern.

Staff completed reviews of draft copyright laws for countries such as Australia, Bahrain, Bulgaria, Canada, Egypt, Germany, Hong Kong (People's Republic of China), the Philippines, Poland, Qatar, Republic of China (Taiwan), Russia, Thailand, Ukraine, and Uruguay.

For the USTR, Copyright Office staff provided assistance to nations such as Algeria, Bosnia, Cambodia, Cape Verde, Nepal, Russia, Saudi Arabia, Serbia, Sudan Ukraine, and Vietnam in their World Trade Organization accession processes. They also responded to WTO Trade Policy Review queries regarding U.S. copyright law and policy.

The Copyright Office participated on the interagency Special 301 Committee which evaluates the adequacy and effectiveness of intellectual property protection and enforcement throughout the world. This annual process, established under U.S. trade law, is one of the tools used by the U.S. government to improve global protection for U.S. authors, inventors, and other holders of intellectual property rights.

In the past year, the Office advised and assisted the Bureau of Customs and Border Protection in resolving issues and developing new procedures related to border enforcement.

The Register participated in a number of symposia and conferences outside the United States, including programs in Germany, Greece, Hungary, Panama, and South Korea. Staff also participated in symposia and conferences sponsored by WIPO and the USPTO Visiting Scholars Program.

The Office's International Copyright Institute (ICI) held a five-day International Symposium on the Effect of Technology on Copyright and Related Rights for nineteen copyright experts and government officials from around the world on November 18–22, 2002. Participants came from Argentina, Belarus, Bolivia, Cambodia, Chile, People's Republic of China, Costa Rica, Egypt, Georgia, Ghana, India, Republic of Korea, Lithuania, Mongolia, Mozambique, Pakistan, Poland, and Thailand. Participants discussed treaties and legislation that relate copyright principles to cyberspace and the digital age. The ICI is designed to further international understanding and support of strong copyright protection, including the development of effective copyright laws and enforcement overseas.

LITIGATION

ALTHOUGH THE OFFICE does not enforce the provisions of title 17, it may be involved in litigation in several ways.

- It can choose to intervene under §411(a) in a case where registration has been refused.
- It may be sued under the Administrative Procedure Act.
- It may be asked to participate in litigation in a number of ways: by assisting in the preparation of an *amicus curiae* brief in support of a particular position; by assisting the Department of Justice in defending a particular action; or by bringing a suit under §407 to compel the deposit of copies of the best edition of a work.

The Copyright Office continued to respond to requests for assistance from the Department of Justice relating to copyright litigation, including three cases before the U.S. Supreme Court.

Eldred v. Ashcroft (formerly Eldred v. Reno)

The Copyright Office assisted the Solicitor General in successfully defending the constitutionality of the Sonny Bono Copyright Term Extension Act of 1998. As detailed in the fiscal 2002 report, the plaintiffs, who exploited works in the public domain, challenged the constitutional validity of the Sonny Bono Copyright Term Extension Act.

Sonny Bono Copyright Term Extension Act

President Clinton signed this Act into law [Pub. Law No. 105-298, 112 Stat. 2827 (1998)], extending for an additional 20 years the term of copyright protection in the United States. The copyright term for most works became life of the author plus 70 years.

Plaintiffs argued that the extension unlawfully deprived them of the ability to use works that would have gone into the public domain but for the extension.

Both the district court and the United States Court of Appeals for the District of Columbia Circuit found the Act constitutional. The United States Supreme Court granted the Appellants' petition for a *writ of certiorari*.

The Copyright Office assisted the U.S. Solicitor General's Office at the Department of Justice in drafting the government's briefs and in preparing the Solicitor General for oral argument.

After hearing oral arguments on October 9, 2002, the Supreme Court issued its opinion on January 15, 2003, upholding the constitutionality of the twenty year term extension.

Veck v. Southern Building Code Conference International

The Solicitor General's recommendations to the Supreme Court in *Veck v. Southern Building Code Conference International* (SBCCI) involved the question of whether a model building code is entitled to copyright protection after it is enacted into law in a particular jurisdiction. When the U.S. Supreme Court invited the Justice Department to comment on whether it should grant *certiorari* in this case, the Copyright Office assisted the Solicitor General in developing the response.

SBCCI is a nonprofit organization that facilitates public and private involvement to develop model building codes. Peter Veck is a resident of North Central Texas where the cities of Anna and Savoy enacted SBCCI's building codes into law by incorporating them by reference. Mr. Veck then placed SBCCI's model codes on his website as the building codes for the two cities.

The U.S. Court of Appeals for the Fifth Circuit held that the copyright in a privately developed model law does not give the copyright owner the right to restrict the reproduction and dissemination of copies of the law of a jurisdiction which was enacted by incorporating the model law by reference, even when the copier made copies from the model law itself.

Since, in the Copyright Office's view, the Court of Appeals reached the correct result, the Office recommended to the Solicitor General that the Supreme Court not accept the case for review. On June 27, 2003, the Supreme Court denied SBCCI's petition for a *writ of certiorari*.

Dastar Corporation v. Twentieth Century Fox Film Corporation

The Copyright Office urged the Solicitor General to file an *amicus curiae* brief with the Supreme Court in *Dastar Corporation v. Twentieth Century Fox Film Corporation*, a Lanham Act case involving a claim of misattribution of the origin of a public domain work, expressing concern that the Court's ruling should not adversely affect U.S. treaty obligations to protect the moral rights of authors.

The issues before the Court concerned Twentieth Century Fox's Lanham Act claim against Dastar for copying and distributing *Campaigns in Europe*, a slightly altered version of *Crusade in Europe*, a television series subsequently released in videotape format. The television series was based on General Eisenhower's book of the same title.

Fox claimed that Dastar's distribution of *Campaigns in Europe* under its own name, without attribution to Fox, was reverse passing off, a form of unfair competition actionable under §43(a) of the Lanham Act.

The district court and the U.S. Court of Appeals for the Ninth Circuit agreed and awarded Fox damages that were double Dastar's profits from the sale of the videos.

The Office informed the Solicitor General that §43(a) of the Lanham Act is an important component of the United States' compliance with its international copyright law obligations. When the United State acceded to the Berne Convention, §43(a), which forbids false designations of origin, was one of the ways in which an author's moral right of attribution was protected, thereby avoiding the necessity to enact specific moral rights legislation in order to comply with Berne. The Office expressed concern that if the Supreme Court were to rule against Fox, it should be careful to do so in a manner that would not adversely affect U.S. treaty obligations to protect moral rights.

The Solicitor General's *amicus* brief took the position that §43(a) should not be construed as barring uncredited copying of public domain works, but observed that "in acceding to the Berne Convention, Congress carefully considered the United States' obligations to protect moral rights under Article 6bis and concluded that the protections available under then-existing domestic law, including the Lanham Act, were sufficient to meet those obligations."

The Supreme Court held in *Dastar* that §43(a) does not prevent the unaccredited copying of an uncopyrighted work and that its protection against "false designation of origin" does not extend to false designations of authorship.

Southco, Inc. v. Kanebridge

This case involved claims of copyright in individual part numbers. The Office assisted the Department of Justice in preparing an *amicus curiae* brief taking the position that part numbers cannot be copyrighted.

A panel of the Third Circuit agreed, reversing a grant of preliminary injunction, and remanded the case to the district court for further proceedings. The district court granted summary judgment in favor of the defendant, despite the plaintiff's submission of a new declaration purporting to show the creativity involved in the assignment of the part numbers.

On appeal, early in 2003, a different panel of the Third Circuit distinguished the earlier panel's decision and held that the new declaration could support a finding of copyrightability in the part numbers, reversing the district court's decision. The entire Court of Appeals then granted rehearing of the case *en banc*. The Office again assisted the Justice Department

in preparing an *amicus* brief in support of the defendant, reiterating its position that part numbers cannot be copyrighted. Oral argument before the *en banc* court was scheduled for October 2003.

Metro-Goldwyn-Mayer Studios Inc. v. Peters and Universal City Studios LLP v. Peters

In these cases, the Copyright Office defended its rejection of cable and satellite claims filed by two motion picture studios on the basis of the studios' failure to file their claims on a timely basis in accordance with the Office's regulations.

On December 2, 2002, the Copyright Office rejected the cable and satellite claims filed by Metro-Goldwyn-Mayer Studios Inc. (MGM) and Universal City Studios LLP (Universal) for their shares of the cable and satellite royalty fees collected in 2000.

On February 4, 2003, and May 16, 2003, MGM and Universal filed suits, respectively, against the Register. They sought judicial review of the Office's decisions. They claimed that the Register's decision was arbitrary, capricious, contrary to law, and a denial of due process.

The Office moved to dismiss their cases or, in the alternative, for summary judgment. The Office argued that the Office properly rejected their claims in accordance with the Office's rules and that the complainants had been extended a meaningful opportunity to be heard.

The studios each opposed the Office's motions and filed cross-motions for summary judgment. Copyright Office staff worked with the Department of Justice to prepare briefs defending the Office's decision.

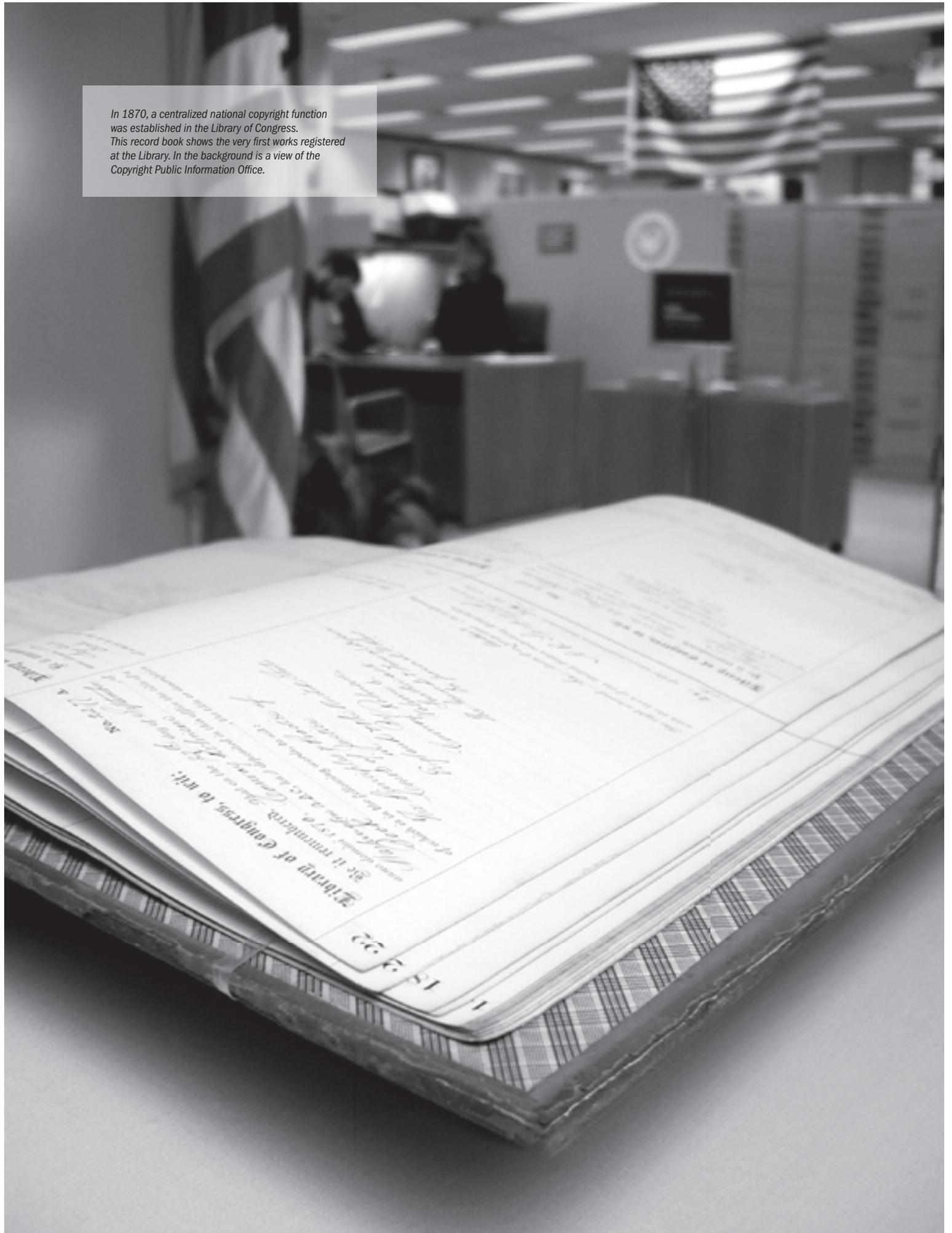
A hearing was scheduled in the MGM case for December 1, 2003. Both cases should be decided in fiscal 2004.

Bonneville Broadcasting v. Peters

As reported in Fiscal Years 2001 and 2002, AM/FM radio broadcasters appealed the decision of the United States District Court for the Eastern District of Pennsylvania upholding the Copyright Office's final rule that AM/FM broadcast signals transmitted simultaneously over a digital communications network, such as the Internet, were not exempted by 17 U.S.C. § 114(d)(1)(A) from the digital performance right for sound recordings.

During fiscal 2003, the case was argued before the United States Court of Appeals for the Third Circuit. As of September 30, 2003, the case was still pending before the Third Circuit.

In 1870, a centralized national copyright function was established in the Library of Congress. This record book shows the very first works registered at the Library. In the background is a view of the Copyright Public Information Office.



Public Information and Education

As the agency responsible for administering provisions of the copyright law, the Copyright Office is well qualified to provide information on copyright law and its application. The Copyright Office responds to public information requests from individuals visiting the Office, by telephone, and through correspondence. The Office also provides copyright education to the public.

The Register and her senior staff spoke at more than forty symposia, conferences, and workshops on various aspects of copyright law and the intellectual property world's current challenges. A significant portion of these were about the copyright issues posed by digital content, the Internet, and current technology.

The Copyright Office website continued to play a key role in disseminating information to the copyright community and to the general public. Over 16 million hits were logged during the year. This was a 23 percent increase over the previous year.

The Copyright Office Website

(www.copyright.gov) is a public service that makes available circulars, announcements, regulations, the copyright law, related material, and all copyright application forms. The website also provides the capability to search copyright registrations and recorded documents from 1978 to the present.

The public conducted over 500,000 searches of the Copyright Office registration database utilizing the Office website's search feature.

The website received numerous additions and enhancements throughout the year, including:

- Formatting and posting of pdf and html versions of Circular 92, *Copyright Law of the United States*, which incorporated recent changes made by the TEACH Act and the Small Webcaster Settlement Act;
- Posting of the complete set of 436 regulations contained in title 37 of the *Code of Federal Regulations*;
- Posting of the Copyright Office fiscal 2002 Annual Report in pdf and html formats, with photographs and tables optimized for the web; and
- Posting of 27 *Federal Register* notices pertaining to U.S. Copyright Office notices of pending regulations, rulemakings, and other legal and administrative decisions.

In fiscal 2003, the Office as a whole responded to 371,446 requests for direct reference services, including 73,643 email inquiries of all types. The Office assisted almost 25,000 public visitors.

The Public Information Section assisted 11,579 members of the public in person, taking in 19,731 registration applications and 3,088 documents for recordation. The section answered 118,598 telephone inquiries, 13,487 letter requests (a 24 percent increase), and 42,406 email requests for information from the public.

This is the third year that email inquiries to the Public Information Section have doubled. The increase in electronic mail requests is partly a result of the public using website modifications that made it easier to contact the Office by email.

The Copyright Office electronically published 36 issues of *NewsNet* during the year to 5,435 subscribers.

In response to public requests, the Reference and Bibliography Section searched 11,066 titles and prepared 719 search reports. A decline in search report requests was attributed in part to improved public access to the registration records via the website, increased fees, and lingering effects of the postal disruption. In addition, the section received 9,340 telephone calls and assisted 8,977 visitors to the Copyright Card Catalog.

The Clerical Support Unit responded to 17,350 letter requests (a 48 percent increase), 47,766 telephone requests, and 30,033 email requests from the public for forms and publications.

During the fiscal year, 342,541 deposits, constituting some 6,627 cubic feet, were processed for storage at the Deposit Copies Storage Unit in Landover, Maryland. This was a slight decrease from the volume processed in fiscal 2002. The unit transferred 2,961 cubic feet of records, consisting of unpublished deposits and registration applications, to other remote off-site storage facilities.

Freedom of Information Act (FOIA)

The Office received 26 requests under the FOIA during the fiscal year.

Planned Storage Facility at Fort Meade

During the year, the Office completed plans for an off-site copyright deposit storage facility to be constructed at Fort Meade, Maryland.

Pub. Law No. 103-110 authorized the U.S. Army to transfer a 100-acre site at Fort Meade, Maryland, to the Architect of the Capitol (AOC) for use by the legislative branch for the construction of storage facilities. The transfer of this property took place in 1994.

The Office collaborated with the AOC and URS Corporation, an outside architectural firm, to complete all design and construction documents in August 2003.

The Fort Meade facility would provide long-term preservation of copyright deposits in environmentally optimum conditions with full security. All copyright deposited works would be brought together for easy servicing in a single location, with the reuniting of collections currently stored at the Landover Center Annex and at the more distant Iron Mountain location.

The Office anticipates requesting funding for construction of the facility in the fiscal 2005 budget.

The Copyright Office's new seal exists in digital form for printed and electronic materials and as a set of hand-engraved embossing dies for certifying official documents.



Management

COPYRIGHT OFFICE SEAL AND LOGO

THE COPYRIGHT OFFICE WORKED throughout the year on a project to develop a new identity package with a new official seal and an updated logo. For the last 25 years, the

Office's logo has been a representation of a pen in a circle. New designs were previewed and refined during fiscal 2003. The Office developed a detailed plan and schedule for implementing the new look on publications, circulars, forms, and stationery at the beginning of calendar year 2004.



REENGINEERING

The Copyright Office Reengineering Program, as detailed in previous reports, proceeded on schedule, progressing into the implementation phase.

The Office has identified and reengineered seven principal processes for the purpose of providing Copyright Office services online, ensuring prompt availability of new copyright records, providing better tracking of individual items in the workflow, and increasing acquisition of digital works for the Library of Congress collections.

In fiscal 2001 and 2002, the Office developed process redesign recommendations and drafted procedures manuals for six process areas: register claims, record documents, acquire deposits, answer requests, receive mail, and maintain accounts. In fiscal 2003, the Office addressed the remaining principal process—process licenses. As with other processes, the Office established a team that developed a streamlined licensing process. In March 2003, the team delivered its draft procedures manual for the new licensing process, which utilizes new technology and online workflow management.

The Office identified bridge activities between the present and future processes. Bridge activities typically are either processes that may continue in their current form for some period of time, or shorter-term support measures that must be put in place until transition is complete.

Implementation efforts in fiscal 2003 focused on the three fronts that support reengineered processes: organization, information technology, and facilities. The Reengineering Program Office (RPO) was established to coordinate reengineering through an integrated implementation plan, scheduled for completion in 2006. The RPO manages the processes and the three fronts. The Office appointed a coordinator for each front and developed plans and procedures to monitor and track program-related risks, issues, and change requests.

Because the three fronts are interconnected, the Office must implement them together, switching over in a single phase in 2006. This is required for two principal reasons: First, the new processes cannot go into production until all organization, information technology, and facilities work has been completed. Three-fourths of the staff will be in a new organization structure with new or revised position descriptions, use new IT tools, and be located in a different place. If work on one of the three fronts is not complete, the Office will not be able to process its work. Second, the Office must continue to provide uninterrupted public services before and during the switchover.

The Three Fronts Supporting Reengineered Processes

The Office has redesigned its core processes of registering claims, recording documents, answering requests, acquiring deposits for Library of Congress collections, processing licenses, receiving mail, and maintaining accounts. Final implementation requires completion of work on three fronts:

Organization: Development of a revised organizational structure centered on the new processes, with new job descriptions focused on the requirements of those processes;

Information Technology: Development of new integrated systems to permit primarily electronic processing of copyright services;

Facilities: Reconfiguration of Copyright Office space to ensure efficient movement of work.

Organization

To implement its new processes, the Office will need to reorganize, and in some cases realign, its divisions and modify some of its individual positions.

In fiscal 2003, the RPO started evaluating the proposed reorganization package. A small organization team began an intensive review of the approximately 135 draft position descriptions.

The RPO revised its comprehensive reengineering training plan during the year and initiated hiring of a Training Officer to implement the plan.

Information Technology (IT)

Information technology is essential to the provision of effective copyright services. The Office has six non-integrated major IT systems and dozens of smaller ones. In fiscal 2002, the Office completed an analysis of IT requirements needed to support the reengineered business processes.

During fiscal 2003, the Office used the findings from that analysis as the foundation for obtaining contract resources to design and build its IT system. The Office selected the Federal Systems Integration and Management Center of GSA to manage and administer the procurement through a Government-wide agency contract (GWAC). The Millennia Lite GWAC best matched the Office's requirements.

Following a careful and thorough evaluation of proposals from interested Millennia Lite Group 4 contractors, the Office selected SRA International, Inc., of Fairfax, Virginia to design and develop the new systems infrastructure.

SRA proposed an innovative solution using Siebel customer relationship management (CRM) and case management software along with the ENCompass search engine from Endeavor Information Systems. The contract, totaling \$8.9 million, was awarded on August 22, 2003, and the contractor began work in the Copyright Office on September 3.

The Information Technology Technical Review Board (ITTRB), an external consultative group of information technology (IT) managers who are familiar with large scale, complex information technology implementations within government organizations, met twice during the year to review IT work plans.

Facilities

The Copyright Office completed essential steps toward facilities redesign to support a reconfiguration of the Office's existing space to accommodate the new processes. The planning, architecture, and engineering firm of Leo A Daly worked closely with the Copyright Office to plan and design the new configuration.

The new design will reflect the new organization and proposed workflow using existing space on portions of three levels in the Library of Congress Madison Building. The design is intended to implement architectural improvements in the most efficient way and with the least disruption to work. It will utilize space efficiently; satisfy adjacency requirements for materials flow; create functional workspace with adequate furniture and workstations; create more secure facilities for in-process documents and claims; consolidate public viewing areas; improve lighting levels as required; and provide aesthetically pleasing spaces for the staff and public.

During fiscal 2003, the first two of four phases of facilities planning were completed: Programming, and Blocking and Stacking. In the Programming Phase, the Office documented functional requirements and adjacency requirements. Subsequently, the contractor developed space prototypes for private offices and open workstations. A Space Program Report documented the number of personnel, area requirements, desired adjacency diagrams and space prototypes.

In the Blocking and Stacking Phase, space was allocated in the available floor area, taking into account adjacency requirements. A blocking diagram shows both the size and location of each group.

The remaining two phases—Design Development and Space Planning, and Development of Construction Documents—are expected to be completed in Fiscal Year 2004.

Communications on Reengineering

The RPO involved stakeholders in the reengineering process and included Copyright Office staff and management at all levels on teams and committees. Communications with staff about reengineering implementation was conducted through distribution of *ReNews*, the Office's reengineering newsletter; stakeholder meetings with staff and managers within the Office and in affected areas of Library of Congress service and support units; all-staff meetings; the posting of updates and information on a reengineering Intranet website; and articles distributed through *Copyright Notices*.

MANAGEMENT CONTROLS AND BUDGET

Management Controls

The Management Control Program ensures that Copyright Office programs are carried out in the most effective and economical manner possible and that assets are safeguarded.

During fiscal 2003, the Office conducted Vulnerability Assessments on its 22 management control modules, of which three were found to be low risk and the rest at medium risk. The Office decided to perform control reviews for four modules, which were completed by June 2003. The small number of letter findings were incorporated into a Corrective Action Plan.

The Register issued a year-end determination asserting the following: reasonable assurance that obligations and costs comply with applicable law; assets are safeguarded against waste, loss, unauthorized use, or misappropriation; proper accounting of revenues and expenditures are provided; and program activities are carried out effectively and economically.

Budget

The Copyright Office annually receives three appropriations from Congress: BASIC, Licensing and CARP. For fiscal 2003, Congress reduced the BASIC appropriation base by \$5,650,000 and directed the Copyright Office to use the \$5,650,000 funds left over from the fiscal 2002 supplemental appropriation that remained in a separate No-Year Account. Total fiscal 2003 Copyright Office budget authority was \$44,621,031 with a full time equivalent (FTE) staff ceiling of 530.

The BASIC appropriation (\$38,470,273) funds the majority of the Office's activities. The Licensing budget activities (\$3,515,003) and the CARP budget activities (\$2,635,755) were fully funded from user fees withdrawn from royalty pools. In the BASIC appropriation, the Office received \$1,441,000 in new offsetting collections authority to fund information technology support for the Reengineering Program.

The total BASIC appropriation derives its funding from two revenue sources: net appropriations from the U.S. Treasury (\$9,499,273 in fiscal 2003) and offsetting collections authority from user fees (\$23,321,000). At the end of the fiscal year, the Office had applied \$23,126,089 in user fees to the appropriation.

Investment Income from Deposit Accounts

In fiscal 2003, the Office continued to invest deposit account holdings in U.S. securities. Deposit account holdings decreased slightly to about \$3,848,000. A total of \$44,296 in interest was earned from investments during the fiscal year.

SECURITY

Security Tagging, Asset Marking, Item Bar Code Labeling

The security tagging of copyright deposits was officially reassigned from the Library's Collection Access Loan Management Division (CALM) to the Copyright Receipt Analysis & Control Center (RACC) in December 2002. Following extensive archival testing of several sample security tags, the Office purchased tags that meet the new performance and material specifications for book materials. The Binding and Collections Care Division of the Library's Preservation Directorate prepared guidelines for the application of book security tags and trained RACC staff. The Preservation Directorate also developed security tag specifications for videocassette formats.

In July 2002, the Library Services/Copyright Office Joint Issues Group on Labeling, part of the reengineering effort, issued a report recommending that management streamline the marking and labeling of formats received by the Acquisitions Directorate and the Copyright Office. In April 2003, the Library and the Copyright Office created an oversight group known as the Labeling Joint Implementation Team (LJIT) to manage the implementation of recommendations from the report. The team is charged with forming sub-groups to perform certain tasks and monitoring their activities. Sub-groups will:

- Address workflow for motion picture and recorded sound materials going to the Library's new Culpeper facility;
- Revise Library of Congress regulations to match the Joint Issue Group's recommendations;
- Develop specifications for software to produce shelving number, title, and other on-demand labels;
- Determine specifications for vendor-produced labels and efficient methods for dispensing and applying labels;
- Develop appropriate administrative procedures for the procurement, testing, and dissemination of label stock, security devices, and containers; and costing and submitting a budget request.

Personal Belongings Program

Together with other Library of Congress reading rooms, the Copyright Office implemented a new policy to reduce the opportunity for concealing and removing material or for introducing implements that could be used to mutilate collection items or Office records. Members of the public may stow their personal belongings in lockers located in the Copyright Card Catalog area and the Copyright Records Maintenance Unit. To improve security, the entrance of the Copyright Card Catalog Room was redesigned at the reader registration check-in area, lockers were relocated, and additional lockers were installed.

Site Assistance Visits to Monitor Adherence to Security Practices in Processing and Curatorial Divisions

Members of the Library's Collections Security Oversight Committee performed site assistance visits to curatorial and processing divisions, including the Copyright Office, to ensure adherence to established standards and security practices. Visits were conducted in the five copyright processing areas. Results were generally good, with only a few recommendations for corrective actions made to the appropriate division chiefs.

SAFETY AND EMERGENCY PREPAREDNESS

Based on the 2002 Report of the Library’s Task Force on Protective Measures, several safety and emergency preparedness initiatives were scheduled and implemented. The Library purchased escape hood respirators for use by its employees, on-site contractors, and visitors during an actual or suspected chemical or biological terrorist event. Staff were trained and received escape hood respirators to keep at their work stations.

The Office distributed emergency lanterns and emergency support packs for use during building evacuation and shelter-in-place situations.

In March 2003, the Library of Congress published its Employee Emergency Action Guide (EEAG). The purpose of the guide is to promote safety of Library staff and other building occupants in the event of various types of emergency situations, and for employees to know what actions to take.

The Guide outlined management and supervisory responsibilities, including the development of a localized Internal Emergency Action Plan (IEAP) for employees and contractors assigned to the division.

By year-end each Copyright Office division and office had

- Identified primary and secondary evacuation assembly areas outside the Library;
- Identified shelter-in-place locations;
- Designated an Office Emergency Coordinator and alternate for each division and office;
- Identified employees within the division/office who require special assistance during evacuation, and assigned and guided “buddies” to help evacuate the employees from the office to the nearest area of refuge;
- Prepared the division’s emergency action plan, trained staff and contractors in the plan, and maintained a written record of the training provided to employees and the distribution of the EEAG, the IEAP, and the emergency evacuation route map; and
- Posted an emergency evacuation route map at every exit door within the divisions.



Safety and emergency preparedness equipment distributed included escape hood respirators, emergency support packs, and emergency lanterns.

INFORMATION TECHNOLOGY ACTIVITIES

In addition to the IT work done as part of the reengineering program and outlined earlier in this report, the following technology work was undertaken during the fiscal year:

Migration of Copyright Cataloging Data to the Voyager Integrated Library System

For the past 25 years, the Copyright Office has used the COPICS system on the Library's mainframe computer to create and provide access to the historical records of copyright ownership. With the planned retirement of the mainframe at the end of 2004, the Office decided to use Voyager, the same software used by the Library for the Integrated Library System, to maintain its records in the future.

In April 2003, the Office initiated a project to plan and design the migration of copyright records dating back to January 1978 to the Voyager environment. The Office collaborated with staff from Library Services and the Cataloging Distribution Service to prepare specifications for migrating monograph and serial records. Development and testing are underway. Similar specifications are being developed for copyright document records.

In fiscal 2004, the Office will prepare specifications for migrating mandatory deposit records; develop and execute plans to move historical data records to the new environment; and set up input and output formats and procedures to enable the staff and public to access the records through Voyager.

Copyright Office Electronic Registration, Recordation and Deposit System (CORDS)

CORDS is the Copyright Office's current prototype system to receive and process digital applications and digital deposits of copyrighted works for electronic registration via the Internet from a limited number of cooperating partners who meet current criteria.

Through CORDS, copyright applications can be filed electronically by sending applications and deposits in digital form. The CORDS system facilitates full electronic processing, including initial preparation by the applicants on the "front end" and completely automated processing on the "back end" by the Copyright Office.

CORDS continued to be used during Fiscal Year 2003 to process 21,000 full electronic claims in textual works and music. The replacement of the prototype with more robust software reached the testing phase. The Office completed the transfer of responsibility for

refinement, tuning and implementation of the new software to the Library. Three releases of the new software are planned. These will center around the internal server (i.e., the database processing), the submitter or client that remitters will be using, and the examiner/cataloger module for internal processing.

Copyright Office In-process System (COINS)

The Office collaborated with the Library's Information Technology Services (ITS) and users of the COINS system to test and tune the new Oracle-based system and to complete the user guides and training. Conversion from the Data General system to Oracle was completed and the new system was successfully installed on June 2, 2003. Users received additional written instructions and guides, group training and one-on-one sessions.

Copyright Imaging System (CIS)

The company responsible for the old proprietary Copyright Imaging System canceled its maintenance contract in August 2003. This compelled the Copyright Office and ITS to implement the new system while various testing and development issues were still being addressed.

The new Kofax/Oracle CIS was installed on August 11, 2003, for entry of prospective images and records. By September 8, 2003, ITS had completed the conversion of all 5,000,000 retrospective images and provided the Copyright Office with a complete database with records dating back to 1993.

The new system includes all new hardware and software and enables access to the records from any workstation in the Copyright Office. The Office is working with ITS to resolve several significant system issues and incorporate changes that will facilitate higher productivity.

Paper Check Conversion (PCC)

PCC converts personal and business checks into electronic funds transfers. The process occurs at the point of sale. PCC benefits everyone in that workload is reduced by removing paper from the process; returns processing is improved; exception handling is easier; the deposit and collection process is quicker; failed items may be resubmitted; the acceptance of dishonored checks is reduced; the system provides a complete electronic record of converted checks; and there is an audit trail for each item.

The Office piloted paper check conversion in areas where payments from walk-in customers were processed upon receipt. This pilot was successful in the Certifications & Documents Section. Another paper check conversion pilot project began in August 2003 to convert deposit account replenishment checks.

Respectfully submitted to the Librarian of Congress by
MARYBETH PETERS
Register of Copyrights and
Associate Librarian of Congress for Copyright Services



Copyright assignment books and the
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Register's Testimony to Congress

- Testimony before the House Subcommittee on Courts, the Internet, and Intellectual Property on the “broadcast flag” (March 6, 2003).
- Testimony before the House Subcommittee on Courts, the Internet, and Intellectual Property on the Copyright Royalty and Distribution Reform Act of 2003 (H.R. 1417) (April 1, 2003).
- Testimony before the House Subcommittee on Courts, the Internet, and Intellectual Property on the Intellectual Property Protection Restoration Act of 2003 (H.R. 2344) (June 17, 2003).
- Testimony before the Senate Committee on the Judiciary on “Pornography, Technology, and Process: Problems and Solutions on Peer-to-Peer Networks” (September 9, 2003).
- Testimony delivered by the Copyright Office General Counsel on behalf of the Register before the House Subcommittee on Courts, the Internet, and Intellectual Property and the Subcommittee on Commerce, Trade, and Consumer Protection on the “Database and Collections of Information Misappropriation Act of 2003” (H.R. 3261) (September 23, 2003).

Full text of these statements is available on the Copyright Office website: www.copyright.gov

Federal Register Documents Issued

- Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies; Notice of inquiry · 67 FR 63578, October 15, 2002
- Noncommercial Educational Broadcasting Compulsory License; Notice of proposed rulemaking · 67 FR 66090, October 30, 2002
- Notice of Termination; Final rule · 67 FR 69134, November 15, 2002
- Digital Performance Right in Sound Recordings and Ephemeral Recordings; Request for notices of intent to participate and written comments on scheduling · 67 FR 70093, November 20, 2002

- Cost of Living Adjustment for Performance of Musical Compositions by Colleges and Universities; Final rule · 67 FR 71105, November 29, 2002
- Filing of Claims for DART Royalty Funds; Waiver of regulation · 67 FR 71477, December 2, 2002
- Noncommercial Educational Broadcasting Compulsory License; Final rule · 67 FR 77170, December 17, 2002
- Notice of Termination; Notice of proposed rulemaking · 67 FR 77951, December 20, 2002
- Notice of Termination; Interim rule · 67 FR 78176, December 23, 2002
- Notification of Agreement Under the Small Webcaster Settlement Act of 2002; Notice of agreement · 67 FR 78510, December 24, 2002
- Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings by Preexisting Subscription Services; Notice of proposed rulemaking · 68 FR 4744, January 30, 2003
- Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies; Notice of inquiry · 68 FR 6678, February 10, 2003
- Vessel Hull Design Protection Act; Request for comments and notice of public hearing · 68 FR 7350, February 13, 2003
- Notice of Public Hearings: Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies; Notice of public hearings · 68 FR 13652, March 20, 2003
- Notice of Public Hearings: Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies; Notice of Public Hearings in Los Angeles, CA · 68 FR 15972, April 2, 2003
- Notice of Termination: Final regulation · 68 FR 16958, April 8, 2003
- Distribution of 1998 and 1999 Cable Royalty Fund: Initiation of arbitration and announcement of schedule · 68 FR 17838, April 11, 2003
- Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings: Notice of proposed rulemaking · 68 FR 19482, April 21, 2003
- Notice of Public Hearings; Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies: Notice of Amended Hearing Dates · 68 FR 19966, April 23, 2003
- Digital Performance Right in Sound Recordings and Ephemeral Recordings: Notice of proposed rulemaking · 68 FR 23241, May 1, 2003

- Digital Performance Right in Sound Recordings and Ephemeral Recordings: Notice of proposed rulemaking · 68 FR 27506, May 20, 2003
- Filing of Claims for Cable and Satellite Royalties: Waiver of regulation · 68 FR 32381, May 30, 2003
- Notification of Agreement Under the Small Webcaster Settlement Act of 2002: Notice of agreement · 68 FR 35008, June 11, 2003
- Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings: Final regulation · 68 FR 36469, June 18, 2003
- Architectural Works: Final rule; technical amendment · 68 FR 38630, June 30, 2003
- Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings by Preexisting Subscription Services: Final rule · 68 FR 39837, July 3, 2003
- Ascertainment of Controversy for the 2001 Cable Royalty Funds: Notice with request for comments and notices of intention to participate · 68 FR 48415, August 13, 2003
- Digital Performance Right in Sound Recordings and Ephemeral Recordings: Notice of proposed rulemaking · 68 FR 50493, August 21, 2003

Registrations, 1790–2003

Year(s)	Total	Year	Total	Year	Total	Year	Total
1790–1869	150,000 ¹	1903	99,122	1937	156,930	1971	329,696
1870	5,600	1904	104,431	1938	168,663	1972	344,574
1871	12,688	1905	114,747	1939	175,450	1973	353,648
1872	14,164	1906	118,799	1940	179,467	1974	372,832
1873	15,352	1907	124,814	1941	180,647	1975	401,274
1874	16,283	1908	120,657	1942	182,232	1976	410,969
1875	16,194	1909	121,141	1943	160,789	1976	108,762 ²
1876	15,392	1910	109,309	1944	169,269	1977	452,702
1877	16,082	1911	115,955	1945	178,848	1978	331,942
1878	16,290	1912	121,824	1946	202,144	1979	429,004
1879	18,528	1913	120,413	1947	230,215	1980	464,743
1880	20,993	1914	124,213	1948	238,121	1981	471,178
1881	21,256	1915	116,276	1949	201,190	1982	468,149
1882	23,141	1916	117,202	1950	210,564	1983	488,256
1883	25,892	1917	112,561	1951	200,354	1984	502,628
1884	27,727	1918	107,436	1952	203,705	1985	539,165
1885	28,748	1919	113,771	1953	218,506	1986	560,212
1886	31,638	1920	127,342	1954	222,665	1987	581,276
1887	35,467	1921	136,765	1955	224,732	1988	565,801
1888	38,907	1922	140,734	1956	224,908	1989	611,328
1889	41,297	1923	151,087	1957	225,807	1990	643,602
1890	43,098	1924	164,710	1958	238,935	1991	663,684
1891	49,197	1925	167,863	1959	241,735	1992	606,253
1892	54,741	1926	180,179	1960	243,926	1993	604,894
1893	58,957	1927	186,856	1961	247,014	1994	530,332
1894	62,764	1928	196,715	1962	254,776	1995	609,195
1895	67,578	1929	164,666	1963	264,845	1996	550,422
1896	72,482	1930	175,125	1964	278,987	1997	569,226
1897	75,035	1931	167,107	1965	293,617	1998	558,645
1898	75,634	1932	153,710	1966	286,866	1999	594,501
1899	81,416	1933	139,361	1967	294,406	2000	515,612
1900	95,573	1934	141,217	1968	303,451	2001	601,659
1901	93,299	1935	144,439	1969	301,258	2002	521,041
1902	93,891	1936	159,268	1970	316,466	2003	534,122
						Total	30,787,934

1. Estimated registrations made in the offices of the Clerks of the District Courts (source: pamphlet entitled *Records in the Copyright Office Deposited by the United States District Courts Covering the Period 1790–1870*, by Martin A. Roberts, Chief Assistant Librarian, Library of Congress, 1939).

2. Registrations made July 1, 1976, through September 30, 1976, reported separately owing to the statutory change making the fiscal years run from October 1 through September 30 instead of July 1 through June 30.

Registrations by Subject Matter, Fiscal 2003

Category of Material	Published	Unpublished	Total
Nondramatic literary works:			
<i>Monographs and computer-related works</i>	141,279	46,710	187,989
<i>Serials:</i>			
Serials (nongroup)	45,324	—	45,324
Group Daily Newspapers	2,356	—	2,356
Group Serials	8,656	—	8,656
Total literary works	197,615	46,710	244,325
Works of the performing arts, including musical works, dramatic works, choreography and pantomimes, and motion pictures and filmstrips	58,627	70,768	129,395
Works of the visual arts, including two-dimensional works of fine and graphic art, sculptural works, technical drawings and models, photographs, cartographic works, commercial prints and labels, and works of applied arts	64,822	28,622	93,444
Sound recordings	22,798	24,159	46,957
Total basic registrations	343,862	170,259	514,121
Renewals			19,559
Mask work registrations			397
Vessel hull design registrations			45
Grand total all registrations			534,122
Documents recorded			16,103

Fee Receipts and Interest, Fiscal 2003

Fees	Receipts Recorded ¹
Fees for copyright registration	\$18,442,984
Fees for mask works registration	\$26,400
Fees for vessel hull design registration	\$11,770
Fees for renewal registration	\$1,117,295
Subtotal	\$19,598,449
Fees for document recordation	\$1,820,850
Fees for certifications	\$190,131
Fees for searches	\$171,559
Fees for expedited services	\$1,459,778
Fees for other services	\$245,089
Subtotal	\$3,887,407
Total	\$23,485,856
Interest earned on Deposit Accounts	\$44,296
Fee receipts and interest applied to the Appropriation²	\$23,170,385

1. "Receipts recorded" are fee receipts entered into the Copyright Office's in-process system.

2. "Fee receipts and interest applied to the Appropriation" are fee receipts and deposit account interest that were cleared for deposit to the Copyright Office appropriation account.

Estimated Value of Materials Transferred, Fiscal 2003

	Registered works transferred to other departments of the Library	Non-registration works transferred to other departments of the Library	Total works transferred to other departments of the Library	Average unit price	Total value of works transferred to other departments of the Library
Books¹	173,159	93,267	266,426		\$13,212,841
<i>Ink print</i>	149,781	44,091	193,872	\$59.80	\$11,593,546
<i>Electronic Works (ProQuest)</i>	20,781	34,372	55,153	\$3.82	\$210,684
<i>Microfilm</i>	2,597	14,804	17,401	\$80.95	\$1,408,611
Serials²	210,865	389,381	600,246		\$9,702,065
<i>Periodicals</i>	188,477	349,200	537,677	\$29.08	\$9,381,388
<i>Ink Print Newspapers</i>	20,032	39,000	59,032	\$0.97	\$34,357
<i>Microfilm Newspapers</i>	2,356	1,181	3,537	\$80.95	\$286,320
Computer-related works	9,618	1,950	11,568		\$2,677,582
<i>Software</i>	3,366	31	3,397	\$26.86	\$91,243
<i>CD-ROMs</i>	1,924	1,919	3,843	\$673.00	\$2,586,339
<i>Printouts</i>	4,328	0	4,328	indeterminate value	
Motion pictures³	10,783	781	11,564		\$6,184,058
<i>Videotapes</i>	10,230	776	11,006	\$85.00	\$935,510
<i>Feature films</i>	553	5	558	\$9,406.00	\$5,248,548
Music	34,757	3,322	38,079	\$34.02	\$1,295,448
Dramatic works, choreography, and pantomimes	819	0	819	\$59.80	\$48,976
Other works of the performing arts	170	0	170	\$34.02	\$5,783
Sound recordings	20,676	2,469	23,145	\$13.81	\$319,632
Maps	2,533	36	2,569	\$34.96	\$89,812
Prints, pictures, and works of art	7,520	13	7,533	\$28.25	\$212,807
Total	470,900	491,219	962,119		\$33,749,004

1. 60% of "Books" are selected for the collections; 40% are used for the Library's exchange program.

2. 60% of "Serials" are selected for the collections, except in the case of microfilm newspapers (100% of which are selected).

3. Includes 46 copies selected by the Library under motion picture agreements.

Non-Fee Information Services to the Public, Fiscal 2003

Information and Reference Division direct reference services

<i>In person</i>	24,984
<i>By correspondence</i>	56,583
<i>By email</i>	73,643
<i>By telephone</i>	184,503
Total	339,713

Office of the General Counsel direct reference services

<i>By correspondence</i>	259
<i>By telephone</i>	1,575
Total	1,834

Receiving and Processing Division direct reference services

<i>By correspondence</i>	10,791
<i>By telephone</i>	7,252
Total	18,043

Licensing Division direct reference services

<i>In person</i>	414
<i>By correspondence</i>	2,512
<i>By telephone</i>	8,930
Total	11,856

Grand total direct reference services **371,446**

Financial Statement of Royalty Fees for Compulsory Licenses for Secondary Transmission by Cable Systems for Calendar Year 2002

Royalty fees deposited	\$119,727,026.35
Interest income	\$3,058,744.24
Gain on matured securities	\$259,932.06
Transfers in	\$47,788.63
Total	\$123,093,491.28
Less: Licensing operating costs	\$2,836,365.61
Refunds issued	\$347,714.75
Cost of investments	\$116,745,219.61
Cost of initial investments	\$2,062,437.34
CARP operating costs	\$449,846.83
Transfers out	\$12,448.48
Total	\$122,454,032.62
Balance as of September 30, 2003	\$639,458.66
Plus: Face amount of securities due	\$116,863,832.53
Less: Pending refunds	—
Cable royalty fees for calendar year 2002 available for distribution by the Library of Congress	\$117,503,291.19

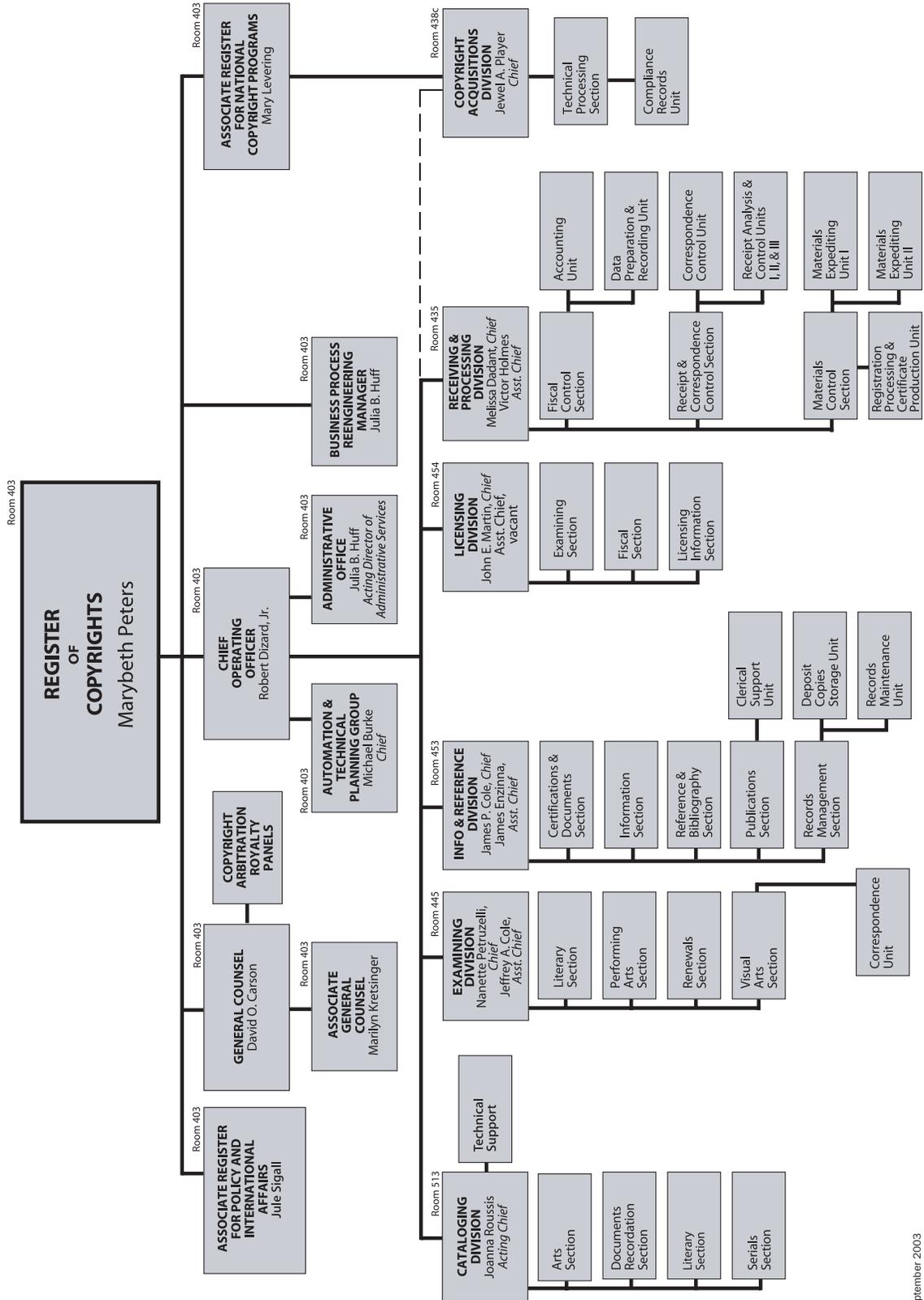
Financial Statement of Royalty Fees for Statutory Obligations for Distribution of Digital Audio Recording Equipment and Media for Calendar Year 2002

Royalty fees deposited	\$3,448,577.55
Interest income	\$114,262.50
Gain on matured securities	\$13,661.13
Transfers in	\$321.77
Total	\$3,576,822.95
Less: Licensing operating costs	\$27,322.75
Refunds	—
Cost of investments	\$3,379,482.83
Cost of initial investments	\$92,147.61
CARP operating costs	\$37,397.15
Distribution of fees	—
Transfers out	\$132.09
Total	\$3,536,482.43
Balance as of September 30, 2002	\$40,340.52
Plus: Face amount of securities due	\$3,383,627.76
Audio Home Recording Act royalty fees for calendar year 2002 available for distribution by the Library of Congress	\$3,423,968.28

Financial Statement of Royalty Fees for Statutory Licenses for Secondary Transmissions by Satellite Carriers for Calendar Year 2002

Royalty fees deposited	\$68,119,599.05
Interest income	\$2,565,552.97
Gain on matured securities	\$77,051.29
Transferred in	—
Total	\$70,762,203.31
Less: Licensing operating costs	\$6,734.57
Cost of investments	\$68,881,220.15
Cost of initial investments	\$1,770,448.77
CARP operating costs	\$61,837.52
Transfers out	—
Total	\$70,720,241.01
Balance as of September 30, 2002	\$41,962.30
Plus: Face amount of securities due	\$68,951,205.62
Satellite carrier royalty fees for calendar year 2002 available for distribution by the Library of Congress	\$68,993,167.92

Copyright Office



COPYRIGHT OFFICE CONTACT INFORMATION

U.S. Copyright Office
The Library of Congress
101 Independence Avenue, SE
Washington, D.C. 20559-6000

Website · www.copyright.gov

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INTERNATIONAL COPYRIGHT TREATIES AND CONVENTIONS

PROTECTION AGAINST UNAUTHORIZED USE of a copyrighted work in a country depends primarily on the national laws of that country. Most countries offer protection to foreign works under the aegis of international copyright treaties and conventions.



Treaties and Conventions

- **Berne Convention**—the leading international agreement that sets standards for protecting literary and artistic works
- **Bilateral**—a unique agreement on copyright protection between the United States and another country
- **Geneva Phonograms Convention**—known as the Geneva Convention, sets standards for protection of sound recordings against piracy
- **Universal Copyright Convention (UCC)**—an international agreement that sets standards for protecting literary and artistic works, largely superseded by Berne
- **WIPO Copyright Treaty (WCT)**—an international treaty setting standards for protection of works in digital format
- **WIPO Performances and Phonograms Treaty (WPPT)**—an international agreement setting standards for protection of sound recordings
- **World Trade Organization (WTO)**—the World Trade Organization’s obligations regarding Trade-Related Aspects of Intellectual Property Rights, incorporating and expanding on Berne and adding enforcement obligations

