

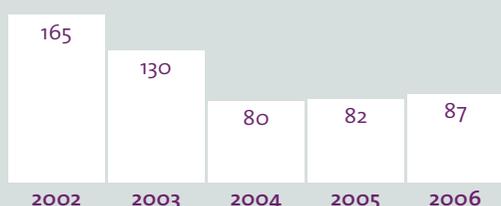
The Copyright Office administers the provisions of the copyright law (title 17 of the *United States Code*) for the benefit of owners and users of copyrighted works, mask works, and vessel hull designs. Copyright Office regulations resulting from copyright law administration are in chapter 37 of the *Code of Federal Regulations*.

## TIMELINESS OF SERVICES

An effective national copyright system requires timely service. The Copyright Office has maintained its improved delivery times for products and services. At the end of fiscal 2006, the average processing times were 87 days to process a copyright claim, slightly better than the target of 90 days; and 33 days to record a document,

significantly better than the target of 50 days. The Office is providing certificates and online public records with dramatically better speed than at the beginning of the decade, better serving both the copyright owners and those who want to make lawful use of copyrighted works.

**Year-End Average Registration Processing Time**  
(in days; 2002–2003 estimated)



# Copyright law administration

*Copyright specialists test routine selection processes traditionally performed by selection officers in Library Services.*



## REGISTRATION

### Copyrighted Works

During fiscal 2006, the Copyright Office received 594,125 claims to copyright covering more than a million works and registered 520,906 claims. The Office examines copyright claims to determine whether the deposited work contains copyrightable content and whether there has been compliance with U.S. copyright law and Office regulations. The Office continued to complete registrations in less than half the time that it took in 2001.

### Preregistration

The Family Entertainment and Copyright Act (FECA) of 2005, Pub. L. No. 109-9, amended the U.S. copyright law by the addition of a new section establishing preregistration. Preregistration, as distinct from registration, is available only for types of unpublished works that are subject to copyright protection and that the Register of Copyrights finds to have a history of infringement prior to commercial distribution. Unlike registration, preregistration requires only an application with a brief description of the work, some other basic information, and a fee. Preregistration is not a substitute for registration; after publication, a follow-up registration is required.

On November 15, 2005, the Office implemented preregistration—a new service available only online and the first use of eCO (electronic Copyright Office, the Office's new information technology system) to process regular work. There were 309 preregistrations during fiscal 2006. Much of the work done on the preregistration system will apply directly to the development of the eCO system for an electronic registration pilot in fiscal 2007. The Office also successfully implemented payment of preregistration fees via credit card using the U.S. Treasury's *Pay.gov* portal and will extend online payment to all fee services in late fiscal 2007.

### Creation of the Registration Record

The copyright law requires the Register of Copyrights to create, maintain, and index records of all deposits, registrations, recordations, and other copyright-related matters and to make these records available to the public.

Records of copyright registrations provide important information about ownership of copyrighted works, helping users to make lawful use of such works and providing information for researchers about the history of American creativity. The Cataloging Division created records for 493,903 registrations in fiscal 2006, including 20,434 registrations submitted through the current electronic system, CORDS.

### Reconsiderations of Denial of Registration

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 seek reconsideration of such decisions in a two-stage process. The claimant first requests reconsideration by the Examining Division. If the Division upholds the refusal, the claimant may make a second request to the Copyright Office Review Board. The Register of Copyrights, the General Counsel, and a third member designated by the Register, constitute the Review Board.

During fiscal 2006, the Examining Division handled 239 first requests for reconsideration covering 465 claims. Of the initial refusals to register, 117 claims (25 percent) were reversed upon first request.

The Copyright Office Review Board met 11 times during the year to review and make final administrative determinations on the Examining Division's refusals to register works. The Board reviewed requests for second reconsideration involving 126 works. The Board issued 17 decisional letters involving 107 works. The Board agreed to register 7 of the contested works, and upheld the Examining Division's refusal to register the other 100 works.

### Copies of Deposits and Certifications

The Copyright Office makes certified copies of its records, including registration certificates and deposited works, usually when the owner is engaged in infringement-related litigation. To obtain a certified copy, the requester must meet one of three conditions: (1) the Office receives a written authorization from the copyright claimant of record or his or her designated agent, or from the owner of any of the

exclusive rights in the copyright, as long as this ownership can be demonstrated by written documentation of the transfer of ownership; (2) an attorney or authorized representative completes and submits the Copyright Office Litigation Statement Form in connection with litigation involving the copyrighted work and the Office finds a basis for providing a copy; or (3) the Office receives a court-issued order for a reproduction of a deposited article, facsimile, or identifying portion of a work that is the subject of litigation in its jurisdiction.

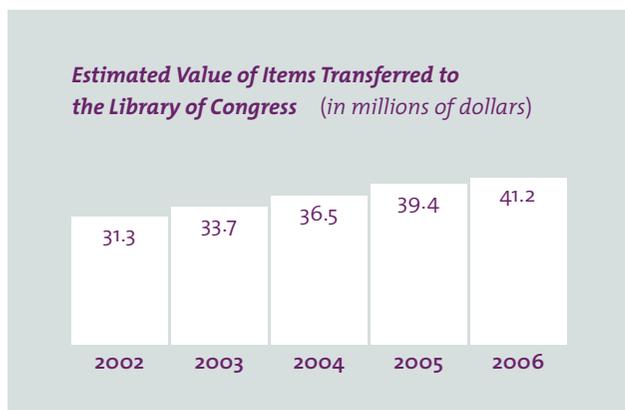
The Information and Reference Division's Certifications and Documents Section produced 4,539 copies of certificates of registration. During the fiscal year, the section made 2,321 copies of copyright deposits and certified 1,006 deposits and records.

### 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 the primary record

of American creativity.

During the fiscal year, the Office transferred 1,120,791 copies of registered and nonregistered works valued at more than \$41 million to the Library of Congress for its collections.



### Mask Works

The Semiconductor Chip Protection Act of 1984 created protection for mask works, a series

of related images of the predetermined three-dimensional pattern on the layers of a semiconductor chip product. In fiscal 2006, the Office received applications for 322 mask works and registered 349, some of which were carried over from the previous fiscal year.

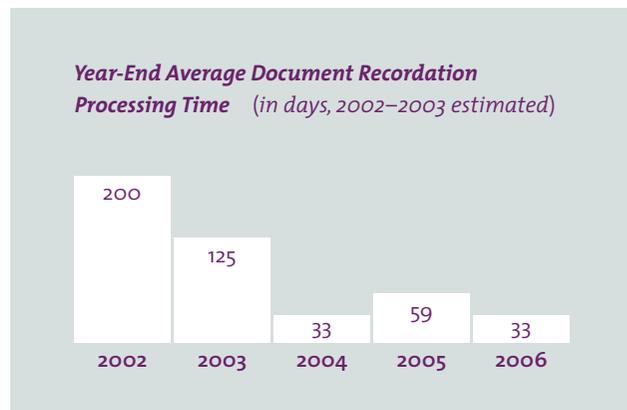
## Vessel Hull Designs

Chapter 13 of title 17 *USC* grants the 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 62 applications for registration of vessel hull designs this fiscal year and registered 61.

## 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. Documents may involve transfers of rights from one copyright owner to another, security interests, contracts between authors and publishers, and notices of termination of grants of rights. These documents frequently reflect popular and economically valuable intellectual property.

During fiscal 2006, the Office recorded 13,016 documents covering more than 350,000 titles of works. The Office reduced the year-end average processing time to 33 days, dramatically faster than at the beginning of the decade.



## ONLINE SERVICE PROVIDER DESIGNATIONS OF AGENTS

The Office also processed online service providers' designations of agents. Congress amended the copyright law in 1998 to limit potential liability of service providers for monetary and injunctive relief for copyright infringement. To take advantage of this limitation on liability, the service provider must file a designation of agent statement identifying the agent to whom one must send notification of claims of infringement. The service provider must also post such information on its publicly accessible website. The Office then makes these designations of agents available to the public through a directory of agents on its website, one of the website's most-visited areas with three million hits in fiscal 2006. During the year, the Office posted an additional 632 designations of agents to the website, for a total of 6,811.

## MANDATORY DEPOSIT

The mandatory deposit provision in §407 of the copyright law requires, with certain exceptions, that the owner of copyright or of the exclusive right of publication deposit



two copies of every copyrightable work published in the United States within three months of publication. These copies are deposited with the Copyright Office for the use of the Library of Congress in its collections or for exchange or transfer to other libraries.

The Copyright Acquisitions Division (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 6,090 titles based on recommendations by CAD librarians and Library of Congress recommending officers, and from Congressional requests. CAD received 5,887 titles from publishers in response to these demands. CAD also completed eighteen reviews of publisher compliance and twelve followup reviews. The Office referred one noncompliant publisher to the Department of Justice for legal action.

More than half of the copies of works the Office transferred to the Library of Congress for its use arrived under the mandatory deposit provisions of the copyright law. The value of these mandatory deposits was \$17.6 million or 43 percent of the estimated value of all materials transferred to the Library (see above under “Contributions to the Library of Congress Collections”).

## STATUTORY LICENSES AND OBLIGATIONS

The Copyright Office oversees the statutory licenses and obligations in the copyright law. Congress created statutory copyright licenses to remove the burden of negotiating individual licenses from certain users and owners of copyrighted works.

Some of these statutory licenses require the users of the works to deposit royalty funds with the Copyright Office. Statutory licenses were included in the Copyright Act of 1976, Pub. L. No. 94-553, 90 Stat. 2541 (title 17 USC) and later laws amending it. The Licensing Division dates from 1978 when the Copyright Act of 1976 became effective.

The Licensing Division is responsible for collecting royalty fees from cable operators, satellite carriers, and importers and manufacturers of digital audio recording devices and media (DART); investing the royalty fees, minus operating costs, in interest-bearing securities with the U.S. Treasury for later distribution to copyright

### Statutory Licenses

*These licenses 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 distributing 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 and media.*

owners; recording voluntary licensing agreements between copyright owners and specified users of their works; and examining licensing documents submitted for these statutory licenses to determine whether they meet the requirements of the law and the Office's regulations.

Royalty rates, terms and conditions of statutory licenses, and distribution determinations have been made by three different bodies that Congress created at different times: first, by the Copyright Royalty Tribunal, 1978–1993, an independent agency outside the Library of Congress; second, by Copyright Arbitration Royalty Panels (CARPs), 1993–2005, under the aegis of the Librarian of Congress and administered through the Copyright Office; and third, by the Copyright Royalty Board,

beginning in 2005, an independent organization also under the aegis of the Librarian of Congress.

The Licensing Division collected nearly \$227 million in royalty payments during the fiscal year. The division worked on developing options for electronic filing for cable statements of account (SA) to be tested in a pilot e-filing program, scheduled for fiscal 2007. The division also pursued several internal measures to create processing efficiencies



in workflow and quicker public availability of completed SA documents, including completion of a regulation requiring that all royalties be deposited via electronic funds transfer.

### Royalty Fee Distributions

The Copyright Office distributes royalties collected under §111, §119, and chapter 10 of the copyright law, as determined by agreements among claimants or by proceedings of the Copyright Royalty Board.

In fiscal 2006, the Office distributed royalties totaling more than \$191 million in the following distributions:

- On October 6, 2005: a distribution totaling \$110,213,284.82, comprising 50% of the 2001, 2002, and 2003 satellite royalties
- On October 27, 2005: a distribution totaling \$649,113.32, comprising the Digital Audio Recording Technology (DART) 2004 Featured Artist Subfund
- On January 26, 2006: a final distribution of \$11,616,515.35, to the Motion Picture Association of America, for the 1996, 1997, and 1998 satellite royalties
- On July 13, 2006: a distribution of \$64,182.63, comprising the DART 2005 Nonfeatured Musicians Subfund and Nonfeatured Vocalists Subfund
- On September 7, 2006: a distribution of \$68,500,057.81, comprising 50% of the 2003 cable royalties

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 compiled and audited on a calendar year basis as required by law. The total royalty receipts and disbursements shown in calendar year statements are therefore not the same as the fiscal year total. Calendar year 2005 financial statements are included in the appendices.

### Compulsory License Administration

Up to 2005, when the Copyright Royalty Distribution and Reform Act of 2004 took effect, CARPs determined distribution of royalties collected by the Licensing Division for the cable and satellite licenses and for DART when copyright owners could not resolve controversies among themselves. CARPs also set and adjusted royalty rates and set terms and conditions of payment. A CARP panel consisted of three arbitrators.

During fiscal 2006, the Copyright Office reviewed the open CARP proceedings and prepared to make further distributions of royalty fees before terminating the proceedings as a result of the implementation of the Copyright Royalty and Distribution Reform Act of 2004 which replaced the CARP system with three Copyright Royalty Judges and their staff. However, the decision to make further distributions awaits the resolution of a number of pending motions filed by the parties to these proceedings.

## Rate Adjustments; Distribution Proceedings; Claims Filed for Royalty Fees

Please refer to decisions and annual reports of the Copyright Royalty Board, which now has jurisdiction over rate adjustments and terms of the licenses, distribution proceedings, and claims filed for royalty fees.

## Notices of Intent to Audit

On December 21, 2004, SoundExchange, a collecting rights entity designated by the Librarian to collect and distribute royalty fee payments made under §114(d)(2) of the copyright law, filed with the Copyright Office eleven notices of intent to audit these eligible nonsubscription and new subscription services that digitally transmit sound recordings under statutory licenses for the years 2002, 2003, and 2004: Bonneville International Corporation; Susquehanna Radio Corp.; RealNetworks, Inc.; Clear Channel Communications, Inc.; America Online, Inc.; Beethoven Radio; MTV Networks, Inc.; Microsoft Corporation; Live365, Inc.; Cox Radio Interactive; and Yahoo! Inc. Pursuant to Copyright Office regulations 37 *CFR* §262.6(c), the Office is required to publish in the *Federal Register* within thirty days of receipt of a notice of intent to audit a public notice announcing the designated agent's intent to conduct the audit. In accordance with this regulation, the Office published the required notice on January 5, 2006.

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