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Before the

SUBCOMMITTEE ON COURTS,
THE INTERNET, AND INTELLECTUAL PROPERTY
OF THE HOUSE COMMITTEE ON THE JUDICIARY

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Mr. Chairman, Representative Berman, Members of the Subcommittee, I am pleased to have the opportunity to report to you on the state of the U.S. Copyright Office and our work in fulfilling the Office's mission to promote creativity by administering and sustaining an effective national copyright system.

I will review the Office's current operations, how we are transforming these operations for the future through our Reengineering Program, and the policy and legal work the Office is undertaking.

I. OPERATIONS

Improvements in Processing Times

In 2001, when I last reported to the subcommittee in an oversight hearing, I noted that we were experiencing significant processing delays in our public services. Today, I can report much progress in this area. Since that last hearing, the time it takes between receipt of a work for copyright registration and issuance of a registration certificate has been cut by more than half –

from an average of more than 6 months to about 90 days. The time required to record documents submitted to the Office has been reduced by almost two-thirds – from 20 weeks to 7. Requests for copies of works for the Library of Congress under the mandatory deposit provisions of the Copyright Act have been reduced from a high of nearly 2,500 requests awaiting action to a current level of just over 100.

We achieved these results even with the major disruption caused by the October 2001 anthrax incidents and a lengthy suspension of U.S. Postal service mail. When mail service resumed after the suspension, we received 9 months of held mail in a 4-month period – all the while continuing to receive new incoming mail.

That we were able to make this progress is a tribute to the Copyright Office staff and its commitment to providing exemplary public service.

Registration and Recordation

During FY 2003, the Copyright Office received 607,492 claims to copyright covering more than a million works. Of these, we registered 534,122 claims and created cataloging records for 543,105 registrations. We also recorded 16,103 documents covering approximately 300,000 titles of works. 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, and notices of termination of grants of rights. Documents are indexed under the names of the parties involved and by titles of works.

Works for the Collections of the Library of Congress

Copyright deposits, through both registration and mandatory deposit, remain an important source of works for the Library of Congress. Last year, the Copyright Office transferred almost

one million copies of works to the Library of Congress for its collections. The estimated value of these works was nearly $34 million.

Licensing Activities

As part of our responsibilities for administering the copyright law's statutory licenses, we administered six Copyright Arbitration Royalty Panel proceedings last fiscal year. Four of the proceedings involved adjustments to the rate structures previously adopted for use of sound recordings in digital transmissions; one set rates for use of certain nondramatic works by noncommercial broadcasters. None of these proceedings required the Office to convene an arbitration panel to consider the adjustments. In each case, industry representatives were able to negotiate a settlement agreement which was adopted by the Librarian after giving the public an opportunity to comment. The Office, however, did convene one arbitration panel to consider the distribution of cable royalty fees.

We continued to encourage the use of electronic funds transfer, including the Treasury Department's "Pay.gov" Internet-based remittance collection system, in the payment of royalties. The percentage of remittances made via EFT is now about 95 percent. Of the funds available, more than $65 million in copyright royalties were distributed. The Licensing Division deducts its full operating costs from the royalty fees.

Public Information and Education

In FY 2003, the Office responded to 371,446 in-person, telephone, and e-mail requests for information. Last year was the third consecutive year that email inquiries to our Public Information Section doubled. The Office web site received 16 million hits, a 23 percent increase. We inaugurated new Spanish-language web pages on our site; they include basic information on

copyright and application forms and instructions on how to register a work.

The Office also provides access to and copies of its records. Additionally, under certain conditions it provides copies of works that have been submitted for registration. Upon request, the Office will search its records and provide search reports of its findings. Last year we searched 11,066 titles and prepared 719 search reports. Nine thousand people used our onsite Copyright Catalog.

In addition, Copyright Office staff gave presentations at scores of educational conferences and symposia in both the United States and abroad on copyright matters. For example, in March we conducted our third annual "Copyright Office Comes to California" program in association with the Intellectual Property Law Section of the California State Bar, which provides two day-long conferences, one in Los Angeles and one in San Francisco, covering the activities of the Office, registration procedures, and current legal and policy issues related to copyright. The program has been very successful, which prompted us to hold the first annual "Copyright Office Comes to New York" program with the Intellectual Property Law Section of the New York State Bar Association held in New York City in April. That program was also very well received.

We developed a new official seal and an updated logo for the Office, which became effective on January 1, 2004.

Increasing Public Access to Historical Records

The Office's registration and recordation records made after 1977 are in electronic form and available through our website. To ascertain the copyright status or current ownership of a work the public often needs the pre-1978 records. We have initiated a feasibility study to conduct an alternative business assessment for converting the analog copyright records (1790

through 1977) to digital form and providing electronic access to those records to facilitate copyright research, particularly rights clearance activities. We also hope to determine technical approaches for integrating the resultant digital records with post-1977 records that are already in digital form, and potentially, the costs and feasibility of delivering a digital application that provides retrieval access to all copyright records from 1790 to the present.

This is not a simple task. For example, there are an estimated 45 million catalog cards representing some 16.4 million works. However, creation of digital forms of these records will meet a compelling preservation need and will provide public access to a valuable body of data. The study, expected to take 12 months, should be completed next February.

Mail Situation

The mail situation continues to affect our operations. The recent ricin scare in the Senate, as you know, stopped U.S. Postal Service mail delivery for weeks. This, of course, affects our ability to maintain a consistent workflow and timely services.

In addition to this disruption on operations, irradiation continues to damage some materials submitted for registration or mandatory deposit. While only about 2 percent of works or applications submitted are damaged to the extent that they cannot be processed or examined, that still requires us to ask thousands of submitters for replacements.

II. REENGINEERING OUR PUBLIC SERVICES

I am also pleased to report that we are maintaining steady progress in our Reengineering Program and plan for full implementation of our new processes in Fiscal Year 2006. This effort

is developing the Copyright Office of the future – it will mean more efficient and timely public services, with more of these services, including registration, available online.

We embarked on this effort in September 2000. Our objectives are to provide Copyright Office services online, ensure prompt availability of new copyright records, provide better tracking of individual items in the workflow, and increase acquisition of digital works for the Library of Congress collections. Over the past three years we identified and reengineered seven new processes for performing our work: register claims, record documents, acquire deposits, answer requests, receive mail, maintain accounts, and administer statutory licenses. Our current processes have been in place for almost half a century and processing time for a registration can take several months with handling by as many as 24 staff members. In the future, a registration will be completed in two to three weeks with only two or three people handling the case. All of the new processes will use new technology and online workflow management. More than half of our staff participated in the work for redesign and implementation of these principal processes.

In order for the new processes to be implemented, extensive change is required on three fronts: information technology (IT), organization, and facilities.

On the IT front, a contract was awarded last August to SRA International, Inc. to build a new integrated IT systems infrastructure which will support our new processes and public services. SRA began work in September. Since then we have:

1. defined the systems architecture;
2. refined the selected software environment; and
3. completed the preliminary design of user screens and the system's data model.

We plan to implement the first of several pilots of the system in November 2004.

On the organization front, the Office has completed much of the work of reviewing and revising the more than 135 position descriptions for the jobs that will change as a result of the new processes. A reorganization proposal will be finalized this summer. After the Library approves the reorganization, we will bargain impact with the labor organizations. After analyzing the skill sets that will be required for the new job roles, we developed a comprehensive training plan and have initiated hiring of a Training Officer to implement the plan.

On the facilities front, the Office completed essential steps to redesign the existing facilities to accommodate the new processes. We have completed a facilities project plan, a program report identifying facilities and requirements across the Office, adjacency and blocking diagrams, and have begun detailed design work for each division. The space plans, along with interior architectural construction documents, will be completed and delivered to the Architect of the Capitol by the end of June.

The key challenge over the next two years is to coordinate our execution across these three reengineering fronts of IT, organization, and facilities. Since our processes are changing so dramatically, our Office structure in each of these areas will change dramatically as well – to the point that our new processes cannot begin without full implementation of each front.

At the same time we are making this dramatic transition to our new processes, we need to make sure that we continue to provide our services to the public – including registration, recordation, licensing activities, and acquisition of copyrighted works for the Library's collections. We realize that the most significant impact on our public services, in terms of the Office's transition, will be in the area of facilities redesign. As such, we need to complete our facilities work as quickly as possible. We determined that under the fastest construction

schedule, this redesign would take at least six months. We then concluded that, in order to keep providing our services to the public, the best option is to move off site into rental space during the construction period, which is scheduled to begin October 2005 and end in April 2006. At that time we will move back into the Madison Building and begin using the new processes supported by new technology systems.

III. POLICY, REGULATORY AND LEGAL WORK

As the primary source of copyright expertise in the federal government, the Copyright Office continues to work closely on copyright issues with Members and committees, executive branch agencies and the federal judiciary. Our work in the policy and legal arena is growing. As this committee knows, digital technology regularly raises challenges to copyright law that must be carefully identified and deliberately considered. Internationally, we are participating as part of U.S. delegations to a growing number of free trade agreements being negotiated around the world, each of which contains important intellectual property provisions. The committee is very familiar with the Office's work on legislative issues this Congress. We have also been and continue to be active on the regulatory front, especially involving the statutory licences such as those found in sections 114 and 115 of the Copyright Act. These regulatory activities have drawn the attention of the committee in recent hearings and, I understand, a hearing to be held in the near future. Therefore, I will focus on some of the international and legal work that we have recently undertaken and in which we are now involved.

International Activities

The Copyright Office's international activities advance the economic health of the United States by promoting development and adherence of effective copyright systems, which ensure

compensation to American creators, thereby encouraging creation and dissemination of works 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.

The United States has 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 attorneys and attorneys from the USPTO. The U.S. proposal has been considered at meetings of the WIPO Standing Committee on Copyright and Related Rights.

Our staff also participated in delegations led by USTR in negotiations of Free Trade Agreements with several countries, including Chile, Singapore, Australia, Morocco, and a group of Central American countries. These agreements contain comprehensive intellectual property provisions, including copyright. Our staff is also participating in 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 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 and the annual meeting of the Assemblies of WIPO Member States.

We 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.

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 Office participates in the interagency Special 301 review process, 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.

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 Department of Justice, 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. 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 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 Office also conducted symposia as part of its International Copyright Institute (ICI). The ICI is designed to further international understanding and support of strong copyright protection, including the development of effective copyright laws and enforcement overseas. In March we hosted a delegation of 14 officials from China led by a deputy director general of the National Copyright Administration of China. The delegation included officials from various Chinese provinces who have authority in the area of copyright enforcement, as well as judges who hear copyright cases. Frequently we work with WIPO. In May, the Office in cooperation with WIPO hosted a group of government officials from a number of nations for an "International Symposium on Emerging Issues In Copyright And Related Rights For Developing Countries And Countries In Transition."

1201 Rulemaking

Last October we completed the second Section 1201 rulemaking to determine whether any particular classes of copyrighted works should be exempted from the protection afforded by the prohibition on circumventing technological protection measures that control access to such works. We started the process a year out, in October 2002. We received 51 comments, with

proposals for 83 exemptions, in response to our Notice of Inquiry. There were 338 reply comments supporting or opposing those proposed exemptions. We held four days of hearings in Washington and two in Los Angeles. Forty-four witnesses representing over 60 groups testified at these hearings. As a result of this process, four such classes of works were exempted.

I believe it is important to address some of the criticisms of the Copyright Office's triennial rulemaking that were made at a recent hearing before another Committee. It has been alleged that section 1201 provides a draconian mechanism to protect the interests of copyright owners in a way that adversely affects the legitimate interests of consumers. These claims overlook the purpose, process and results of the 1201 rulemaking. The voluminous record[1] of the two rulemakings conducted by the Copyright Office over the last six years stands in stark contrast to these claims. The record of the rulemaking reveals a thriving marketplace that is operating largely as Congress anticipated. Abundant "use-facilitating" business models now provide the public with a staggering array of digital choices – choices that are, in most cases, in addition to the traditional forms of distribution available to consumers. To say that the balance of copyright has shifted to the detriment of the public ignores this empirical evidence about the marketplace as a whole.

Our most recent section 1201 rulemaking fully and carefully considered evidence of present and likely future impediments to noninfringing uses, and we concluded that the record warranted a finding that the prohibition against circumvention shall not apply to persons who engage in noninfringing uses of four relatively narrow classes of copyrighted works. It has been suggested that since only four exceptions were recommended, the rulemaking has not fulfilled its

[1] http www.copyright.gov/1201/

promise, either quantitatively or qualitatively. I believe this view is inconsistent with the purpose of the rulemaking proceeding and the DMCA itself.

In enacting the DMCA, it is clear that Congress expected the development of the digital information marketplace to benefit the public without the necessity of regulatory intervention. Rather, the rulemaking proceeding was created as a "fail-safe" mechanism.[2] As the Section-by-Section Analysis published by this Committee stated at the time, "In any particular 3-year period, it may be determined that the conditions for the exemptions do not exist. Such an outcome would reflect that the digital information marketplace is developing in the manner which is most likely to occur, with the availability of copyrighted materials for lawful uses being enhanced, not diminished, by the implementation of technological measures and the establishment of carefully targeted legal prohibitions against acts of circumvention."[3] The drafters of Section 1201 did not expect the rulemaking proceeding to result in numerous and broad exemptions. For example, the Commerce Committee explained that the rulemaking proceeding "would monitor developments in the marketplace for copyrighted materials, and allow the enforceability of the prohibition against the act of circumvention *to be selectively waived, for limited time periods, if necessary* to prevent a diminution in the availability [of works]."[4] In addition, the Commerce Committee noted that any such exemption should be "fully considered and fairly decided on the basis of real marketplace developments."[5]

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[2] H.R. Rep. No.105-551 Part 2, at 36 (July 22, 1998).

[3] House Committee on the Judiciary, 105th Cong., Section-By-Section Analysis of H.R. 2281 as Passed by the United States House of Representatives on August 4, 1998, at 8 (August 4, 1998) ("House Manager's Report").

[4] *Id.* (emphasis added).

[5] *Id.*.

The body of evidence established in the first two rulemakings does not support the view that fair use, or other noninfringing uses, have been constrained in the marketplace. While fears and concerns for the future were plentiful, the evidence of present or likely adverse effects was quite limited. In many ways, the evidence elicited in the second rulemaking tended to prove that the digital marketplace has been developing in a manner which has enhanced public access to copyrighted works. The fears of copyright owner abuse of section 1201 have not become a reality in any significant respect. Where real problems were presented, and where existing statutory exceptions would not resolve those problems, we defined exempted classes of works in ways tailored to alleviate the problem. The fact that there were few exemptions is not a sign of the failure of the rulemaking. Rather, it is a sign of the success of a digital marketplace that is providing the public with access to an ever-increasing array of copyrighted works in ways that were never before possible. As Congress anticipated, the strongest check on overzealous protection by copyright owners is the marketplace itself. While I have no way of knowing what the future will hold, there is reason for optimism.

Even though technological change in the digital marketplace has created significant benefits to the public in terms of new and varied means of access and use of copyrighted works, some people seem to believe that any limitation on access or use is an abridgement of the public's rights. For instance, at a recent hearing before another Committee, some witnesses argued that the fact that DVDs cannot be copied is a limitation on the consumer's so-called "fair use right" to make a back-up copy. They have asserted that when section 1201 is invoked to prevent the marketing of software that circumvents access controls to enable people to make "back-up" copies of motion pictures on DVDs, it deprives people of the ability to engage in fair

use. Proponents of that point of view sought an exemption in the Section 1201 rulemaking last year. However, they utterly failed to make their case either legally or factually, offering no legal support for the proposition that the making of a "back-up" copy of a motion picture on a DVD is a noninfringing use[6] and failing to demonstrate that DVDs are so susceptible to damage and deterioration that a convincing case could be made that the practice of making preventive backup copies of audiovisual works on DVDs should be noninfringing.[7]

At the same hearing, proponents of a right to make "back-up" copies of DVDs asserted that my DMCA Section 104 Report, which I delivered to Congress in August, 2001, supports the position that the making of a back up of a motion picture is a fair use. In fact, the Section 104 Report came to no such conclusion.[8]

I also think it is necessary to respond, once again, to the criticisms raised concerning that required showing of proof in the rulemaking. It has been repeatedly stated – most recently in a hearing last month before another Committee – that the Copyright Office raised the burden of

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[6] Recommendation of the Register of Copyrights, pp.106-108 (October 27, 2003)("The proponents of an exemption bear the burden of proving that their intended use is a noninfringing one. No proponent has offered a fair use analysis or supporting authority which would allow the Register to consider such a basis for the exemption, and the Register is skeptical of the merits of such an argument.").

[7] *Id.* at 106.

[8] In the Section 104 Report, I presented recommendations on whether amendment of 17 U.S.C. § 117, the provision permitting the making of a back-up copy of a computer program, was advisable. I concluded that there was a fundamental mismatch between the law and accepted, prudent practices among most system administrators and other users regarding the back up procedures for works residing on a computer. An entire industry of hardware, software and media manufacturers had developed in the marketplace to accommodate the legitimate needs of users, which were otherwise unmet in the marketplace, *i.e.,* one could not easily replace the contents of one's hard drive. Although I recommended an expansion of § 117 to include works of digital media that are subject to accidental erasure, damage or destruction in the ordinary course of use, the context of the discussion related to works, other than computer programs, that are stored on computers. As I stated in the Report, "the exception would be limited primarily to backups made from copies of a hard drive, floppy disk, or other magnetic medium." *Id.* at 160 n. 471. I did not and do not believe that such an exemption should extend to making backups of DVDs or CDs, given the lack of demonstrated fragility in "the ordinary course of use."

proof for proponents of exempted classes in a manner that is contrary to the plain language of the statute, thereby eliminating the possibility of an exemption for most proposals. As I stated in my Recommendation to the Librarian of Congress, this claim is unfounded.[9] I concluded in 2000 and again in 2003 that a determination to exempt a class of works from the prohibition on circumvention must be based on a showing that the prohibition has a *substantial* adverse effect on noninfringing uses of a particular class of works. However, the term "substantial" was not used to heighten the burden, but to clarify that adverse effects must have substance to be considered. By way of guidance, our initial notice of inquiry in the rulemaking informed the public that insubstantial effects, whether de minimis or the result of inconvenience, do not represent a sufficient basis for an exemption.[10] The use of the term "substantial" simply imposes the requirement found throughout the legislative history, which is variously stated as "substantial adverse impact,"[11] "distinct, verifiable, and measurable impacts,"[12] and more than "de minimis impacts."[13] As is apparent from the dictionary definition of "substantial" and the Supreme Court's treatment of the term (*e.g.,* in its articulation of the substantial evidence rule), requiring that one's proof be "substantial" simply means that it must have substance. The requirement of substance rather than speculation was not a deviation from the statute and fully coincides not only with Congressional intent but also with simple common sense.

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[9] Recommendation of the Register of Copyrights, pp.16-20 (October 27, 2003).

[10] Notice of Inquiry, 67 F.R. 63578, 63580 (October 15, 2002).

[11] See House Manager's Report, at 6.

[12] See, e.g., H.R. Rep. No.105-551 Part 2, at 37 (July 22, 1998).

[13] See *id.*

The fact that I found that only four narrow classes of works qualified for exemption from the prohibition on circumvention is not evidence of a failed rulemaking proceeding; rather, that fact is due to the failure of proponents of other classes of works to come forward with any showing of a substantial adverse impact on noninfringing uses. But you do not have to take my word for it. The entire record of the rulemaking is available on-line,[14] and I have yet to see any criticism of the results of the rulemaking that has shown that we overlooked or disregarded any evidence of substantial adverse impacts on noninfringing uses. The extensive record developed in the rulemaking is devoid of evidence to support the claims made by the critics of the DMCA.

The limited number and scope of exemptions in the section 1201 rulemaking is a testament to the availability of access and use of digital works in the marketplace. Although I had reservations about the rulemaking when we embarked upon the process in 2000, I have come to believe that it serves a useful purpose. As Congress intended, it gives us the opportunity to monitor developments in the marketplace to determine whether copyright owners are using the legal protections offered by the DMCA in ways that will enhance or hinder the availability of their works to the public. I assume that copyright owners recognize that if they apply access controls in ways that prevent people from making noninfringing uses of certain types of works, they run the risk that the rulemaking will be used to deprive them of the protection of the anticircumvention provisions for those works. I would like to think that one of the reasons we identified only four narrow classes of works is that copyright owners, mindful of the triennial rulemaking, have by and large refrained from using access controls in a heavy-handed manner.

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[14] http://www.copyright.gov/1201/

Of course, the Copyright Office will continue to fully and carefully monitor developments in the digital market for copyrighted works in future triennial proceedings.

Litigation

In the past 18 months, we have worked closely with the Solicitor General and the Department of Justice on a number of important cases, providing advice on issues of copyright law and policy and assisting in the preparation of documents. We advised and assisted the Solicitor General in a number of cases pending in the Supreme Court, the courts of appeals and district courts, including Eldred v. Ashcroft, which upheld the constitutionality of the Sonny Bono Copyright Term Extension Act, as well as a number of cases involving challenges to the Digital Millennium Copyright Act and cases involving issues such as copyrightability of parts numbers and model laws.

Sonny Bono Copyright Term Extension Act: Unfinished Business

A key component of the Sonny Bono Copyright Term Extension Act, which extended copyright terms by twenty years, was an exception to help ensure public access to works in the last twenty years of their copyright term. During consideration of the issue, the Chairman of this Subcommittee asked the Office to facilitate negotiations between libraries, educational institutions and copyright owners with a goal of reaching agreement on the scope of a possible exemption. There were numerous meetings over a span of many months. Although there was some disagreement on the language of the exemption, there was no disagreement that the exemption would apply to all types of works.

The exemption, which became 17 U.S.C. 108(h), essentially permits a nonprofit library, educational institution or archive to reproduce or distribute copies of a work, including in digital

format, and to display or perform a work during the last twenty years of the copyright term as long as that work is not commercially available. Unfortunately, the terms of section 108(i) make this exception inapplicable to motion pictures, musical works and pictorial, graphic and sculptural works. I am hopeful that this error will be remedied and would be pleased to work with the Subcommittee to correct it.

IV. FY05 BUDGET REQUEST

Given the attention the Fiscal Year 2005 budget process is receiving, I will briefly review the Office's request. We are very appreciative of this committee's support of our budget requests in recent years.

For FY 2005, the Copyright Office is seeking a total budget of $53,518,000 for the BASIC, Licensing and CARP appropriations. The budget request is funded from $19,369,000 in net appropriations and $34,149,000 in offsetting collections authority. Besides mandatories and price level increases for each appropriation, we are seeking approval of two specific requests: $3,660,000 in new offsetting collections authority and spending authority (no new net appropriations) to be used to redesign our office space, which is required to support our reengineered business processes; and $59.2 million for a Copyright Deposit Facility at Ft. Meade. As the Ft. Meade facility is important to our ability to fulfill our responsibilities under the Copyright Act, I wanted to provide the committee with a fuller description of this request.

Ft. Meade Copyright Deposit Facility

The Copyright Deposit Facility at Ft. Meade will, for the first time, ensure that copyright deposits of registered works not selected by the Library are stored for certain periods in

environmental conditions that allow us to meet our legal requirements to retain, and be able to produce copies of, these works.

The imperative for the Copyright Deposit Facility at Ft. Meade is to fulfill the requirement under the Copyright Act for the Office to provide for long-term preservation of copyright deposits. The Copyright Office is required by statute to retain unpublished copyright deposits for the full term of copyright, which is the life of the author plus 70 years, and to retain published deposits for the longest period considered practicable and desirable by the Register. A retention period of 120 years has been established to fulfill this legal requirement for unpublished deposits, and I have concluded that a retention period of 20 years should be established for the published deposits .

Deposits serve as evidence of what was registered; they reflect the nature and in most cases the extent of the material that has been registered. The Office retrieves approximately 2,500 works from its offsite storage each year. Copies of copyright deposits, certified by the Copyright Office, are used in a variety of legal proceedings. If we continue to hold deposits under the conditions that have been in place since then, some works will deteriorate to such an extent that we would not be able to either ascertain the full work or make a copy.

The Office currently stores about 50,000 cubic feet of deposits at the Landover Center Annex, a GSA leased facility. In addition, the Office stores more than 85,000 cubic feet of deposits at a commercial records management storage facility in Sterling, Virginia run by Iron Mountain.

The legal deposits consist of a variety of formats and types, including: paper in varying quality and size such as books, architectural drawings, sheet music, and computer code printouts; magnetic tape (both audio and video); photographs; CD-ROMs, CDs, and LPs; and fabric.

The current storage space, both at the leased facility and the commercial records storage facility, fails to provide the appropriate environmental conditions necessary to ensure the longevity of the deposit materials. The storage space at the Landover Annex is subject to wide temperature variances, high humidity levels and water leaks. The commercial records storage facility is also subject to seasonal temperature fluctuations and uncontrolled humidity levels.

Continued storage under present substandard environmental conditions will accelerate the aging of the deposit material and reduce the useful life span by 75 percent, i.e., deterioration that would ordinarily occur in 100 years occurs in 25 years. These conditions place legal deposits at risk in the long term. This is particularly applicable to the video and audio magnetic tapes in storage which are especially sensitive to environmental conditions. In addition, the current storage space at the Landover Annex and the commercial records storage facility does not meet the NARA fire protection requirements for storage of long-term records which must be in place by FY 2009.

In September 2002, a task group was formed to prepare design specifications and construction documents. The group comprised representatives from the Copyright Office, Library of Congress support divisions, the AOC, and an outside architectural firm. Last August, this group completed facility design and construction documents.

The Ft. Meade facility would be a highly secured, environmentally controlled, high-density storage building with sufficient space for retaining current and future deposits. It

would be in full compliance with the NARA regulations for records storage facilities, and would bring together all copyright deposits in a single location, improving retrieval time and our service to the public.

The Ft. Meade facility will allow for 245,000 cubic feet of storage. When the building is ready for occupancy in FY 2007, we would immediately occupy about two-thirds of that space. Currently, the Copyright Office is adding an average of 3,500 cubic feet of deposits of published works and records and 3,500 cubic feet of deposits of unpublished works annually. Although it is difficult to estimate the volume of copyright deposits that we will receive in the future, we project that the facility would provide adequate storage space at least through 2020.

We consulted with the Library's Preservation Directorate to determine the climate control requirements to ensure that the useful life of the legal deposits would be sufficient to meet the legally mandated retention periods. Because published and unpublished deposits retention periods are different, the necessary environmental requirements are different as well. Published deposits need to be stored in a temperature of 68 degrees Fahrenheit (F), and 45 percent relative humidity (RH). Unpublished deposits must be stored in a climate-controlled area maintained at 50 degrees F and 30 percent RH.

We have briefed the Appropriations Committees staff on our current storage problems and our need for this facility. The staff has asked us to ascertain whether there are acceptable alternative storage options. Our staff visited three alternative facilities and they are being evaluated based on our requirements in the areas of environmental conditions, security and retrieval of deposits. We will provide our analysis shortly.

CARP Reform Legislation

I also note the budget impacts of H.R. 1417, the proposed Copyright Royalty and Distribution Reform Act of 2004, which has passed the House and is awaiting action in the Senate. The current system authorizes the Copyright Office to deduct CARP administrative costs from royalty fees collected by the Office. H.R. 1417 provides that these costs be paid for out of appropriated funds so that copyright owners, who are entitled to the royalty fees collected by the Copyright Office, will receive all the royalties collected under the statutory licenses to which they are entitled, and so that no one with a stake in the outcome of rate-setting proceedings will be unable to participate due to a requirement that they bear the high costs of such proceedings. If the legislation is enacted, the Copyright Office will be need to request an estimated $1 million in additional net appropriations to cover these new funding requirements. It is possible that, depending on the timing of enactment of H.R. 1417, it will be difficult if not impossible to secure that funding for Fiscal Year 2005. If that is the case, it may be necessary to defer the effective date of the provision providing for public funding of the new system until Fiscal Year 2006. I hope that I can count on your support with respect to these funding issues.

V. CONCLUSION

The Copyright Office has a full agenda before it in terms of our policy work, in carrying out our responsibilities under the Copyright Act, and in reengineering our work processes for even better public service in the future. We aim to be forward-looking and committed to exemplary service. I thank the staff of the Copyright Office for the accomplishment reflected in this testimony.

I also express my gratitude to this committee for its consistent support of the Office's work. We consider service to this committee a most important part of our mission, and look forward to continuing to work with the Members of the Committee and your very able staff.