

Annual Report of the Register of Copyrights

FISCAL YEAR ENDING SEPTEMBER 30, 2004



United States Copyright Office

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A Message from the Register

THIS ANNUAL REPORT for Fiscal Year 2004 highlights the Copyright Office's activities and accomplishments for one of its fullest years on record.

It was my privilege to be invited to deliver the 33rd Donald C. Brace Memorial Lecture before the Copyright Society in April 2004. In that lecture, entitled "Copyright Enters the Public Domain," I observed that in recent years copyright had entered the court of public opinion. In the digital age large numbers of individuals are able to engage in actions that implicate copyright. Copyright owners exhibit legitimate concern about widespread infringement, but the wisdom with which copyright owners exercise their rights, how law is framed in the future, and how the public experiences the effects of copyright law will determine how copyright is judged in the public arena. The Office's accomplishments during 2004 represent further steps in addressing the fundamental issues presented by the digital era.

During the fiscal year the Office provided testimony to Congress on significant legislative issues, including several relating directly to digital technologies and the Internet. These include issues such as services that facilitate infringements through peer-to-peer networks, software that filters out objectionable scenes on DVDs, and Internet streaming of radio broadcasts. The Office also testified several times relating to sections of the copyright law dealing with compulsory licenses.

We worked with the Executive Branch and international organizations to strengthen copyright systems around the world, thus contributing to the nation's cultural and economic well-being. The United States has made bilateral and multilateral trade agreements an increasingly important part of its trade policy. In Fiscal Year 2004 the Office participated in drafting and negotiating the intellectual property provisions of several such agreements.

In our key duty of administering the copyright law, the Office recovered from mail disruptions in Fiscal Year 2002 and February 2004. We significantly reduced the number of service requests in process and greatly improved service delivery times.

The Office received and disbursed tens of millions of dollars in licensing royalties, and issued necessary regulations. We finalized the second section 1201 rulemaking on October 28, 2003, and sent to Congress a study of the efficacy of the Vessel Hull Design Protection Act of 1998.

Our Reengineering Program is proceeding systematically. We continued setting the groundwork for implementation in Fiscal Years 2006–2007, preparing the final elements of an organization package, completing most space planning and facility design work, and developing a new information technology systems infrastructure for the Office. Particularly important during the year was the initiation of ongoing regular meetings with Library of Congress infrastructure units on whose support the facilities and information technology components of the Reengineering Program depend.

Our continuing progress would not be possible without the efforts of the Copyright Office staff, whose hard work sustained the accomplishments mentioned in this report. I extend to them my gratitude for their continued public service.



Marybeth Peters
Register of Copyrights

Copyright in the Public Eye

UNTIL THE LATE 1990S copyright was more or less invisible to the general public. Now, technology allows consumers to be not only authors and copyright owners, but also unauthorized copiers and distributors on a scale and with an ease that has never before existed. For the first time ordinary consumers come face-to-face with copyright as something that regulates them directly. In this situation, the copyright owner is more likely to see the user as an infringer than as a customer. Copyright has entered the court of public opinion.

The issue now is whether the public understands and agrees with the purposes of copyright, whether they feel that copyright is in their interest as well as copyright owners' interests. A few decades ago organizations representing copyright owners and large institutional users agreed on copyright's core principles. The public was not involved in or aware of the making of copyright policy. Today, the substance of the debate is different. Many copyright skeptics are arguing that copyright laws do not work in today's environment.

The Founders knew what they were doing when they made explicit that Congress was to secure to authors an "exclusive Right." They understood that individual rights, especially property-like rights, were the key to establishing a stable and productive society. They also trusted copyright owners to use those rights for the public good by offering creative works to the public. It is important for copyright owners to fulfill their end of the bargain with the public — to use the exclusive rights they have been granted to provide the public with convenient access to copyrighted works.

The purpose of the Constitution's copyright clause and subsequent legislation is to foster the growth of learning and culture for the good of the public. The grant of exclusive rights for a limited time is the means to that end.

How copyright is perceived will largely depend on how technological measures limit reproduction and distribution in ways that are painless and invisible to the public. New services need to earn a reputation based on the things they allow people to do with copyrighted works, rather than on what they prevent people from doing.

The Copyright Office's work has an impact on how copyright fares in the court of public opinion. For instance, the Office is assisting Congress to address such issues as the liability of those who contribute to and facilitate infringement. Sensible application of doctrines of secondary liability would take the copyright burden off the individual consumer and place it on the entities that make infringement possible and profit from it.

In the area of education, the increasing number of people who are exposed to copyright need to understand what it is and why it exists. The Copyright Office's ongoing program of education and outreach seeks to decrease the distance between the users and the creators of copyrighted works, so that both understand the results of their mutual engagement with copyright principles and law.

The pages of this annual report indicate some of the ways in which the U.S. Copyright Office is helping to retain the good standing of copyright principles and law in the eyes of the public.

Copyright Law Administration

TIMELINESS OF SERVICES

Service is central to an effective national copyright system. Effective delivery of client-funded and taxpayer-funded copyright services requires that they be timely.

For several years the Copyright Office wrestled with lengthy time frames for delivering its products. Through focused effort and the energy created by the Office's Reengineering Program, the Office has achieved significantly better delivery times for its services and products since 2001.

Prompt service delivery has decreased the number of status inquiries, freeing time for public information functions to deal more effectively with other substantive inquiries. This achievement took place during a period of increased security concerns and a significant investment of staff resources to reengineer Copyright Office processes.

The security concern that had the most direct impact on the Office's ability to provide its services was the anthrax threat in late 2001, as reported in the annual reports for Fiscal Years 2002 and 2003. Subsequently, Congress created offsite mail screening processes for all Capitol Hill mail. In early February 2004, ricin-contaminated mail was delivered to a Senate office. This incident disrupted the Office's mail delivery for an entire month while enhanced screening processes were put in place. The disruption affected mail processing until early June as delayed mail was delivered along with current mail. The Office worked to restore



Work station where applications are scanned to print registration certificates

normal processing levels. The improvement in timeliness reflects the Office's efforts to overcome the disruption.

REGISTRATION

Copyrighted Works

During Fiscal Year 2004, the Copyright Office received 614,235 claims to copyright covering more than a million works and registered 661,469 claims received during fiscal years 2003 and 2004. The Office examines the materials received to determine whether the deposited work contains copyrightable content, whether the claimant is entitled to claim copyright, and whether there has been compliance with U.S. copyright law and Office regulations. Registration is now two and a half times speedier than in 2001, when there was an average of 200 days between receipt of a claim and the issuance of a certificate. At the end of Fiscal Year 2004, the average time to issue a certificate was 80 days.

Mask Works

Mask works are a series of related images having or representing the predetermined three-dimensional pattern on the layers of a semiconductor chip product. The Office received 357 mask works in Fiscal Year 2004. It registered 377, including some received in Fiscal Year 2003.

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 55 vessel hull designs this fiscal year. The Office registered 52 and either rejected or corresponded on the others.

Appeals of Denial of Registration

During Fiscal Year 2004, the Examining Division handled 231 first appeals covering 353 claims. Of the 353 initial refusals to register, 101 (29 percent) were reversed upon first appeal.

The Board of Appeals met 10 times during the fiscal year and handled 28 requests for reconsideration involving 68 works. The Board issued decisional letters responding to 33 second appeals involving 77 works. Some of these works were from requests that the Board considered in Fiscal Year 2003 but responded to in Fiscal Year 2004. It agreed to register four works and upheld the refusal to register the other 73.

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 the copyright facts, some bibliographic information, and a physical description of the deposited copies for all works registered in the Copyright Office. The Division also creates a record for recorded documents.

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

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

The Cataloging Division created cataloging records for 567,607 registrations in Fiscal Year 2004, including 21,078 registrations submitted electronically.

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, constitute the Board of Appeals.

Copies of Deposits and Certifications

The Information and Reference Division's Certifications and Documents Section produced 4,607 copies of certificates of registration. This was an 18 percent increase from the previous year. During the fiscal year, the section made 2,314 copies of copyright deposits and 1,103 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 the primary record of American creativity.

During the fiscal year, the Office transferred 1,038,561 copies of registered and nonregistered works valued at \$36,456,888 to the Library of Congress collections.

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 popular and economically significant 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.

During Fiscal Year 2004, the Documents Recordation Section recorded 14,979 documents covering more than 470,000 titles of works. As of the end of Fiscal Year 2004, the average processing time was down to 33 days, more than six times faster than the average of 210 days three years earlier.

ONLINE SERVICE PROVIDER DESIGNATIONS OF AGENT

The Digital Millennium Copyright Act amended the law to limit potential liability for monetary and injunctive relief for infringing uses of online service provider services. To take advantage of this limitation, the service provider must designate an agent for notification of claimed infringement and provide contact information to the Copyright Office. These designations of agent are then made available to the public. The Office maintains a directory of agents on its website, one of the website's most-visited areas with more than 3.5 million hits in Fiscal Year 2004. During the year, the Office posted an additional 572 designations of agent to the website, for a total of more than 5,400.

MANDATORY DEPOSIT

The mandatory deposit provision in §407 of the copyright law requires publishers to 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) acquires from publishers works needed for Library of Congress collections when those works have not been obtained as registration deposits or voluntary deposits sent in compliance with the mandatory deposit requirement.

CAD made demands for 3,937 titles based on recommendations by CAD librarians and Library of Congress recommending officers and in response to Congressional requests.

Of the 1,038,561 copies of works the Office transferred to the Library of Congress for its use, more than half — 537,903 — arrived under the mandatory deposit provisions of the copyright law. The value of these mandatory deposits was \$13,220,977 or 36 percent of the estimated value of all materials transferred to the Library.

The Copyright Acquisitions Division 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.

STATUTORY LICENSES AND OBLIGATIONS AND THE CARP SYSTEM

The Copyright Office oversees the statutory licenses and obligations in the copyright law. 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

Licensing Division Responsibilities

To collect royalty fees from cable operators, satellite carriers, and importers and manufacturers of digital audio recording devices and media (DART);

To invest the royalty fees, minus operating costs, in interest-bearing securities with the U.S. Treasury for later distribution to copyright owners;

To record voluntary licensing agreements between copyright owners and specified users of their works; and

To examine licensing documents submitted for these statutory licenses to determine whether they meet the requirements of the law.

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.

The Licensing Division collected more than \$212 million in royalty payments during the fiscal year, almost entirely via electronic funds transfer (EFT). The division worked on developing options for electronic filing for cable Statements of Account (SA) to be tested in a pilot e-filing program during Fiscal Year 2005.

The division pursued several other internal measures to create processing efficiencies in workflow and public availability of completed SA documents, including streamlined data entry procedures in the Licensing Division System, abbreviated examination

of the SA1-2 cable short form, and simultaneous examination of SA-3 cable long forms across two accounting periods.

Royalty Fee Distributions

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

In Fiscal Year 2004, the Office distributed royalties totaling \$154,109,550.93 in the following distributions:

- On October 23, 2003: two distributions totaling \$79,533,900.59 comprising distribution of the 1998 satellite royalties (\$18,368,179.26) to the Joint Sport and Program Suppliers claimant groups, and 50 percent of the 2001 cable royalties (\$61,165,721.33).
- On October 30, 2003: \$2,150,676.18 comprising the 2002 DART Copyright Owners Subfund and the Featured Artist Subfund.
- On December 4, 2003: two distributions totaling \$444,206.64 comprising the 2002 DART Nonfeatured Musicians (\$58,860.39) and Nonfeatured Vocalists Subfunds (\$30,831.64), and a final distribution to the Devotional Claimants (copyright owners of religious programming) of the 1998 cable royalties (\$354,514.61).
- On July 8, 2004: \$7,567,865.51 of 1997 cable royalties to Program Suppliers.
- On July 29, 2004: \$835,571.32 of the 2003 DART Featured Artist Subfund.
- On September 16, 2004: \$63,577,330.69 comprising 50 percent of the 2002 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 shown in calendar year statements are therefore not the same as the fiscal year total. Calendar year 2003 financial statements are included in the appendices.

Copyright Arbitration Royalty Panels (CARP)

During Fiscal Year 2004, the Copyright Office administered five CARP proceedings — three rate adjustment proceedings and two distribution proceedings. The rate adjustment proceedings involved setting rates and terms for the section 114 license for the digital performance right in sound recordings and the section

112 statutory license for the making of ephemeral recordings to facilitate these transmissions.

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

Copyright Arbitration Royalty Panels (CARP)

CARPs set and adjust royalty rates, set terms and conditions of payment, and 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. A CARP panel consists of three arbitrators. CARP proceedings are divided into two phases. The first phase is the 45-day discovery period during which the parties exchange their documentation and evidence in support of their cases, in preparation for the hearings before a CARP. The second phase is the CARP proceeding itself, including the presentation of evidence. 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 substitutes his own determination within a specified time period.

Below is a summary of the proceedings conducted this fiscal year and updates on prior-year distribution proceedings not yet concluded.

Rate Adjustments

Public Performance of Sound Recordings:

Docket Numbers 2002-1 CARP DTRA3 and 2001-2 CARP DTNSRA

In 2002, the Copyright Office began two proceedings to set rates and payment terms for the statutory licenses governing the reproduction and public performance of sound recordings by means of digital audio transmissions. The first proceeding was to establish rates and terms for services making nonsubscription transmissions, while the second proceeding was to perform the same function for new subscription services. Because both proceedings shared common issues and parties, the proceedings were consolidated in Fiscal Year 2003.

Parties who were then part of the consolidated proceeding negotiated a series of industry-wide agreements that proposed rates and terms for the 2003–2004 license period that would cover the various categories of users. These proposals were submitted to the Copyright Office for publication and comment. In response to the publication of these proposals, four parties who had not previously identified their interest

in these proceedings filed comments with the Office objecting to certain provisions in the proposals. These differences, however, were eventually resolved through further

negotiations, and the objections were withdrawn. Because no controversies remained, the Librarian published a final rule on February 6, 2004, adopting the rates and terms previously published for the license period beginning January 1, 2003, and ending December 31, 2004.

Digital Performance Right in Sound Recordings:

Docket Number 2002-1 CARP DORA 4

The copyright law requires that rates and payment terms for the statutory licenses governing the reproduction and public performance of sound recordings by means of digital audio transmissions be reconsidered every two years. Accordingly, the Copyright Office published a *Federal Register* notice in January 2004 announcing the initiation of a new proceeding to adjust the rates and terms of payment for the 2005–2006 license period. The first six months of the proceeding are set aside for negotiations among representatives of the interested parties. To date, interested parties have reached settlements concerning rates and terms applicable to eligible nonsubscription services, small commercial webcasters, and noncommercial webcasters for the new license period, but two groups who operate under the statutory licenses have yet to reach agreement with the copyright owners of the sound recordings. In accordance with the statute, the proposed rates and terms may be adopted once they have been published for comment provided that no party with a significant interest files an objection. However, at the close of Fiscal Year 2004, publication of the submitted proposals had not yet occurred.

Webcasting: Docket Number 2000-9 CARP DTRA1&2

In 2002, the Librarian of Congress issued his first decision setting rates and terms for the two statutory licenses in sections 112 and 114 that allow for the ephemeral reproduction and the public performance of sound recordings by means of digital audio transmissions (webcasting). This determination covered the initial license period, beginning October 28, 1998, through the second period ending on December 31, 2002. This decision is the subject of a number of appeals pending before the United States Court of Appeals for the District of Columbia Circuit filed by the Recording Industry Association of America, the American Federation of Television and Radio Artists, the American Federation of Musicians, Salem Communications, the National Religious Broadcasters Music License Committee, and five nonparty interveners. Oral argument in this case is scheduled for October 13, 2004.

Distribution Proceedings

1997 Cable Royalty Fees: Docket Number 2000-2 CARP CD 93-9

As reported in the Annual Reports for Fiscal Years 2002 and 2003, the Motion Picture Association of America, Inc., and the Independent Producers Group each filed petitions with the United States Court of Appeals for the District of Columbia Circuit to review the Librarian of Congress's December 26, 2001, decision to reject both the initial and revised recommendations of the CARP, which had been 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 Year 2004, the parties settled their dispute. As part of the settlement, it was agreed that the Librarian's December 26, 2001, order would be vacated. On April 21, 2004, the Court of Appeals dismissed the actions. To facilitate the settlement, the Librarian issued an order vacating as moot his December 26, 2001, order as well as the initial and revised CARP reports. On April 30, 2004, the Office published a notice officially terminating the proceeding. (69 FR 23821, April 30, 2004).

1998 and 1999 Cable Royalty Fees: Docket Number 2001-8 CARP CD 98-99

On January 26, 2004, the Librarian of Congress, upon the recommendation of the Register of Copyrights, issued a final determination setting forth the distribution of royalty fees collected under the section 111 cable compulsory license for Calendar Years 1998 and 1999. The Librarian accepted in full the report of the CARP that divided the royalties among the following claimant groups representing various categories of copyright owners: Program Suppliers (movies and syndicated series); Joint Sports Claimants (sports programming); the National Association of Broadcasters (commercial broadcast programming); the Public Broadcasting Service (noncommercial broadcast programming); Devotional Claimants (religious programming); and Canadian Claimants (programming produced by Canadian copyright owners). The Motion Picture Association of America, on behalf of the Program Supplier category, has appealed the Librarian's decision to the U.S. Court of Appeals for the District of Columbia Circuit. On July 23, 2004, the court issued an order setting forth a briefing schedule for this appeal.

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 Calendar Year 2003 under the terms of the compulsory licenses for cable and satellite, and the DART statutory obligation.

In January and February 2004, the Office received 71 claims for DART royalty fees. In July 2004, it received 630 claims for cable royalty fees and 300 claims for satellite royalty fees.

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

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

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 Year 2004 included the following:

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

The Copyright Office completed 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.

During Fiscal Year 2003, the Office published a Notice of Inquiry in the *Federal Register* requesting that those who wished to do so could propose a particular class of works where noninfringing uses had been, or were likely to be in the next three years, adversely affected as a result of the prohibition on circumvention.

The Office received comments that proposed 83 exemptions to the prohibition and more than three hundred reply comments supporting or opposing those proposed exemptions. The Office held several days of hearings in Washington, DC, and Los Angeles, California, and sent follow-up questions to a number of the witnesses requesting additional clarification for the record.

On October 28, 2003, the Librarian of Congress, on the recommendation of the Register of Copyrights, announced the classes of works subject to the exemption from

the prohibition against circumvention of technological measures that control access to copyrighted works. The four classes of works exempted were:

- (1) Compilations consisting of lists of Internet locations blocked by commercially marketed filtering software applications that are intended to prevent access to domains, websites, or portions of websites, but not including lists of Internet locations blocked by software applications that operate exclusively to protect against damage to a computer or computer network or lists of Internet locations blocked by software applications that operate exclusively to prevent receipt of email.
- (2) Computer programs protected by dongles (security or copy protection devices for commercial microcomputer programs) that prevent access due to malfunction or damage and which are obsolete.
- (3) Computer programs and video games distributed in formats that have become obsolete and that require the original media or hardware as a condition of access. A format is considered obsolete if the machine or system necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.
- (4) Literary works distributed in e-book format when all existing e-book editions of the work (including digital text editions made available by authorized entities) contain access controls that prevent the enabling of the e-book's read-aloud function and that prevent the enabling of screen readers to render the text into a specialized format.

Anticircumvention Rulemaking

As part of the Digital Millennium Copyright Act, Congress prohibited the circumvention of access controls placed on works by copyright owners. By protecting access to works, Congress sought to encourage copyright owners to make their works available online in new and varied ways to benefit the public. Access entails authorized entry into a work as distinct from various protected uses. Because there were concerns that this new prohibition might adversely affect noninfringing uses of works in unforeseeable ways, Congress created a recurring rulemaking proceeding to monitor the marketplace every three years. As a result of the rulemaking, the Register of Copyrights is required to make a recommendation to the Librarian of Congress on whether any particular classes of works should be exempted from the general prohibition on circumvention for the ensuing three-year period.

These exemptions will remain in effect through October 27, 2006.

Adoption of Regulations Governing Legal Processes

On February 23, 2004, the Copyright Office published in the *Federal Register* a notice seeking comment on a proposed new rule to govern various legal processes, including service of process upon the Office, requests for production of documents, and requests for testimony by Office personnel. Because the Office had previously operated without any centralized processing mechanism or a published regulation addressing this topic, requests requiring timely responses were frequently misdelivered. The proposed rule sought to make the process more efficient and effective by providing comprehensive guidelines for the Office and its employees, outside agencies, and other persons regarding the appropriate procedures.

In crafting its proposed rule, the Office consulted with the Department of Justice and evaluated similar rules in other federal agencies. The Office received and considered one comment.

On June 30, 2004, the Office published an announcement that it was adopting the proposed rules substantively as published, and that the new rules would be effective July 30, 2004. Since then, representatives of the Office of the General Counsel have worked with the operating divisions to ensure the Copyright Office staff's adherence to the new rules.

Request for Reconsideration Rulemaking

On July 13, 2004, the Copyright Office proposed a regulation to govern an applicant's request that the Office reconsider its decision to refuse an application for copyright registration. With a few modifications, this notice of proposed rulemaking incorporates the procedures the Office implemented in 1995.

Applicants for registration have two sequential opportunities to seek reconsideration of a Copyright Office decision to refuse registration. At the first level of reconsideration, the Copyright Office's Examining Division will review its initial decision to refuse registration. If not satisfied with that response, the applicant can file for the second level of reconsideration, at which time the Review Board will review the refusal to register the subject work. The proposed regulation provides that the Register of Copyrights, the General Counsel, and the Chief of the Examining Division, or their respective designees, constitute the Review Board.

The notice of proposed rulemaking would codify these procedures in the *Code of Federal Regulations*, as well as address applicable deadlines and mail and hand-

delivery requirements. It would clarify that the procedures for reconsideration also apply to the Office's refusals to register mask works and vessel hull designs. The name of the Copyright Office "Board of Appeals" would change to the "Review Board." The Copyright Office received no comments from the public regarding the proposed rulemaking by the September 13, 2004, deadline for initial comments.

Acquiring Materials for the Library of Congress

Best Edition

Works deposited with the Copyright Office constitute a significant portion of Library of Congress collections. The Copyright Office's regulations specify the acceptable form for a mandatory deposit, as well as the deposit requirements for copies and phonorecords deposited in connection with registration of claims to copyright. Where more than one edition has been published, the best edition is the one that best meets the Library of Congress's collection needs. In general, the Library is entitled to receive two best edition copies or phonorecords of works published in the United States regardless of the quantity or quality of other U.S. editions that may also have been published before the time of deposit. When the deposit requirement for a particular work has been met under section 407, the Library cannot claim deposit of future editions unless they represent newly copyrightable works under section 103.

Motion Pictures

In matters relating to the best edition requirement, owners of published motion pictures must also submit copies of their works for the Library of Congress to use and include in its collections. Copyright owners may satisfy this mandatory deposit requirement concurrently with filing an application for copyright registration. On February 26, 2004, the Copyright Office issued a final rule to amend the guidelines for "best edition" of published motion pictures. This rule accounts for recent technological developments and clarifies the requirements. There are two significant changes to the best edition statement. One is that 70-millimeter positive print is added as the most desirable film format where the original production negative size is greater than 35 millimeters. The other is that the DVD format has been added to the list of acceptable video formats. The Office issued the rules with a request for comments that were due by March 29, 2004. Since the Copyright Office received no comments, the rule became

effective on April 26, 2004. One film, *NASCAR 3D: The Imax Experience*, has already been deposited under this new film preference.

Audio and Audiovisual Transmissions

At the time Congress considered the 1976 Copyright Act, it recognized the need for the Library to acquire for its collections, in addition to published works, certain widely disseminated, unpublished works, namely radio and television programs. To that end, Congress enacted the American Television and Radio Archives Act (ATRA Act) to enable the Library of Congress to collect both published and unpublished transmission programs of “public or cultural interest, historical significance, cognitive value, or otherwise worthy of preservation” (Transitional and Supplementary Provisions of the Copyright Act of 1976, §113(a)(1)). The ATRA Act authorizes the Librarian of Congress to reproduce, compile, and distribute television and radio transmission programs of regularly scheduled newscasts and on-the-spot coverage of news events under certain circumstances. On July 1, 2004, the Library’s Office of the General Counsel issued enabling regulations prescribing terms and conditions under which such reproduction, compilation, and distribution may occur (LCR 321-10, 69 FR 39837, July 1, 2004).

The Register of Copyrights is charged, under section 407(e) of the Copyright Act, with establishing regulations to govern the recording and acquiring by other means of unpublished audio and audiovisual transmission programs to enable the Library further to augment its collection of transmissions to the public. On August 5, 2004, the Copyright Office published a Notice of Proposed Rulemaking on Library Recording of Audio and Audiovisual Transmission Programs (69 FR 47396, August 5, 2004). This notice proposed the amendment of existing Copyright Office regulations to broaden the scope of the types of unpublished transmission programs the Library of Congress is authorized to acquire. Under the proposed regulation, the Library may record fixed, unpublished radio, cable, and satellite television programs as well as unpublished Internet transmission programs that have been fixed in a copy or phonorecord. The Copyright Office regulations already provide for the Library to obtain copies of unpublished television transmission programs, either by recording fixations or by demanding copies in the form of a transfer, loan, or sale at cost. The revised regulation makes similar provisions for radio transmission programs and includes programs made available by digital communications networks such as the Internet.

The proposed regulation would establish a presumption that radio programs are unpublished and are fixed simultaneously with transmission. The presumption of nonpublication regarding radio programs is based on empirical Copyright Office experience, factual information from surveys conducted in the Office, and surveys of databases covering registered works. The proposed regulation would provide a procedure for any copyright owner whose work is recorded to overcome the presumption of nonpublication.

Announcement about Mail Delivery

Consistent with the latest developments for screening materials that come to congressional offices and the Library of Congress, the Copyright Office published in the *Federal Register* new procedures for delivering materials to this Office. On December 16, 2003, it announced that effective December 29, 2003, the Library of Congress, including the Copyright Office, would no longer accept on-site deliveries from nongovernmental, in-person, commercial couriers or messengers. Instead, such deliveries will be directed to the Congressional Courier Acceptance Site for screening. These procedures do not apply to large commercial carriers such as Federal Express or United Parcel Service, which will continue to deliver to the off-site mail facility.

On February 4, 2004, the Office announced that effective February 9, 2004, all hand deliveries from private parties intended for the Copyright Office General Counsel, including all comments in rulemaking proceedings, all filings in a Copyright Arbitration Royalty Panel (CARP) proceeding, and all litigation-related materials, must be delivered to the Public Information Office (PIO) located in room 401 of the James Madison Memorial Building (LM-401). This announcement emphasized that such documents still needed to contain “Office of the General Counsel, U.S. Copyright Office” in the address for PIO to route the material properly.

Notice and Recordkeeping under Statutory Licenses

On March 11, 2004, the Copyright Office issued an interim regulation specifying the records that services, such as webcasters and retransmitters of broadcast radio stations, must maintain with respect to their use of copyrighted sound recordings on the Internet pursuant to the compulsory licenses provided by sections 112 and 114 of

the Copyright Act. In addition, the interim regulation set forth the requirements for the notification that a service must give to sound recording copyright owners of the service's intention to make use of the compulsory licenses. The purpose of the notice and recordkeeping interim regulation is to provide the designated agent that collects the statutory royalties with sufficient information to determine how those royalties are to be divided among copyright owners.

Those interim regulations, however, apply only prospectively to the use of sound recordings commencing during the second calendar quarter of 2004, leaving unanswered the question of what records must be maintained for the use of sound recordings for the "historic period" from October 28, 1998 (the date the statutory licenses first became available for services other than preexisting subscription services) to March 31, 2004.

On October 8, 2003, the Office published a notice of inquiry seeking public comment on the form and content that such regulations should take in light of the fact that few records had been kept. The submitted comments confirmed that data for the historic period simply did not exist to any meaningful degree. The commenters suggested the use of a proxy in lieu of reporting requirements for the historic period. The proxy most favored by the commenters was the data that preexisting subscription services had provided to SoundExchange (the designated agent responsible for distributing royalties to copyright owners and performers) in accordance with the notice and recordkeeping requirements imposed for transmissions made under 17 U.S.C. §114(f). The Office agreed that the data provided by preexisting subscription services for the corresponding period would be the most appropriate proxy. The Office received no comments opposing the proposed amendment to allow for the use of this proxy, and published the final rule at the end of Fiscal Year 2004. The Office expects to issue future regulations regarding the acceptable formats for maintaining and transmitting electronic records about the use of sound recordings.

Compulsory License for Making and Distributing Phonorecords, Including Digital Phonorecord Deliveries

Section 115 of the Copyright Act offers a statutory license to make and distribute phonorecords of a nondramatic musical work once authorized phonorecords of that work have been distributed to the public in the United States. Under the terms of this

license, licensees must adhere to notice and recordkeeping regulations issued by the Copyright Office. The rules as originally adopted required a licensee to serve a separate notice directly on the copyright owner for each work the licensee intended to use. Although somewhat cumbersome, these rules served the needs of those who made and distributed physical phonorecords.

In 1995, however, Congress amended the scope of the section 115 license to include the distribution of a phonorecord of a nondramatic musical work by means of a digital phonorecord delivery. Concomitantly, the Office amended its notice and recordkeeping regulations to reflect the change in the law, but these initial changes did not go far enough to address the needs of certain digital music providers that anticipated using most, if not all, of the musical recordings embodied in the sound recordings currently on the market. Consequently, the Office again considered amendments to its regulations and, on June 22, 2004, adopted final rules to address the needs of both the copyright owner and the user in a digital environment. In addition to minor changes to the fee structure for filing notices with the Copyright Office, the new rules now allow a licensee to serve notice on either the copyright owner or an authorized agent of the copyright owner, to list multiple titles in a single notice, to use an address other than the one listed in the public records of the Copyright Office, and to submit the notice electronically.

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

To reflect the change in the Consumer Price Index, the Copyright Office each year adjusts the 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, Broadcast Music, Inc., and SESAC, Inc. On December 1, 2003, the Office published the new rates, adjusting for a 2 percent cost of living increase. The revised rates became effective on January 1, 2004.

Waiver of Regulation for Filing Claims to Cable, Satellite, and DART Royalty Fees

Copyright owners must file claims with the Copyright Office each year to receive a portion of the royalties collected the preceding calendar year under 17 U.S.C. §111, §119, and Chapter 10. The Office's regulations require that a claimant either mail or hand-deliver the claim to the Office of the General Counsel during the prescribed filing period. In Fiscal Year 2002, the Copyright Office waived its mailing requirement and offered several additional means for delivering a cable, satellite, or DART claim. The Office took this action in response to a severe disruption of mail delivery caused by the threat of anthrax-contaminated mail.

By Fiscal Year 2003, mail delivery to the Office had resumed. However, incoming mail continued to be irradiated and diverted to an off-site location for screening. Because this procedure resulted in delays, the Copyright Office again waived its mailing requirement.

These delays in mail delivery continued into Fiscal Year 2004, requiring the Copyright Office once again to waive its mailing requirement and to offer additional means for delivering a cable, satellite, or DART claim to the Office. Copyright owners were allowed to submit their claims on-line, or, in the case of the DART claims, via a facsimile submission.

[Docket numbers and dates of *Federal Register* documents issued during Fiscal Year 2004 are listed in an appendix of this report.]

REPORTS AND LEGISLATION

The Copyright Office provides reliable advice and 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 seven congressional hearings during Fiscal Year 2004. The subjects of these hearings were:

Before the Subcommittee on Courts, the Internet, and Intellectual Property of the House Committee on the Judiciary:

- The section 119 cable and satellite carrier statutory license on February 24, 2004 [related to the Satellite Home Viewer Extension and Reauthorization Act of 2004 (H.R. 4501)]
- The section 115 compulsory license on March 11, 2004
- Oversight of the operations of the U.S. Copyright Office on June 3, 2004
- The Family Movie Act of 2004 (H.R. 4586) on June 17, 2004
- Internet streaming of radio broadcasts on July 15, 2004, at which the General Counsel testified on the Register's behalf

Before the Senate Committee on the Judiciary:

- The Satellite Home Viewer Extension and Reauthorization Act of 2004 (S. 2013) on May 12, 2004, at which the General Counsel testified on the Register's behalf
- The Inducing Infringement of Copyrights Act of 2004 (S. 2560) on July 22, 2004

The Satellite Home Viewer Extension and Reauthorization Act of 2004

Section 119 of the Copyright Act currently makes a compulsory license available to satellite carriers who retransmit distant over-the-air television broadcast stations. However, this license will expire at the end of calendar year 2004. The Register of Copyrights testified on February 24, 2004, before the Subcommittee on Courts, the Internet, and Intellectual Property of the House Committee on the Judiciary, and the General Counsel testified before the Senate Judiciary Committee on May 12, 2004.

The Register and General Counsel testified in favor of a five-year reauthorization of the section 119 satellite license, which helps satellite providers deliver programming to millions of Americans and compensates the owners of the content of that programming.

The Register and General Counsel spoke in favor of harmonizing the examination requirements of the section 119 satellite license with the section 111 cable license. They noted that the Office has generally “opposed statutory licensing for copyrighted works,” preferring that licensing “be determined in the marketplace by copyright owners through the exercise of their exclusive rights.” However, as long as there is such a license for the cable industry, there should also be one for the satellite industry.

In addition, the Register supported amendments to the section 119 license, including excising outdated provisions. She also spoke in favor of congressional

recognition that the section 119 license applies to satellite carriers of over-the-air *digital* broadcast TV stations. This would protect local network broadcasters whose station is not provided by a satellite carrier from having their viewers watch another affiliate of the same network on their satellite TV service, rather than the local network affiliate.

The Senate's version of the legislation, S. 2013, was reported out of the Senate Judiciary Committee on June 17, 2004. The House version, H.R. 4518, was reported out of the House Judiciary Committee on September 7, 2004. The proposed legislation would extend the section 119 statutory licenses for an additional five years.

Section 115 Compulsory License

The section 115 compulsory license allows for the making and distribution of physical phonorecords and digital phonorecord deliveries. The United States is one of only two countries that have a compulsory license for these works.

On March 11, 2004, the Register of Copyrights testified before the Subcommittee on Courts, the Internet, and Intellectual Property in a hearing to examine whether the compulsory license for making and distributing phonorecords promotes or hinders the rollout of digital music services, especially those that offer digital downloads.

Her testimony focused on the inadequacies of the current licensing scheme to accommodate new business models in a digital marketplace, noting that the current law is cumbersome and expensive to utilize and lacks specificity with respect to its coverage.

Although the Register offered no concrete legislative solutions, she did suggest replacing the current statutory licensing scheme with a blanket collective licensing system similar to the one used by the performing rights organizations throughout the world. She noted that a collective licensing system allows a user to obtain a license for use of hundreds

Statutory Licenses Governing Over-the-Air Broadcast Signals

Cable Statutory License:

- *The section 111 license allows a cable system to retransmit both local and distant over-the-air radio and TV broadcast stations to its subscribers, who pay a fee for such service. This license is permanent.*

Satellite Statutory Licenses:

- *The section 119 license permits a satellite carrier to retransmit distant over-the-air TV broadcast stations (but not radio) to its subscribers for private home viewing. This license was set to expire at the end of 2004.*
- *The section 122 license permits satellite carriers to retransmit local over-the-air TV (but not radio) broadcast stations to their subscribers for commercial and private home viewing. This license is permanent.*

of thousands of songs, often with a single payment and without the administrative burdens placed upon a statutory licensee.

The Register recognized that other parties may favor different approaches, and proposed that the matter be studied further before settling upon a particular approach. The Register also identified other issues in her written testimony that merit serious consideration for legislative action, including clarification of the types of reproductions that fall within the scope of the license, expansion of the license to cover both reproductions and performances of musical works in the course of either digital phonorecord deliveries or transmissions of performances, establishment of a single entity to receive and disburse royalties collected under the section 115 license, and revision of the payment provisions to require quarterly payments rather than monthly payments.

In light of the issues raised during this hearing and the need for change voiced by the Register and the users of this license, the Chairmen and Ranking Members of the Judiciary Committee and its Subcommittee on Courts, the Internet, and Intellectual Property asked the Register to host a series of informal meetings during the summer with parties interested in discussing ways to modernize section 115. However, given the short time frame in which the meetings occurred, the parties were not able to agree upon any concrete legislative proposals. Nevertheless, the parties identified principal issues of concern and agreed that further discussions were needed in order to formulate a workable legislative solution.

The Family Movie Act of 2004

This bill would provide that the making of limited portions of audio or video content of a motion picture imperceptible by or for the possessor of an authorized copy of that motion picture for private use in a household is not an infringement as long as no fixed copy of the altered version of the movie is created.

This legislation was prompted by a lawsuit involving motion picture studios, directors, and companies that provide filtering software that skips past or mutes material in DVDs of motion pictures that some people may find objectionable. Studios and directors argued that the software violates the exclusive right to prepare derivative works (*i.e.*, changed versions). The Register testified on June 17, 2004, based on her understanding of the technology and how it worked, that there was no infringement of any copyright rights. Thus, legislation was neither necessary nor desirable.

The Family Movie Act of 2004 nevertheless passed the House of Representatives on September 28, 2004, as part of the Piracy Deterrence and Education Act of 2004 (H.R. 4077) (see page 32).

Internet Streaming of Radio Broadcasts

On July 15, 2004, the Subcommittee on Courts, the Internet, and Intellectual Property convened an oversight hearing to explore issues related to the streaming of copyrighted sound recordings over the Internet and to begin an examination of the potential impact of new technologies and devices, such as digital radio, upon the balance of interests embodied in the copyright law.

The General Counsel testified on behalf of the Office. He recounted the Office's recent experiences in administering the section 112 and 114 statutory licenses that allow a webcaster to stream music over the Internet. Specifically, he discussed the CARP proceeding that established the initial rates and payment terms for webcasters operating under a statutory license, the ongoing rulemaking proceeding to establish notice and recordkeeping requirements, and the rulemaking proceeding that concluded that simulcasts of AM/FM radio programs over the Internet are not exempt from the digital performance right.

The testimony also addressed issues associated with digital radio. While voicing strong support for the continued rollout of digital radio, the Office raised concerns about new digital radio recorders and computer software programs that are capable of making perfect, digital copies of sound recordings from over-the-air digital radio broadcasts. The testimony specifically noted that, should copying of digital radio broadcasts become commonplace, it would threaten legitimate record sales in the marketplace and disrupt the careful balance that Congress has already struck between the record industry and the purveyors of new digital technologies.

While the Office offered no discrete solutions to combat these specific dangers, it did recommend that Congress grant an exclusive and unlimited performance right to the copyright owners of sound recordings or, in the alternative, consider requiring use of new technological methods to prevent unlawful copying.

The Inducing Infringement of Copyrights Act of 2004

This bill would make intentional inducement of infringement unlawful. It is intended to permit enforcement against infringement to move from multiple lawsuits against

Peer-to-Peer Infringement

The underlying issue in peer-to-peer network piracy is so-called 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 that were 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. Grokster, Ltd. has shown, this decentralization makes it more difficult to pursue copyright violators in court.

individuals toward suits against the businesses such as peer-to-peer file-sharing services that are facilitating and profiting from the infringement.

At a hearing on July 22, 2004, the Register testified in support of this bill, because it improves the existing law of secondary liability for copyright infringement, although she stated that the bill solved only part of the problem. This area of the law is essential for effective copyright protection, but it has become confused as courts have struggled to apply the existing common law doctrines to the new peer-to-peer services, with conflicting results.

After the hearing, Senate sponsors of the bill asked the Register to meet with interested parties to discuss alternatives, evaluate whether such parties could reach a consensus on an approach to this legislation, and provide her recommendations to the Senators. After the parties failed to reach a consensus, the Register recommended an approach that she believed accommodated the legitimate concerns of all parties and would provide a basis for developing a consensus while meeting the goals expressed by the bill’s cosponsors. The Register’s recommended approach focused on the business model of the alleged infringer

and on the extent to which the alleged infringer relied on infringement to support the business, rather than focusing on the technology the defendant chose to employ. This approach would render the bill technologically neutral. However, despite lengthy discussions among interested parties, no further action was taken on the bill.

Other Legislation

Vessel Hull Design Protection Act Study

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

law required the United States Copyright Office and the United States Patent and Trademark Office to submit to Congress a joint report by November 1, 2003, on the Act's effectiveness.

The study specifically considered issues and questions posed by Congress, and gathered information via a request for public comment as well as by means of a public hearing. The report included, in part, the following findings and conclusions:

- Only “scant and anecdotal” evidence exists that the VHDPA suppresses infringement;
- The Copyright Office registered 156 claims to vessel hull protection between 1999 and 2003, which represents an unknown, but suspected small, percentage of the total new designs eligible for protection under the VHDPA;
- The extent to which the VHDPA has encouraged creation of new vessel hull designs is debatable;
- The effect that the VHDPA has had on the price of protected vessel hulls is unknown;
- The marine industry opposes a requirement for detailed engineering drawings and depictions of protected designs to be included with the registration application for fear of facilitating infringement;
- The present 10-year term of protection is not objectionable, although one witness suggested extending it to 15 years;
- Industry representatives expressed concern that Internet publication of their designs could facilitate infringement, although no one cited any actual example of infringement; and
- Publishing protected designs on the Internet is the best means of creating a publicly available record as required by the VHDPA.

Copyright Royalty and Distribution Reform Act of 2004 (H.R. 1417)

As passed in the House, this legislation would replace the Copyright Arbitration Royalty Panels (CARPs) with three full-time Copyright Royalty Judges (CRJs) whom the Librarian of Congress would appoint after consultation with the Register of Copyrights. The CRJs would set rates and terms for all statutory licenses except the satellite license, and would determine distributions of royalty fees collected by the Copyright Office for all licenses.

In the new program, the CRJs, as Library of Congress employees, would serve six-year renewable terms, funded through appropriations. As a result, cost would no longer be a barrier to participation in the process. This is in contrast to the current *ad hoc* CARP arbitrators who are funded by the participants. The intent of this legislation is to remove cost barriers to participation in the rate-setting process, ensure consistent decision making, and preserve institutional expertise.

The use of CRJs would also significantly change the process for adjusting royalty rates by requiring the CRJs to reconsider the rates and terms for the statutory licenses every five years, establish a new procedure for considering voluntary agreements that would set rates and terms applicable to all users, grant CRJs continuing jurisdiction to correct any technical or clerical errors or to modify any terms in response to unforeseen circumstances, establish new rules of discovery for rate setting proceedings, and allow (and, with respect to novel questions of copyright law, require) the CRJs to seek the interpretation of the Register of Copyrights on points of law.

The Copyright Royalty and Distribution Reform Act of 2004 (H.R. 1417) passed the House of Representatives on March 3, 2004. The Register of Copyrights had testified on the bill in April 2003. On September 29, 2004, the Senate Judiciary Committee approved the bill with some significant changes in the discovery procedures and a provision for review of final determinations of the CRJs by the Register of Copyrights for errors of law. The full Senate is expected to take up the bill early in Fiscal Year 2005.

Piracy Deterrence and Education Act of 2004 (H.R. 4077)

This Act passed the House of Representatives on September 28, 2004. It would amend the copyright law to provide for, among other things: (1) criminal penalties for unauthorized recording of motion pictures in a motion picture exhibition facility (e.g., a theater); (2) enhancement of the criminal and civil provisions with respect to “pre-release” works; and (3) removal of the copyright registration requirement as a prerequisite for the United States to file suit. On September 8, the House Judiciary Committee appended the Family Movie Act of 2004 (H.R. 4586) to this legislation (see page 28).

The Artists’ Rights and Theft Prevention Act (S. 1932)

This Act, which passed the Senate on June 25, 2004, would provide criminal penalties for unauthorized recording of motion pictures in a motion picture facility. It would

also create a new “preregistration” process in the Copyright Office for works being prepared for commercial distribution and provide criminal and civil penalties for the unauthorized distribution of such “pre-release” copyrighted works.

The Protection of Intellectual Rights Against Theft and Expropriation (PIRATE) Act (S. 2237)

This Act, which passed the Senate on June 25, 2004, would amend the copyright law to authorize the Attorney General to commence a civil action against anyone who violates section 506 of the Copyright Act. The proposed law would clarify that imposition of a civil penalty under this section does not preclude any other relief, including a criminal remedy. It also would direct the Attorney General to create training programs on intellectual property and to designate at least four U.S. Attorney’s Offices to implement this law.

The Enhancing Federal Obscenity Reporting and Copyright Enforcement Act of 2004 (S. 1933)

This Act was reported out of the Senate Judiciary Committee on May 20, 2004. It addresses the effect of harmless errors in a certificate of copyright registration, the computation of statutory damages in cases involving compilations and derivative works, and the prosecutions of criminal copyright infringement by the Department of Justice.

The Database and Collections of Information Misappropriation Act of 2003 (H.R. 3261)

This bill 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.

The House Judiciary Committee approved this bill in January 2004, but the House Energy and Commerce Committee, to which it was subsequently referred, reported it unfavorably and approved a bill (H.R. 3872) taking another approach.

Digital Media Consumers' Rights Act (H.R. 107)

This legislation would, among other things, permit users to defeat a technological lock that controls access to and use of a copyrighted work if doing so would enable fair use and other noninfringing activities. The bill also would allow entities to traffic in devices or services that circumvent technological controls on access if such devices or services enabled noninfringing uses. It was referred to the House Committee on Energy and Commerce, which conducted a hearing but took no further action on the bill.

Public Domain Enhancement Act (H.R. 2601)

This Act would amend the copyright law to require the Register of Copyrights to charge a one dollar fee for maintaining the copyright in a published U.S. work commencing 50 years after the date of first publication or on December 31, 2004, whichever occurs later. Payment would be required every ten years thereafter. If the maintenance fee is not received within six months after the stated due date, copyright protection would be terminated.

The Benefit Authors without Limiting Advancement of Net Consumer Expectations (BALANCE) Act (H.R. 1066)

This Act focuses on fair use. It would allow first sale rights for online content and would provide for circumvention to enable fair use and meet consumer expectations.

Oversight of the Copyright Office

On June 3, 2004, the Register provided testimony on the Office's operations, reengineering program, policy and legal work, and Fiscal Year 2005 budget request. She highlighted the Office's significantly improved processing time for registrations and recordations, a feasibility study for converting hardcopy records to digital format, the steady progress on all reengineering fronts, assistance in the drafting of a WIPO-proposed treaty text on the protection of broadcasting organizations, the decisions in the second section 1201 rulemaking, the funding request for construction of a new depository facility at Fort Meade, and the costs of CARP reform legislation (H.R. 1417).

INTERNATIONAL ACTIVITIES

The Copyright Office undertakes international copyright activities 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 worldwide.

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 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 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 to enforce their provisions. Such training is in the areas of awareness of international standards and the U.S. legal and regulatory environment; U.S. copyright law; legal reform; and statutory drafting assistance.

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 participated in numerous multilateral, regional, and bilateral negotiations in Fiscal Year 2004. Office staff formed part of the U.S. delegation in meetings of the WIPO Standing Committee on Copyright and Related Rights, which considered issues relating to a possible treaty on the protection of broadcasting organizations, as well as a meeting of the WIPO Ad Hoc Committee on Enforcement and an *ad hoc* informal meeting regarding the Protection of Audiovisual Performers. The Copyright Office also participated in the meetings of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore.

Staff were instrumental in the drafting and negotiation of the intellectual property provisions of bilateral Free Trade Agreements recently signed between the United States



Participants in the March 2004 International Copyright Institute gather in the Madison Building mezzanine.

and Australia, Bahrain, a group of Central American nations and the Dominican Republic, Morocco, Panama, and Thailand. Staff were also involved in ongoing negotiation of agreements with a group of Andean nations and the South African Customs Union, and work on the Free Trade Agreement of the Americas.

The Office actively participated in the U.S.

delegation to the World Summit on the Information Society, the first phase of which was held in Geneva in December 2003. The second phase of the Summit is to be held in Tunis in 2005.

Staff continued to participate in 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.

The Office also actively participated in numerous additional bilateral negotiations and consultations during the year, including those held with Brazil, China (the People's Republic of China), the Dominican Republic, Germany, India, Japan, Korea, Kuwait, Mexico, Pakistan, Paraguay, the Philippines, Poland, Qatar, Russia, South Korea, Sri

Lanka, Taiwan (Republic of China), Thailand, Ukraine, and the United Arab Emirates, among others, on issues ranging from enforcement to copyright law revision.

For the USTR, the Office provided assistance to nations such as Algeria, Andorra, Azerbaijan, Bahamas, Belarus, Bhutan, Bosnia Herzegovina, Cape Verde, Ethiopia, Kazakhstan, the Lao People's Democratic Republic, the Lebanese Republic, the Russian Federation, Samoa, Saudi Arabia, Serbia and Montenegro, the Seychelles, Sudan, Tajikistan, Tonga, Ukraine, Uzbekistan, Vietnam, and Yemen in their World Trade Organization (WTO) accession processes and provided responses regarding U.S. copyright law and policy to the WTO Trade Policy Review queries.

The Copyright Office participated in March 2004 on the interagency Special 301 Committee that 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 the U.S. government uses to improve global protection for U.S. authors, inventors, and other holders of intellectual property rights.

The Register participated in a number of symposia and conferences outside the United States, including programs in Canada, Ireland, Germany, and Mexico.

In March 2004, the Register visited Hong Kong to participate as the expert from the United States in a world-wide symposium sponsored by WIPO and the Hong Kong Intellectual Property Office on Copyright in Educational Institutions and Libraries. She presented two papers, one titled "Copyright Protection Systems and Digital Rights Management: Exceptions for Educational Institutions and Libraries," and another titled "Internet and Digital Licenses for Educational Institutions and Libraries."

At the behest of the U.S. Department of State, the Register visited Chile and Uruguay in May 2004. In Santiago, Chile, the Minister of Culture invited her to speak at a two-day conference on copyright. She also spoke to professors in higher education, teachers, and librarians at the Chilean Library of Congress in Valparaiso, and to students, faculty, and the public at the University of Chile law school. The Register met with a committee of Chilean senators who focus on intellectual property, a member of the House of Representatives, government officials who deal with criminal enforcement of copyright, and various copyright owner groups. She then visited Montevideo, Uruguay, where she met with a senator who championed recent copyright amendments. She gave a two-hour presentation at a program sponsored by the Uruguayan Copyright Society and the U.S. Embassy. In both countries, interviews and press conferences resulted in significant newspaper features.

The Office also participated in symposia and conferences in Egypt and Belgium on digital copyright issues, Italy on audiovisual works and digital copyrights, Washington, DC, on China copyright issues, and the European Union symposium on copyright and creativity in Ireland.

The Office, through its International Copyright Institute (ICI), hosted two symposia during the year. The first, on March 8 through 12, 2004, for a 14-member delegation from the People's Republic of China, was titled "The Effect of Technology on the Protection of Copyright and Related Rights." China is a focus for copyright education to improve compliance with international copyright obligations. The second was a five-day international symposium on May 3 through 7, 2004, co-sponsored with WIPO, for representatives from 17 developing countries and countries in transition titled "Emerging Issues in Copyright and Related Rights for Developing Countries and Countries in Transition."

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 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 Office was involved in several cases where the Office was a party, and it continued to respond to requests for assistance from the Department of Justice relating to copyright litigation.

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

As reported in Fiscal Year 2003, in these cases the Copyright Office defended its rejection of cable and satellite claims filed by Metro-Goldwyn-Mayer Studios, Inc. (MGM) and Universal City Studios, LLP (Universal) respectively for their shares of compulsory royalty fees collected in year 2000 on the basis of the studios' failure to file their claims on a timely basis in accordance with the Office's regulations.

MGM and Universal each filed suits against the Register of Copyrights seeking judicial review of the Office's decision. Each studio claimed that the Register's decision was arbitrary, capricious, contrary to law, and a denial of due process. The Office moved to dismiss the cases or, in the alternative, for summary judgment. The Office argued that it had properly rejected the claims in accordance with the Office's regulations, 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. Oral argument in the MGM case occurred on December 1, 2003; the court denied Universal's request for oral argument because of the duplication of the issues and arguments in the two cases.

On March 24, 2004, the district court issued opinions in both cases granting the Register's motions for summary judgment and denying MGM's and Universal's cross-motions. The court found that in each case the Register's regulations regarding the timely filing of cable and satellite claims were a "model of clarity and brevity." Therefore, her application of these regulations to MGM's and Universal's claims was not arbitrary, capricious, or contrary to law. Similarly, the court found that MGM and Universal had been afforded an ample opportunity to be heard, and therefore were not denied due process. MGM and Universal each have appealed the decisions to the United States Court of Appeals for the District of Columbia Circuit.



The statue "The Contemplation of Justice" seated before the United States Supreme Court

Coach, Inc. v. Peters

Coach, a manufacturer of expensive leather and twill products such as purses and briefcases, filed a complaint in the Southern District of New York against the Register of Copyrights under the Administrative Procedure Act (APA). This suit constituted the first challenge to a refusal to register a work under the APA since the Office implemented its present system for reconsideration of a refusal. Coach alleged that the Copyright Office's refusal to register its signature "CC" fabric design was arbitrary and an abuse of discretion. The design was a simple arrangement of pairs of the letter "C" on a plain background, one version black on black, the other brown on tan.

Following oral argument on cross-motions for summary judgment, Judge Sprizzo announced that he was denying both motions without prejudice and putting the case on the suspense calendar, without prejudice to Coach's filing an infringement action against an alleged infringer, at which point the issues could be raised again.

Bonneville Broadcasting v. Peters

As reported in Fiscal Years 2001, 2002, and 2003, 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. In other words, the process of webcasting or streaming of broadcast signals is copyright infringement unless it is done with the copyright owners' permission or pursuant to the section 114 statutory license.

In 2003, the case was argued before the United States Court of Appeals for the Third Circuit. On October 17, 2003, the court upheld the United States District Court's decision, indicating that "the Copyright Office's arguments are persuasive."

Kahle v. Ashcroft

Plaintiff Kahle challenged the constitutionality of four copyright statutes: the 1976 Copyright Act, the Berne Convention Implementation Act, the Copyright Renewal Act of 1992, and the Sonny Bono Copyright Term Extension Act, arguing that among other things the removal of various formalities such as copyright notice and renewal violate

the First Amendment and the copyright clause of the Constitution. The Government has filed a motion to dismiss, which is scheduled to be heard in October 2004.

Luck's Music Library, Inc. v. Ashcroft and Peters

The plaintiffs brought a declaratory judgment action claiming that section 514 of the Uruguay Round Agreements Act, which restored copyrights in foreign works, violated the copyright clause of the Constitution and the First Amendment. The court granted the Government's motion to dismiss.

The court found that Congress did not overstep its bounds, because there was ample legislative precedent, starting with the very first Congress, for Congress to grant retroactive copyright protection for works in the public domain. The court concluded that the copyright restoration provision was consistent with the constitutional purpose to promote the progress of science, and that it did not run afoul of the copyright law's constitutional requirement of originality.

With respect to the First Amendment argument, the court rejected the plaintiffs' claim by relying on the Supreme Court's decision in *Eldred v. Ashcroft*, in which the court stated that while the "First Amendment protects the freedom to make one's own speech, it bears less heavily when speakers assert the right to make other people's speeches."

The plaintiffs have appealed this decision to the United States Court of Appeals for the District of Columbia.

Golan v. Ashcroft and Peters

This case challenges the Sonny Bono Copyright Term Extension Act and the restoration provisions of the Uruguay Round Agreements Act. The Uruguay Round Agreements Act claim is essentially the same as the one argued in *Luck's Music Library v. Ashcroft*.

The Government filed a motion to dismiss the complaint for failure to state a claim upon which relief may be granted. The court granted the motion to dismiss the claim challenging the Sonny Bono Copyright Term Extension Act, but denied the remainder of the motion. On September 2, 2004, the plaintiff filed a second amended complaint adding as a defendant Register of Copyrights Marybeth Peters. The defendants' motion for summary judgment is pending.

*Recording Industry Association of America, Inc. v.
Verizon Internet Services, Inc.*

Section 512(h) of the Copyright Act, added by the Digital Millennium Copyright Act, permits a copyright owner to obtain a subpoena directing an online service provider to identify an alleged infringer. Verizon challenged the applicability of section 512(h) to online service providers who act as “mere conduits” under section 512(a), and also objected to the applicability of section 512(h) on various constitutional grounds. The Government intervened in this action to defend the constitutionality of section 512(h). In December 2003, the U.S. Court of Appeals for the District of Columbia Circuit held that the subpoena provision of the Digital Millennium Copyright Act did not apply to section 512(a) service providers, and did not reach the constitutional issues.

*Recording Industry Association of America, Inc. v.
Charter Communications, Inc.*

The Recording Industry Association of America, Inc. (RIAA) sought an order to compel Charter Communications, an Internet service provider, to comply with subpoenas issued pursuant to 17 U.S.C. §512(h). On November 17, 2003, the United States District Court for the Eastern District of Missouri issued an order granting RIAA’s request. Charter appealed.

The Government has entered the case as intervener and *amicus curiae* to defend the applicability of section 512(h) to “mere conduit” online service providers covered by section 512(a) and to defend the constitutionality of section 512(h).

The Office also assisted the Department of Justice in a number of other, similar cases involving applicability of section 512(h) to “mere conduit” service providers covered by section 512(a).

321 Studios v. Metro-Goldwyn-Mayer Studios, Inc.

321 Studios, a manufacturer and distributor of software that decrypted and copied copyrighted content on DVDs, sued several motion picture studios for declaratory relief, seeking a declaration that it did not violate 17 U.S.C. §1201, part of the Digital Millennium Copyright Act of 1998, and that section 1201 is unconstitutional. The Government intervened to defend the constitutionality of section 1201. The district

court granted summary judgment against 321 Studios, holding that it had violated section 1201 and that section 1201 is constitutional.

Paramount Pictures Corp. v. 321 Studios

Motion picture studios not parties to *321 Studios v. Metro-Goldwyn-Mayer Studios, Inc.* sued 321 Studios for violation of 17 U.S.C. §1201. In defense, 321 Studios challenged the constitutionality of section 1201, and the Government intervened to defend the constitutionality of the Digital Millennium Copyright Act. The district court granted a preliminary injunction against 321 Studios' manufacture and distribution of its DVD-copying software. On September 10, 2004, 321 Studios withdrew its challenge, and the court dismissed the action with prejudice.

Cooper v. Library of Congress

The Copyright Office General Counsel assisted the U.S. Attorney's office for the District of Columbia in defending the Copyright Office in litigation filed by a federal prisoner alleging that the Office failed to register a collection of unpublished songs. Copyright Office records revealed that the Copyright Office received but returned plaintiff's submission due to plaintiff's failure to pay the associated fee. A motion to dismiss is currently pending.

508 Notices

Section 508 of the Copyright Act requires the clerks of the courts to send written notification to the Register of Copyrights of any action filed under the Copyright Act and of any final order or judgment issued thereon. The Office is collecting and reviewing data regarding the extent to which federal courts comply with section 508's requirements. The Office will use such data to determine what changes should be made to this section, including the possibility of permitting electronic filing of section 508 notices and the possibility of repealing the requirement. Staff attorneys will monitor the current practices for a one-year period, and plan to meet with the Administrative Office of the U.S. Courts to discuss any proposed changes.



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 provides copyright education to the public and responds to public information requests received by telephone, correspondence, or visits to the Office.

The Register and her senior staff spoke at more than fifty 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.

Of these speeches, the most significant was the Register's delivery of the 33rd annual Donald C. Brace Memorial Lecture to the Copyright Society of the U.S.A. on the topic of "Copyright Enters the Public Domain." Marybeth Peters is the third Register of Copyrights to deliver this prestigious address on domestic copyright issues.

The Copyright Office website continued to play a key role in disseminating information to the copyright community and to the general public. Nearly 20 million hits were logged during the year. This was a 25 percent increase over the previous year.

The public conducted 1.4 million searches of the Copyright Office registration database utilizing the Office website's search feature.

The Office's website received a new look to coincide with the January 1, 2004, introduction of the new Office seal, logo, and wordmark. The website displayed the new

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 records of copyright registrations and recorded documents from 1978 to the present.

Portions of the website and popular circulars are available in Spanish.

symbols along with new colors derived from those used in the Office's printed materials. The pages' appearance was also standardized, streamlined, and designed for faster loading.

The Office launched new Spanish language pages on its website, offering basic assistance with questions about the copyright law and completion of the copyright registration process. The pages, at www.copyright.gov/espanol, received approximately 130,000 hits during the year, reaching a growing and important audience of creators and users. The Library's Head of Workforce Diversity and staff of the Hispanic Division hailed the site as setting the standard for bilingual outreach at the Library of Congress.

The Copyright Office, with the Library's Office of Strategic Initiatives, launched the Copyright Records Project to determine the feasibility of digitizing millions of Copyright Office paper records from 1790 through 1977 by conducting an alternative business assessment and developing technical approaches for integrating the resulting

digital records with post-1977 records already in digital form. In 2004, the project researched and documented the various types of paper records, developed a strategy, and issued a Request for Information seeking expressions of interest. The Office selected four potential vendors to test their capabilities to digitize and index sample records.

In Fiscal Year 2004, the Office as a whole responded to 381,845 requests for direct reference services, including 71,907 email inquiries of all types.

The Office assisted more than 21,000 public visitors.

The Public Information Section assisted 10,394 members of the public in person, taking in 14,192 registration applications and 2,217 documents for recordation. The section answered 114,941 telephone inquiries, 8,064 letter requests, and 37,084 email requests for information from the public. Email requests to the Public Information Section were down just over ten percent, although email inquiries to the Office as a whole were only slightly lower than in 2003.

The Copyright Office provides a free electronic newsletter that alerts subscribers to hearings, deadlines for comments, new and proposed regulations, new publications, and other copyright-related subjects. The Office electronically published 30 issues of *NewsNet* during the year to 5,297 subscribers.

The Department of Health and Human Services selected the Copyright Office website as an example of a government site that meets user expectations with regard to navigation, content, and organization.

The staff newsletter, *Copyright Notices*, commemorated fifty years of publication. It remains an important resource on the current status and historical development of the Copyright Office.

In response to public requests, the Reference and Bibliography Section searched 14,318 titles and prepared 958 search reports (an increase of one-third). The increase in search report requests can be attributed to new features added to the Copyright Office website, including an online form for submitting search requests. In addition, the section received 9,303 telephone calls and assisted 9,848 visitors to the Copyright Card Catalog.

The Clerical Support Unit responded to 13,628 letter requests, 44,937 telephone requests, and 32,329 email requests from the public for forms and publications.

During the fiscal year, 366,842 deposits, constituting some 6,971 cubic feet, were processed for storage at the Deposit Copies Storage Unit in Landover, Maryland. This was an increase of over five percent from the volume processed in Fiscal Year 2003. The unit transferred 5,667 cubic feet of records, consisting of unpublished deposits and registration applications, to other remote off-site storage facilities. The unit met its performance goal of retrieving requested deposits within one business day.

Freedom of Information Act (FOIA)

The Office received and responded to 46 requests under the FOIA during the fiscal year.

Planned Storage Facility at Fort Meade

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.

Congress previously authorized Fiscal Year 2003 funds for a building design and preparation of construction documents for a copyright deposit facility at the site. The Fort Meade facility would provide long-term preservation of copyright deposits in environmentally optimum conditions with full security. All works deposited for copyright 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.

While during the previous year the Office focused on needs analysis and the creation of construction documents, the Office dedicated most of Fiscal Year 2004 to exploring alternative storage options at the request of Congress. The Office evaluated three alternative storage options in Kansas, Pennsylvania, and Virginia. After review and analysis, the Office determined that a new deposit storage facility at Fort Meade, specifically designed and constructed to meet the requirements of the Copyright Office, would be the most suitable facility and should be pursued.

The Office's attempt to secure funding for this project failed to receive congressional approval. The Office worked with the Architect of the Capitol, a private architectural firm, and others to scale back the initial construction requirements and to design a structure that could be built in phases as funds become available. The Office anticipates requesting partial funding in the Fiscal Year 2006 budget for redesign that accommodates phased construction of the facility.



Products featuring the Office's new logo and seal present a cohesive image to the public

Management

COPYRIGHT OFFICE IDENTITY PACKAGE

In January 2004, the Copyright Office implemented its new identity package with a new official seal and logo, bringing a fresh look to publications, circulars, forms, stationery, and the website. For the previous quarter century, the Office's logo had been a representation of a pen in a circle. The identity package is both restrained and contemporary, reflecting the Office's tradition of reliable service and its movement into the 21st century world of online delivery and digital technology.

REENGINEERING

The Copyright Office Reengineering Program, as detailed in previous reports, proceeded on schedule, continuing its 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 Years 2001–2003, the Office developed process redesign recommendations and drafted procedures manuals for seven process areas: register claims, record documents, acquire deposits, answer requests, receive mail, maintain accounts, and process licenses.

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 Year 2004 continued to focus on the three fronts that support reengineered processes: organization, information technology, and facilities.

The Reengineering Program Office (RPO) coordinates reengineering through an integrated implementation plan. The Office has a coordinator for each front who monitors and tracks program-related risks, issues, and change requests. The Reengineering Program is scheduled for completion in Fiscal Year 2007.

Because the three fronts are interconnected, the Office plans to implement them together, switching over in a single phase. A single phase is required for two principal reasons: the new processes cannot go into production until all organization, information technology, and facilities work has been completed; and the Office must continue to provide uninterrupted public services before and during the switchover.

Organization

To implement its new processes, the Office will reorganize, and in some cases realign, its divisions and modify many of its individual personnel position descriptions.

In Fiscal Year 2004, the RPO further evaluated the proposed reorganization package and extensively revised or rewrote 186 position descriptions.

In 2004, the RPO began the process to hire a Training Officer to implement the reengineering training plan. The initial implementation of the training plan began with a four-hour change management course for the Reengineering Program Office and top managers. The training objectives were to:

- Identify historical success factors for change
- Understand the potential responses to change
- Promote the success of the change

After evaluation, the course was modified in preparation for offering it in the succeeding months to all managers and supervisors and then to staff.

Information Technology (IT)

In 2003, the Office selected SRA International, Inc., of Fairfax, Virginia, to design and develop its new systems infrastructure to integrate the functions currently performed

by six nonintegrated major IT systems and dozens of smaller ones. 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 IT project will implement a new systems infrastructure to support the seven reengineered business processes and the nonreengineered processes in the Office of the Register, Office of the General Counsel, Office of Policy and International Affairs, Copyright Technology Office, Administrative Services Office, and the Publications Section of the Information and Reference Division.

The new IT system will enable the Office to provide its services to the public online in a timely manner and manage its internal processes through a centralized case management system. Users of Copyright Office services will be able to check the status of in-process service requests, supply additional information, and resolve discrepancies. Key features of the system include:

- electronic submission of service requests, Web payment, and submission of certain types of deposited works as electronic files;
- imaging of paper materials upon receipt;
- optical character recognition (OCR) to capture certain data from image files;
- integrated access to information across departmental boundaries;
- data import and export from other Library of Congress systems and external databases and data extraction from service request records to begin catalog records and provide data sharing across the Office and Library catalog systems;
- tracking of physical deposits flowing through the business processes.

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 a new integrated system to permit primarily electronic processing of copyright services*

Facilities: *Reconfiguration of Copyright Office space so that space relationships support movement of work through the processes*

The copyright registration application process has primarily been paper-based, with the great majority of applications arriving in the mail. A main goal of the reengineering program is to obtain as many future copyright application forms electronically as possible. However, because some applicants will not have online access or may choose not to register online, the Office created a paper application form to replace existing forms. The application form can be scanned into the electronic workflow process, edited, examined, and cataloged online. The form has a new layout, headings, and instructions to make it easier for applicants to complete the form correctly, and it combines the most frequently used forms into a single application form.

Independent verification and validation (IV&V) is the process of having an outside review and validation of major deliverables at key points to help determine and mitigate risks before implementation. In July 2004, the Office selected NCI Information Systems, Inc. of Reston, Virginia, and their subcontractor CNSI of Rockville, Maryland, to perform independent testing and monitoring of the new IT system for quality, content, system security, and completeness.

The Office held regular meetings with users and developers and reviewed system development life cycle products including the Project Management Plan, the System Design Document, the System Test Plan, and the System Transition Plan. The Copyright Office Change Control Board, made up of the reengineering managers and front coordinators, reviewed changes in the IT requirements. Based on the refined requirements, SRA proceeded to configure and make some customization of the Siebel software with the goal of creating a pilot version suitable for processing motion picture claims and receiving electronic deposits of serials and monographs.

The system is being constructed in five “builds.” Build 1 included initial Siebel screen design and navigation. Build 2 includes the Receive Mail and Register Claim requirements and the receipt and processing of electronic deposits. This build laid the groundwork to begin pilot processing of motion picture claims starting in February 2005, incorporating Siebel case management, paper scanning via Captiva software, touch screen technology, and the creation of copyright cataloging records through a Siebel/Voyager interface. The pilot will also support receipt of electronic deposits.

Builds 3 through 5 will add functionality for the remaining processes and processing of electronic claims receipts. The present prototype system (see page 59) will be supplanted by the Siebel system, available through the new Copyright Office Web portal and business-to-government links for high volume remitters.

Implementation of the new system's full operating capability will occur in the last half of Fiscal Year 2007 upon completion of facilities renovation in the Library of Congress Madison Building.

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 new design will support the new organization and proposed workflow using existing space on portions of three levels in the Madison Building.

The design is intended to implement architectural improvements in the most efficient way and with the least disruption to work and to utilize space efficiently for adjacency and materials flow; create functional workspace with adequate furniture and lighting levels; create more secure facilities for in-process materials; consolidate public viewing areas; and provide an aesthetically pleasing work environment.

The planning, architecture, and engineering firm of Leo A Daly worked closely with the Copyright Office to plan and design the new configuration. After completing the programming as well as the blocking and stacking phases of facility design in Fiscal Year 2003, the Office continued with the final phases of facilities planning in Fiscal Year 2004: design development and space planning, development of construction documents, and furniture selection and specification. These final planning phases included development and refinement of cubicle and office furniture prototypes, space plans for all areas, selection of high-density shelving for certain storage areas, identification of shared electrical equipment, and development of the furniture schedule and tasks. The design development and space plans, including demolition drawings, partition drawings, general furniture layout, and power/electrical plans, were submitted to the Architect of the Capitol in April 2004.

The second phase of construction documents, including selection of new furniture and specifications, re-used and new furniture plans, millwork drawings and finish plans, is 95 percent complete. Staff have viewed and tested furniture mock-ups of prototype cubicles, and the Library ergonomic consultant has advised on the layout. The Library is developing a contract for furniture purchase.

The Library's Facility Services initiated recruitment for a project manager to oversee the redesign of Copyright Office facilities in the Madison Building.

In Fiscal Year 2006 and early Fiscal Year 2007, while the Copyright Office space in the Madison Building is reconfigured, the Office's operations will be carried out from an alternate site. The process of identifying this offsite rental space began during Fiscal Year 2004 with the assistance of the Library's infrastructure units working through GSA. The logistics of the move will be significant, given the Office's intention to move off site some 500 staff, their operational tools, and in-process work within a short time period. The Office began regular meetings with the Library's Integrated Support Services and Information Technology Services to resolve issues and prepare detailed plans for the

move to and from the off-site facility.



Three avenues of Copyright Office communication

Communications on Reengineering

The RPO involved stakeholders in the reengineering process and included Copyright Office management and staff at all levels on teams and committees. Communications with staff about reengineering implementation

were conducted through distribution of *ReNews* (the reengineering newsletter) and an email version called *ReNews Lite*; stakeholder meetings with staff and managers within the Office and in affected areas of Library of Congress service and support units; all-staff meetings and hallway chats; the posting of updates and information on a reengineering Intranet website; and articles distributed through *Copyright Notices*.

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 Year 2004, the Office conducted Vulnerability Assessments on its 23 management control modules. The Office decided to perform control reviews for four modules, which were completed by May 6, 2004. A single management letter finding was noted and corrected by July 2004.

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. Total Fiscal Year 2004 Copyright Office budget authority was \$48,042,513 with a full time equivalent (FTE) staff ceiling of 530.

The BASIC appropriation (\$41,699,513) funds the majority of the Office's activities. The Licensing budget activities (\$3,650,000) and the CARP budget activities (\$2,693,000) were fully funded from user fees withdrawn from royalty pools. The Office's BASIC fund received \$2.1 million in new net appropriations to support information technology systems development within the Reengineering Program.

These budgeted amounts included a 0.59 percent across-the-board rescission required by Congress in its Omnibus Appropriations Bill.

The total BASIC appropriation derives its funding from two revenue sources: net appropriations from the U.S. Treasury (\$18,516,107 in Fiscal Year 2004) and offsetting collections authority from user fees (\$23,183,406). At the end of the fiscal year, the Office had applied \$23,739,028 in user fees to the appropriation.

Investment Income from Deposit Accounts

In Fiscal Year 2004, the Office continued to invest deposit account holdings in U.S. securities. Deposit account holdings totaled about \$4,117,000. A total of \$38,732 in interest was earned from investments during the fiscal year.

SAFETY AND EMERGENCY PREPAREDNESS

The Copyright Office worked closely with OSEP on safety and emergency preparedness issues, including revising and shortening the Library's Consolidated Emergency Management Plan, revising the Employee Emergency Action Guide, preparing a



Emergency Evacuation Team members receive instructions

Shelter-in-Place plan, upgrading Internal Emergency Action Plans to comply with regulations, posting consistent exit maps, staffing Emergency Evacuation Teams, and conducting mini-drills.

SECURITY

Access Control, Intrusion Detection, and Video Monitoring

The Library continues to develop its electronic security systems library-wide.

An older system managed by the Architect

of the Capitol (AOC) is being replaced with a new system that will be managed by the Office of Security and Emergency Preparedness (OSEP). Card readers will be installed in fiscal year 2006 pending approval of OSEP's Fiscal Year 2006 budget request for funds to complete electronic security systems. Installation will coincide with the completion of the Copyright Office reengineering process and office-wide space redesign and reconfiguration. The electronic system will support access control, intrusion detection, and video monitoring in selected areas.

Security Tagging, Asset Marking, Bar Code Labeling

The Copyright Receipt, Analysis, and Control Center continued security tagging of book materials. The Library of Congress developed security tag specifications for video cassette formats. Security tags for other material formats have not been approved.

The Labeling Joint Implementation Team (LJIT), created in 2003 to oversee and manage the implementation of recommendations relating to labeling of Library and Copyright Office materials, appointed subgroups to

- identify workflow and schedules for preparing material for shipment to the new National Audiovisual Center at Culpeper, Virginia
- determine costs and submit a budget request
- develop specifications for software for in-house production of title labels and a serial shelving number label to reduce handwritten transcription
- develop administrative procedures for procuring, testing, and disseminating appropriate label stock, security devices, and containers
- determine specifications for vendor-produced item bar code accession labels and retrieval labels, an “edge” or property stamp to replace the LC Seal, and perforation equipment to mark microfilm

In preparation for Motion Picture, Broadcasting and Recorded Sound (MBRS) Division’s move to Culpeper and the upcoming Copyright Office motion picture pilot, one subgroup concentrated on the labeling of DVDs, videocassettes, motion picture film, and copyright descriptive material that accompanies motion picture deposits. The Copyright Office purchased new item bar code accession labels to be applied to these formats during the pilot.

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

Members of the Collection Security Oversight Committee along with OSEP completed the first round of Site Assistance Visits (SAVs) to all curatorial and processing divisions, including the Copyright Office. The purpose for the visits is to ensure adherence to established standards and security practices. The program has four objectives:

- strengthen the Library’s security
- enhance staff security awareness
- provide independent follow-up addressing control weaknesses identified by risk assessments in selected divisions

- address control weaknesses identified by the Office of Inspector General's March 29, 2002, audit of collections security

SAV reports were disseminated to the Chiefs of the divisions visited and to the Director of Security. Numerous improvements resulted: increased staff member display of identification badges, improved control of generic electronic access cards and keys, and decreased numbers of uncharged or improperly charged books.

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 Copyright Online Publication and Interactive Cataloging System (COPICS) on the Library's mainframe computer to create and provide access to the historical records of copyright ownership. 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 once the mainframe is retired in September 2005.

The Copyright Office worked with Library Services, the Catalog Distribution Service, and ITS to map Copyright Office record data fields to MARC 21 data fields and subfields. The Office prepared specifications for all existing record types, including monographs, serials, documents, and voluntary deposits. ITS used the specifications to convert a sample of existing records to enable staff to test the accuracy and consistency of conversion.

The Office and SRA collaborated in designing data migration for registered claims from the Siebel record into the Voyager database.

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 participants who meet current criteria.

Through CORDS, participants filed over 23,000 copyright applications electronically by sending applications and deposited works in digital form. The CORDS system facilitates the electronic processing of copyright registrations, including preparation by the applicants and work done by Copyright Office examiners and catalogers.

Copyright Office In-process System (COINS)

The Office completed the first full year of processing under the new COINS system. The Office identified changes and adjustments that were implemented in Release 2 of the system. In addition to tracking claims and all other fee service requests, the new system provides statistics on workload and processing status. All archived records were moved from the obsolete Data General computer to an adjunct Oracle database enabling users to search both current and closed records through Oracle, and enabling ITS to retire the Data General.

Copyright Imaging System (CIS)

The new imaging system completed its first full year of processing. The Office defined and implemented a number of improvements during the year, including faster release and validation of records.

Respectfully submitted to the Librarian of Congress by

MARYBETH PETERS

*Register of Copyrights and
Associate Librarian of Congress for Copyright Services*



Appendices and Tables

Register's Testimony to Congress

- Testimony before the Subcommittee on Courts, the Internet, and Intellectual Property of the House Committee on the Judiciary on the section 119 cable and satellite carrier statutory license (February 24, 2004)
- Testimony before the Subcommittee on Courts, the Internet, and Intellectual Property of the House Committee on the Judiciary on the section 115 compulsory license (March 11, 2004)
- Testimony delivered by the Copyright Office General Counsel on behalf of the Register before the Senate Judiciary Committee on the Satellite Home Viewer Act and the section 119 statutory license (May 12, 2004)
- Testimony before the Subcommittee on Courts, the Internet, and Intellectual Property of the House Committee on the Judiciary on oversight of the operations of the U.S. Copyright Office (June 3, 2004)
- Testimony before the Subcommittee on Courts, the Internet, and Intellectual Property of the House Committee on the Judiciary on the Family Movie Act of 2004 (H.R. 4586) (June 17, 2004)
- Testimony delivered by the Copyright Office General Counsel on behalf of the Register before the Subcommittee on Courts, the Internet, and Intellectual Property of the House Committee on the Judiciary on Internet streaming of radio broadcasts (July 15, 2004)
- Testimony before the Senate Committee on the Judiciary on the Intentional Inducement of Copyright Infringements Act of 2004 (S. 2560) (July 22, 2004)

Federal Register Documents Issued

- Determination of Reasonable Rates and Terms for Digital Performance of Sound Recordings by Preexisting Subscription Services (68 FR 57814, October 7, 2003)
- Notice and Recordkeeping for Use of Sound Recordings Under Statutory License (68 FR 58054, October 8, 2003)

- Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies (68 FR 62011, October 31, 2003)
- Cost of Living Adjustment for Performance of Musical Compositions by Colleges and Universities (68 FR 67045, December 1, 2003)
- Courier Mail, New procedure for courier deliveries (68 FR 70039, December 16, 2003)
- Notice of New Copyright Office Seal (68 FR 71171, December 22, 2003)
- Filing of Claims for DART Royalty Funds (68 FR 74481, December 24, 2003)
- Digital Performance Right in Sound Recordings and Ephemeral Recordings (69 FR 689, January 6, 2004)
- Distribution of 1998 and 1999 Cable Royalty Funds (68 FR 3606, January 26, 2004)
- Digital Performance Right in Sound Recordings and Ephemeral Recordings (69 FR 5196, February 3, 2004)
- Copyright Arbitration Royalty Panels; List of Arbitrators (69 FR 5370, February 4, 2004)
- New procedures for hand deliveries from private parties to Copyright Office General Counsel (69 FR 5371, February 4, 2004)
- Digital Performance Right in Sound Recordings and Ephemeral Recordings (69 FR 5693, February 6, 2004)
- Office Proposes Rules Governing Service of Process, Production of Office Documents, and Testimony of Employees (69 FR 8120, February 23, 2004)
- “Best Edition” of Published Motion Pictures for the Collections of the Library of Congress (69 FR 8821, February 26, 2004)
- Digital Performance Right in Sound Recordings and Ephemeral Recordings (69 FR 8822, February 26, 2004)
- Notice and Recordkeeping for Use of Sound Recordings Under Statutory License; Interim regulations (69 FR 11515, March 11, 2004)
- Compulsory License for Making and Distributing Phonorecords, Including Digital Phonorecord Deliveries; Notice of proposed rulemaking (69 FR 11566 March 11, 2004)
- Correction to Docket No. RM 2002-1E: Notice and Recordkeeping for Use of Sound Recordings Under Statutory License: Interim regulations (69 FR 13127, March 19, 2004)
- Distribution of 1993, 1994, 1995, 1996, and 1997 Cable Royalty Funds (69 FR 23821, April 30, 2004)
- Filing of Claims for Cable and Satellite Royalties (69 FR 30577, May 28, 2004)
- Compulsory License for Making and Distributing Phonorecords, Including Digital Phonorecord Deliveries (69 FR 34578, June 22, 2004)

- Communications With the Copyright Office: Change of Address (69 FR 39331, June 30, 2004)
- Service of Legal Process on the Copyright Office (69 FR 39333, June 30, 2004)
- Reconsideration of Refusal to Register; Notice of Proposed Rulemaking (69 FR 42004, July 13, 2004)
- Notice and Recordkeeping for Use of Sound Recordings Under Statutory License (69 FR 42007, July 13, 2004)
- Ascertainment of Controversy for the 2002 Cable Royalty Funds (69 FR 44548, July 26, 2004)
- Acquisition and Deposit of Unpublished Audio and Audiovisual Transmission Programs (69 FR 47396, August 5, 2004)
- Notice and Recordkeeping for Use of Sound Recordings Under Statutory License; Final rule (69 FR 58261, September 30, 2004)

[All testimony and *Federal Register* items are available at www.copyright.gov]

Registrations, 1790–2004

Date	Total	Date	Total	Date	Total	Date	Total
1790–1869	150,000 ¹	1904	104,431	1939	175,450	1974	372,832
1870	5,600	1905	114,747	1940	179,467	1975	401,274
1871	12,688	1906	118,799	1941	180,647	1976	410,969
1872	14,164	1907	124,814	1942	182,232	1976	108,762 ²
1873	15,352	1908	120,657	1943	160,789	1977	452,702
1874	16,283	1909	121,141	1944	169,269	1978	331,942
1875	16,194	1910	109,309	1945	178,848	1979	429,004
1876	15,392	1911	115,955	1946	202,144	1980	464,743
1877	16,082	1912	121,824	1947	230,215	1981	471,178
1878	16,290	1913	120,413	1948	238,121	1982	468,149
1879	18,528	1914	124,213	1949	201,190	1983	488,256
1880	20,993	1915	116,276	1950	210,564	1984	502,628
1881	21,256	1916	117,202	1951	200,354	1985	540,081 ³
1882	23,141	1917	112,561	1952	203,705	1986	561,208 ³
1883	25,892	1918	107,436	1953	218,506	1987	582,239 ³
1884	27,727	1919	113,771	1954	222,665	1988	565,801
1885	28,748	1920	127,342	1955	224,732	1989	619,543 ⁴
1886	31,638	1921	136,765	1956	224,908	1990	643,602
1887	35,467	1922	140,734	1957	225,807	1991	663,684
1888	38,907	1923	151,087	1958	238,935	1992	606,253
1889	41,297	1924	164,710	1959	241,735	1993	604,894
1890	43,098	1925	167,863	1960	243,926	1994	530,332
1891	49,197	1926	180,179	1961	247,014	1995	609,195
1892	54,741	1927	186,856	1962	254,776	1996	550,422
1893	58,957	1928	196,715	1963	264,845	1997	569,226
1894	62,764	1929	164,666	1964	278,987	1998	558,645
1895	67,578	1930	175,125	1965	293,617	1999	594,501
1896	72,482	1931	167,107	1966	286,866	2000	515,612
1897	75,035	1932	153,710	1967	294,406	2001	601,659
1898	75,634	1933	139,361	1968	303,451	2002	521,041
1899	81,416	1934	141,217	1969	301,258	2003	534,122
1900	95,573	1935	144,439	1970	316,466	2004	661,469
1901	93,299	1936	159,268	1971	329,696		
1902	93,891	1937	156,930	1972	344,574		
1903	99,122	1938	168,663	1973	353,648		
						Total	31,460,493

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.

3. The totals for 1985–1987 were corrected as of the FY 2004 annual report to include mask works registrations.

4. The total for 1989 was corrected as of the FY 2004 annual report to be consistent with the FY 1989 table of “Number of Registrations by Subject Matter.”

Number of Registrations by Subject Matter, Fiscal Year 2004

<i>Category of Material</i>	<i>Published</i>	<i>Unpublished</i>	<i>Total</i>
Nondramatic literary works:			
<i>Monographs and computer-related works</i>	158,134	69,352	227,486
<i>Serials:</i>			
Serials (non-group)	54,375	—	54,375
Group Daily Newspapers	3,287	—	3,287
Group Serials	10,616	—	10,616
Total literary works	226,412	69,352	295,764
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Works of the performing arts, including musical works, dramatic works, choreography and pantomimes, and motion pictures and filmstrips	59,037	111,475	170,512
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	63,223	44,552	107,775
Sound recordings	21,735	46,274	68,009
Total basic registrations	370,407	271,653	642,060
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Renewals			18,980
Mask work registrations			377
Vessel hull design registrations			52
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Grand total all registrations			661,469
Documents Recorded			14,979

Fee Receipts and Interest, Fiscal Year 2004

<i>Fees</i>	<i>Receipts recorded¹</i>
Fees for copyright registrations	\$18,295,704
Fees for mask works registrations	\$26,775
Fees for vessel hull design registrations	\$9,395
Fees for renewal registrations	\$1,030,632
Subtotal	\$19,362,506
<hr/>	
Fees for recordation of documents	\$1,728,380
Fees for certifications	\$226,273
Fees for searches	\$136,575
Fees for expedited services	\$1,875,989
Fees for other services	\$312,915
Subtotal	\$4,280,132
<hr/>	
Total fee receipts	\$23,642,638
Interest earned on Deposit Accounts	\$38,732
Fee receipts and interest applied to the Appropriation²	\$23,777,760

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 (\$23,739,028) and deposit account interest (\$38,732) that were cleared for deposit to the Copyright Office appropriation account during the fiscal year.

Estimated Value of Materials Transferred to the Library of Congress, Fiscal Year 2004

	<i>Registered works transferred to other Library departments</i>	<i>Non-registration works transferred to other Library departments</i>	<i>Total works transferred to other Library departments</i>	<i>Average Unit Price</i>	<i>Total value of works transferred to other Library departments</i>
Books¹	164,643	74,539	239,182		\$12,402,238
Ink Print	142,359	43,677	186,036	\$59.80	\$11,124,953
Electronic Works (ProQuest)	19,814	19,404	39,218	\$3.82	\$149,813
Microfilm	2,470	11,458	13,928	\$80.95	\$1,127,472
Serials²	243,554	439,876	683,430		\$11,317,240
Periodicals	217,129	399,500	616,629	\$29.08	\$10,758,943
Ink Print Newspapers	23,138	37,200	60,338	\$0.97	\$35,117
Microfilm Newspapers	3,287	3,176	6,463	\$80.95	\$523,180
Computer-related works	7,849	2,981	10,830		\$2,977,657
Software	2,747	246	2,993	\$26.86	\$80,392
CD-ROMs	1,570	2,735	4,305	\$673.00	\$2,897,265
Printouts	3,532	0	3,532	indeterminate value	
Motion Pictures³	12,227	1,842	14,069		\$7,319,762
Videotapes	11,592	1,820	13,412	\$85.00	\$1,140,020
Feature Films	.635	22	657	\$9,406.00	\$6,179,742
Music	48,530	1,474	50,004	\$34.02	\$1,701,136
Dramatic Works, choreography and pantomimes	1,115	0	1,115	\$59.80	\$66,677
Other works of the performing arts	87	0	87	\$34.02	\$2,960
Sound Recordings	29,524	2,817	32,341	\$13.81	\$446,629
Maps	1,563	21	1,584	\$34.96	\$55,377
Prints, pictures, and works of art	5,726	193	5,919	\$28.25	\$167,212
Total	514,818	523,743	1,038,561		\$36,456,888

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 36 copies selected by the Library under motion picture agreements.

Non-Fee Information Services to Public, Fiscal Year 2004

Information and Reference Division direct reference services	
In person	23,914
By correspondence	83,243
By email	71,907
By telephone	176,946
Total	356,010
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Office of the General Counsel direct reference services	
By correspondence	577
By telephone	1,553
Total	2,130
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Receiving and Processing Division services	
By correspondence	4,223
By telephone or email	8,141
Total	12,364
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Licensing Division direct reference services	
In person	375
By correspondence	2,298
By telephone	8,668
Total	11,341
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Grand total direct reference services	381,845

Financial Statement of Royalty Fees for Compulsory Licenses for Secondary Transmission by Cable Systems for Calendar Year 2003

Royalty fees deposited	\$129,045,274.53
Interest income	\$2,056,394.97
Gain on matured securities	\$286,087.86
Transfers in	\$112.11
Total	\$131,387,869.47

Less:

Licensing operating costs	\$3,074,997.71
Refunds issued	\$175,966.09
Cost of investments	\$126,283,964.81
Cost of initial investments	\$1,164,910.26
CARP Operating costs	\$584,254.25
Transfers out	\$101,741.85
Total	\$131,385,834.97

Balance as of September 30, 2004	\$2,034.50
Plus: Face amount of securities due	\$126,511,002.72
Less: Pending refunds	

Cable royalty fees for calendar year 2003 available for distribution by the Library of Congress	\$126,513,037.22
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Financial Statement of Royalty Fees for Statutory Obligations for Distribution of Digital Audio Recording Equipment and Media for Calendar Year 2003

Royalty fees deposited	\$3,121,190.49
Interest income	\$49,390.63
Gain on matured securities	\$16,256.72
Transfers in	\$0.74
Total	\$3,186,838.58

Less:	
Licensing operating costs	\$54,086.19
Refunds	—
Cost of investments	\$2,143,085.72
Cost of initial investments	\$37,714.72
CARP operating costs	\$60,522.30
Distribution of fees	835,571.32
Transfers out	55,801.14
Total	\$3,186,781.39

Balance as of September 30, 2004	\$57.19
Plus: Face amount of securities due	\$2,146,908.05

Audio Home Recording Act royalty fees for calendar year 2003 available for distribution by the Library of Congress	\$2,146,965.24
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Financial Statement of Royalty Fees for Statutory Licenses for Secondary Transmission by Satellite Carriers for Calendar Year 2003

Royalty fees deposited	\$67,504,619.52
Interest income	\$951,357.76
Gain on matured securities	\$319,347.07
Transfers in	—
Total	\$68,775,324.35

Less:

Licensing operating costs	\$37,556.37
Cost of investments	\$68,082,874.90
Cost of initial investments	\$569,263.74
CARP operating costs	\$85,192.01
Transfers out	—
Total	\$68,774,887.02

Balance as of September 30, 2004	\$437.33
Plus: Face amount of securities due	\$68,157,932.04

Satellite carrier royalty fees for calendar year 2003 available for distribution by the Library of Congress	\$68,158,369.37
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COPYRIGHT OFFICE CONTACT INFORMATION

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

Website · www.copyright.gov

Public Information Office · (202) 707-3000

Information specialists are on duty to answer questions by phone from 8:30 a.m. to 5:00 p.m., eastern time, Monday through Friday, except federal holidays. Recorded information is also available 24 hours a day.

Forms and Publications Hotline · (202) 707-9100

TTY · (202) 707-6737

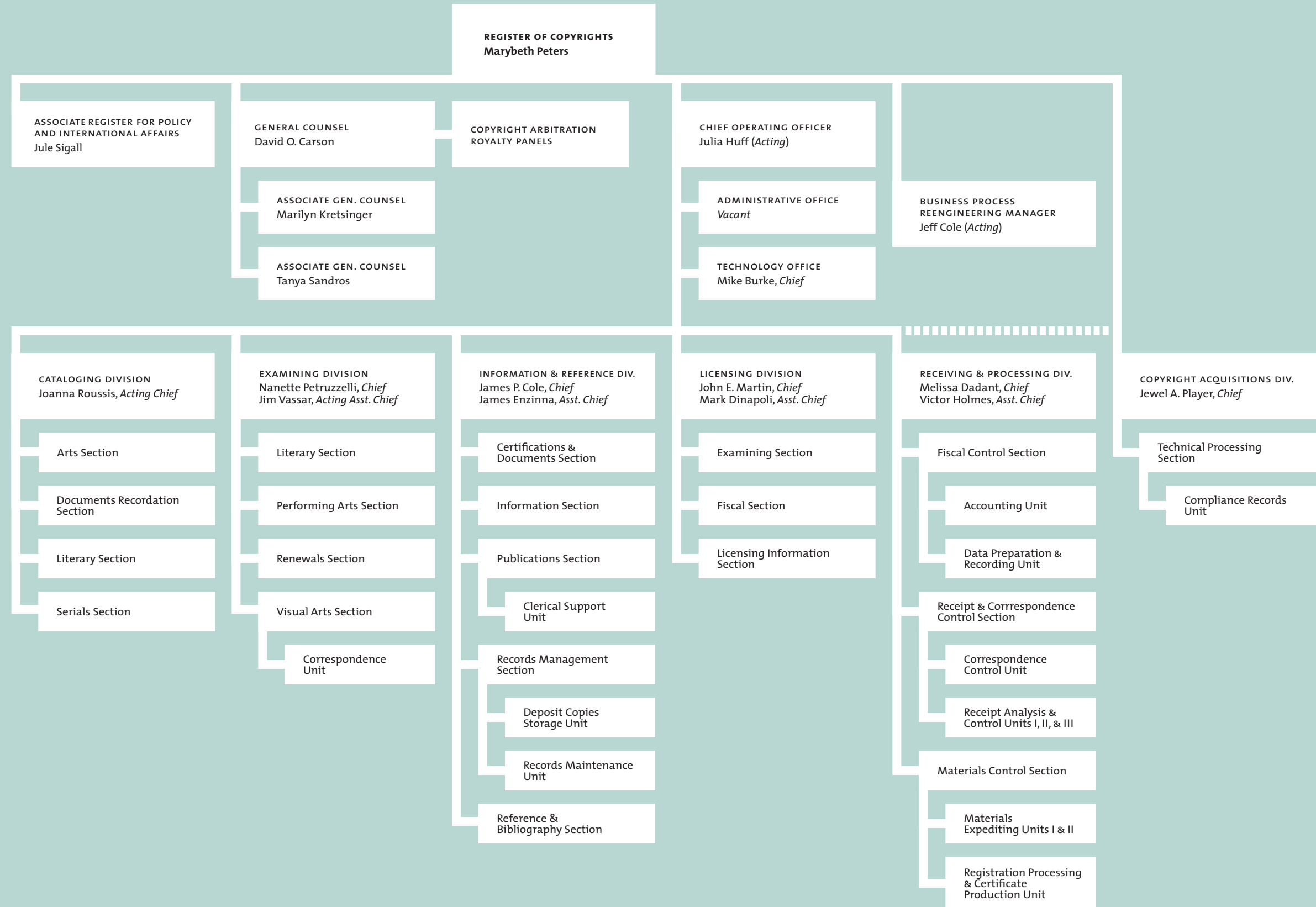
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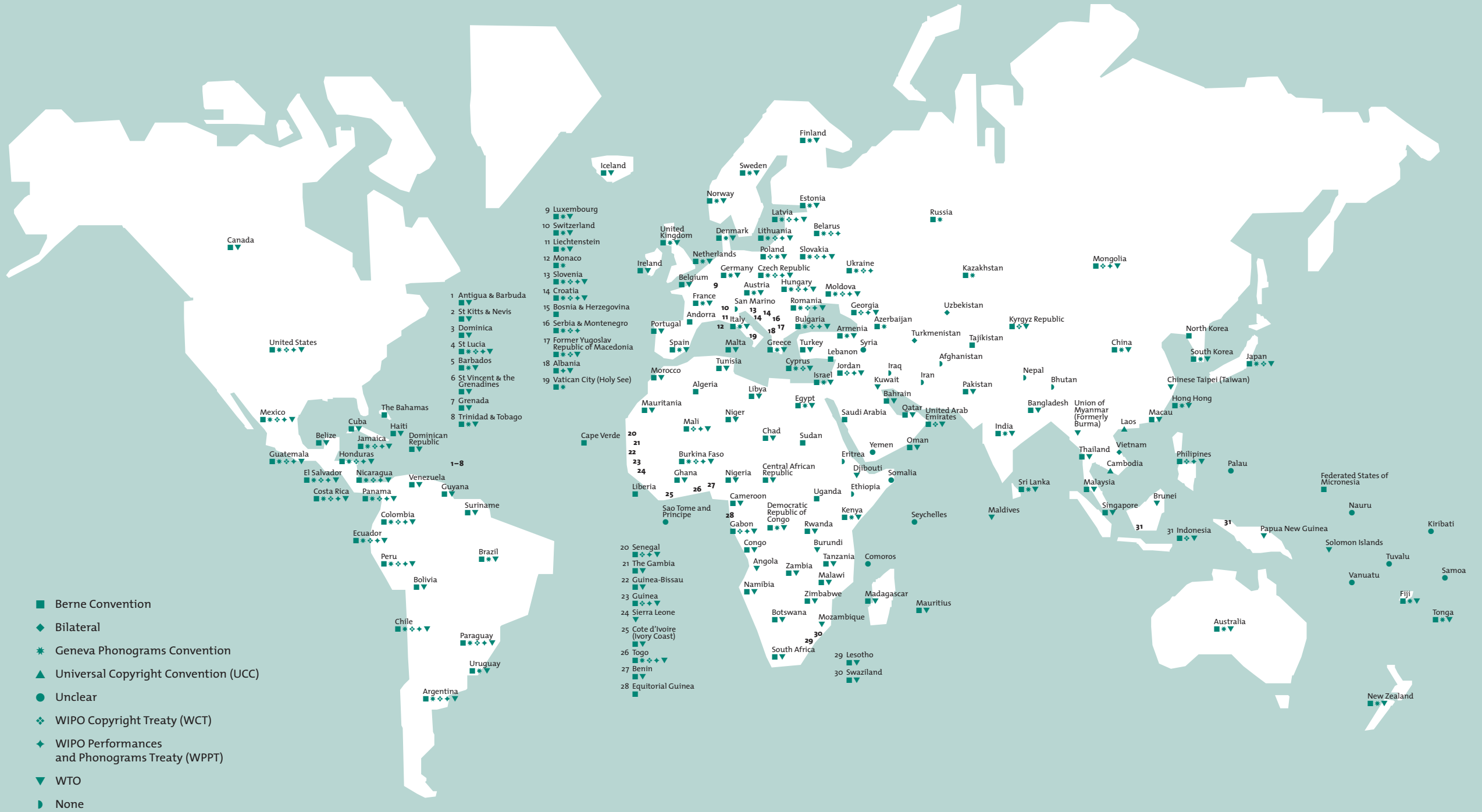
Organization of the U.S. Copyright Office

SEPTEMBER 30, 2004



International Copyright Treaties and Conventions

RELATIONS AS OF SEPTEMBER 2004



This map does not indicate membership in the UCC or bilateral treaty relations for any country that is either party to the Berne Convention or a member of the WTO.