



In FY 2001, the Copyright Office registered 601,659 claims, recorded 15,242 documents, created 548,485 catalog records, and collected and deposited approximately \$186 million in royalty fees. The Office transferred material with an estimated value of over \$31 million to the Library of Congress for its collections and exchange programs.

Copyright Law Administration

COPYRIGHT REGISTRATION



The Copyright Office continued to fulfill its statutory mandate to register claims to copyright and make available a public record of these claims. During the fiscal year, the Office received 590,091 claims to copyright covering more than 800,000 works, and registered 601,659 claims. Materials received by the Office are examined to determine whether the deposit contains copyrightable material, whether the claimant is entitled to claim copyright, and whether there has been compliance with the U.S. copyright laws and Office regulations.

Backlog Reduction Effort

The Office worked diligently to improve the timeliness of its registrations by reducing a backlog of claims on hand. In February 2001, the Examining Division implemented a major backlog reduction effort. The goal of this effort was to reduce the processing time for a copyright registration from receipt of the application to issuance of a certificate and to reduce the amount of unexamined claims on hand to four weeks of receipts by the end of the calendar year.

To achieve these goals, the Division set new weekly production targets for copyright examiners. By the end of the fiscal year, the number of unexamined claims on hand in the Division had dropped substantially and registration processing time had improved significantly. In most parts of the Division, interim production targets were met or exceeded, and the effort was clearly on track for meeting the final goal by the end of the 2001 calendar year. When the backlog reduction effort began in February 2001, the Division had 185,380 unexamined claims on hand. At the end of the fiscal year, September 30, this number was reduced to 81,087.



Another key to improving the management of the workload of the Division was to obtain more accurate statistics on production. To achieve this, a new automated statistical database system, the Examining Production System (EPS), was implemented. Using this new system, each examiner and technician daily logs individual claims worked.

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

During Fiscal Year 2001, more than 21,000 full electronic claims in literary, textual, and musical works were processed through CORDS. ProQuest Information and Learning Company continued to submit electronically approximately 500 claims per week for university dissertations. The other major source of CORDS claims was the Harry Fox Agency, which submitted approximately 50 claims per week for musical works on behalf of several music publishers.

[Developments on CORDS and the Office's overall Information Technology strategy are contained in the Information Technology portion in the Management section of this report.]

Renewals

Under the 1909 copyright law, works copyrighted in the United States before January 1, 1978, were subject to a renewal system in which the term of copyright was divided into two terms — the first term of 28 years and a second term of 47 years if renewed in the last year of the first term. In 1992, Congress amended the copyright law to make renewal automatic for works originally copyrighted from January 1, 1964, through December 31, 1977, and to make renewal registration for such works optional. The 1992 amendment also contained several incentives to encourage owners to register their renewal claims.

The Office registered 19,752 renewals in FY 2001.

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

CORDS is the Copyright Office's automated system to receive and process digital applications and digital deposits of copyrighted works for electronic registration via the Internet from a limited number of cooperating partners. Through CORDS, copyright applications can be filed electronically by sending applications and deposits in digital form. The CORDS system facilitates full electronic processing, both initial preparation by the applicants on the "front end" and completely automated processing on the "back end" by the Copyright Office.

Copyright-Related Registrations

Mask Works

Mask works registered this fiscal year totaled 558. One mask work claim was refused based on lack of eligibility because the citizenship/domicile of the author and the place of first exploitation were solely Taiwan, which is not a party to a U.S. treaty affording protection to mask works. The applicant appealed on the basis of a 1948 treaty on industrial property and on the basis of Taiwan's current Integrated Circuit Layout Protection Act, which mirrors the U.S. Semiconductor Chip Protection Act in many respects, one of which is reciprocity. After considering the applicant's arguments, the Office confirmed the refusal of registration. Under U.S. law, the protection of mask works comes under a *sui generis* category, not under copyright. Because the eligibility provisions of the U.S. Semiconductor Chip Protection Act were not met, the Office concluded that the work was not eligible for protection in the United States.

Mask Works Protections

Under the Semiconductor Chip Protection Act of 1984, federal statutory protection was provided for mask works fixed in semiconductor chip products. Protection of a mask work terminates if application for registration of a claim of protection is not made within two years after the date on which the mask work is first commercially exploited anywhere in the world.

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

Vessel Hulls

The Vessel Hull Design Protection Act was signed into law on October 28, 1998, as part of the Digital Millennium Copyright Act (DMCA). This 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. Vessel hull deposit material may consist of either drawings or photographs of the design.

The Office registered 48 vessel hull designs this fiscal year.

Appeals of Denials of Registration

Applicants whose claims for registration are rejected can appeal such decisions. The Examining Division began keeping statistics on first appeals to rejections in January 2001. From January 2001 through September 2001, the Division handled 133 first appeals. Thirty-eight initial rejections — or 28 percent — were reversed.

The Copyright Office Board of Appeals, which considers second appeals, met six times and heard 15 appeals, involving 39 works. During the fiscal year, the Board issued decisional letters in response to nine second appeals, covering 26 works plus two collections, registered four works and one collection, and upheld the refusal to register 22 works and one collection.



Cataloging

Title 17 U.S.C. §705 requires the Register of Copyrights to provide and keep records of all deposits, registrations, recordations, and other copyright-related matters, and to prepare indexes of all records.

The Cataloging Division records a bibliographic description and the copyright facts of all works registered in the Copyright Office, including documents.

The Cataloging Division received 595,224 registrations in FY 2001 and created cataloging records for 548,458, including 25,673 submitted through CORDS.

The division also cataloged claims for vessel hulls and mask works and processed online service providers' agent designations. By the end of the fiscal year, 48 vessel hull design registrations and three distinctive ID submissions (logos) had been received and scanned, and 744 interim designations of agent had been posted to the Copyright Office website.



RECORDATION

Documents pertaining to a copyright, a mask work, or a vessel hull design can be recorded in the Copyright Office so that a public record is made. Many documents submitted for recordation relate to transfers of ownership. Any or all of the copyright owner's exclusive rights or any subdivision of those rights may be transferred, but the transfer of exclusive rights is not valid unless that transfer is in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent. Recorded documents include contracts between authors and publishers, security interests, terminations, notices of intent, and transfers of ownership.

The Documents Recordation Section received 15,369 documents for recordation and cleared 15,242 covering over 300,000 titles or works.

To improve the processing of documents, a project was begun to produce additional manuals on document practices, prepare Frequently Asked Questions to be posted on the website, prepare a fact sheet on recordation fees, revise public information about recordation in the circulars, and create guide letters and other helpful informational tools. Policy issues to improve document processing were considered, some of which will be resolved next year. Others will await implementation of the Office's business process reengineering effort.



MANDATORY DEPOSIT

The mandatory deposit provision of the copyright law provides that the Copyright Office is entitled to receive copies of every copyrightable work published in the United States. Section 704(b) of the Copyright Act states that these published deposits copies “are available to the Library of Congress for its collections, or for the exchange or transfer to any other library.” The Copyright Acquisitions Division (CAD) uses the mandatory deposit requirement, 17 U.S.C. §407, as well as Copyright Office regulations to acquire works needed for the collections of the Library of Congress. The copyright statute authorizes the Register of Copyrights to issue demands for the required copies anytime after publication. The Division encourages copyright owners to deposit or register works regularly and voluntarily and as soon as possible after publication.

During FY 2001 the Copyright Office transferred to the Library a total of 278,035 copies of works received from copyright owners under the mandatory deposit provisions of the Copyright Act, with an estimated value of \$4,919,356. CAD made demands for 3,439 titles based on recommendations by CAD librarians, LC recommending officers, and congressional requests.



STATUTORY LICENSES AND OBLIGATIONS, AND THE CARP SYSTEM

The Copyright Office administers the statutory licenses and obligations contained in title 17 U.S.C. The Licensing Division collects royalty fees from cable operators for retransmitting television and radio broadcasts, from satellite carriers for retransmitting “superstation” and network signals, and from importers and manufacturers of digital audio recording products. The Division deducts its full operating costs from the royalty fees and invests the balance in interest-bearing securities with the U.S. Treasury for later distribution to copyright owners.

Royalty Fee Distributions

The Copyright Office distributes royalties collected under sections 111, 119 and chapter 10 of title 17 U.S.C.

In FY 2001, the following distributions were made:

- On October 26, 2000, \$239,111,006 was distributed. This included 75 per cent of 1998 cable royalties and 75 per cent of 1996–1998 satellite carrier funds.
- On March 15, 2001, a further distribution of satellite carrier funds totaling \$21,091,427 was made. Certain amounts (reserves) for the 1996, 1997, and 1998 funds were not paid up but held to cover costs and any amount that may be in controversy.
- On June 28, 2001, \$600,000 of 1997 cable royalties, plus \$35,471 in interest, were distributed.
- On June 14, 2001, a full distribution of the 2000 Digital Audio Recording Technology (DART) Sound Recording Fund was made, totaling \$3,320,767. Also, a final distribution of the 1995–1999 DART Musical Works Funds was made in the amount of \$592,390.

Financial statements for the 2001 royalty fees available for distribution in the cable and satellite statutory licenses, and in the digital audio recording technology statutory obligation are included in the appendices.



Initial Notice Documents

The Licensing Division continued to process and examine incoming Initial Notice documents filed pursuant to section 114 of the copyright law and posted them on the Office's website. The filing of an Initial Notice is required in order that copyright owners may receive reasonable notice of use of their sound recordings under the statutory license. To date, over 5,000 links to Initial Notices have been posted on the website.

Copyright Arbitration Royalty Panels (CARP)

During Fiscal Year 2001, the Copyright Office was involved with the administration of five CARP proceedings. Three of the five proceedings involved setting rates and terms for the digital performance right in sound recordings license as it pertains to webcasters, 17 U.S.C. §114, and the ephemeral recording license, 17 U.S.C. §112; the digital performance right in sound recordings license as it pertains to preexisting subscription services and preexisting satellite digital audio radio services, 17 U.S.C. §114; and the digital performance in sound recordings license as it pertains to new subscription services, 17 U.S.C. §114. The other two proceedings involve the distribution of royalty fees collected in accordance with the Audio Home Recording Act of 1992 (AHRA), 17 U.S.C. chapter 10, and the cable statutory license, 17 U.S.C. §111.

Copyright Arbitration Royalty Panel (CARP)

A CARP makes determinations about distribution of royalties collected by the Licensing Division for the cable and satellite licenses, and the digital audio recording devices and media obligation. They also set and adjust royalty rates and set terms and conditions of some of the statutory licenses. A CARP panel consists of two arbitrators selected by the Librarian of Congress upon the recommendation of the Register of Copyrights, with a third, who is chairperson, selected by the first two. The first CARP proceeding took place in 1996.

Rate adjustments and royalty distribution proceedings under CARPs are divided into two essential phases. The first is the 45-day pre-controversy discovery period during which the parties engage in a pre-CARP motions practice and exchange their documentation and evidence in support of their cases, in preparation for the hearings before a CARP.

The second phase is the proceeding before a CARP itself, including the presentation of evidence through hearings and submission of proposed findings by all of the parties. CARPs have 180 days to conduct a proceeding, including receiving evidence and submitting the final written decision to the Register of Copyrights. Within 60 days of receipt of the report, 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 has 30 additional days in which to substitute his own determination.



Rate Setting and Adjustments

The Office has been administering a rate setting proceeding to establish rates and terms for the public performance of sound recordings by means of eligible nonsubscription transmissions (webcasts) (17 U.S.C. §114 license as amended by the Digital Millennium Copyright Act) and the making of an ephemeral recording in furtherance of the permitted public performance of the sound recording (17 U.S.C. §112 license). The Office announced a six-month voluntary negotiation period associated with these licenses for the period October 28, 1998, to December 31, 2000. The voluntary negotiation period concluded with no proposed settlement being filed with the Office.

Subsequently, the Recording Industry Association of America (RIAA) filed a petition in accordance with 17 U.S.C. §112(e)(5) and §114(f)(2)(B) to convene a CARP for the purpose of setting rates and terms for these licenses. Consequently, the Office requested the filing of notices of intent to participate in the proceeding and set the schedule for the 45-day precontroversy discovery period on September 27, 1999. On December 22, 1999, at the request of the parties, the Office vacated the schedule announced in the *Federal Register* in order to allow more time to try to negotiate a settlement.

During the pendency of the proceeding, the Library published a notice, in accordance with 17 U.S.C. §112(e)(6) and §114(f)(2)(C)(i)(II), initiating the voluntary negotiation period for the purpose of establishing rates and terms for the two licenses for the period 2001 and 2002. The RIAA again filed a petition to convene a CARP to set these rates, as no settlements were reached.

Prior to the establishment of a new precontroversy discovery schedule for the 1998–2000 proceeding and the establishment of a precontroversy discovery schedule for the 2001–2002 proceeding, the Library consolidated the two proceedings which would be handled by a single CARP.

After conclusion of the precontroversy discovery period, the Library selected the arbitrators to serve on the CARP, initiated the 180-day period, and announced the schedule for the proceeding. The proceeding progressed on schedule, and the testimony on the direct cases of the parties was completed. The testimony on the rebuttal phase of the case is scheduled to begin early next fiscal year.



The Office initiated a rate adjustment proceeding to establish rates and terms for the public performance of copyrighted sound recordings by preexisting subscription services and preexisting satellite digital audio services. The Office announced the initiation of the six-month voluntary negotiation period, which began on January 9, 2001. The voluntary negotiation period ended with no proposed settlement. Subsequently, two petitions to convene a CARP were filed, one by the RIAA, and a joint petition by XM Satellite Radio and Sirius Satellite Radio. Notices of intent to participate in a CARP proceeding will be filed in Fiscal Year 2002.

The Office initiated another rate proceeding to establish the rates and terms for the public performance of sound recordings by new subscription services. The Office announced the initiation of the six-month voluntary negotiation period, which began on February 12, 2001. The voluntary negotiation period ended with no proposed settlement. The time period in which parties with a significant interest can file with the Office a petition to convene a CARP ends in October 2001.

Distribution Proceedings

The Office also administered two CARP distribution proceedings: the distribution of 1995–1998 royalties collected for the distribution of digital audio recording technology; and the distribution of 1993–1997 cable royalties.

The Office resolved the controversies surrounding the distribution of the 1995–1998 royalties collected for the distribution of digital audio recording technology. The remaining controversies existed within the Musical Works Fund for these years. The 180-day arbitration period began on April 10, 2000. Eight parties appeared before the CARP. The arbitrators met with the parties on June 19, 2000, in order to set the schedule for the proceeding. The Panel ruled that they would decide the proceeding on the basis of the written pleadings. The parties filed their proposed findings of fact and conclusions of law and their reply findings. The Panel issued its report to the Librarian of Congress on November 9, 2000. After considering the petitions to modify the Panel's report and upon the recommendation of the Register of Copyrights, the Librarian adopted the CARP's determination on February 7, 2001.

The other distribution proceeding was to resolve the Phase II controversies in the Program Supplier category in the distribution of the 1993–1997 cable royalties. Settlement was reached by all parties in this category except for the Program Suppliers, represented by the Motion Picture Association of America (MPAA), and the Independent Producers Group (IPG), who had a controversy with respect to the distribution of the 1997 motion picture and syndicated programming funds.

After the filing of direct cases and the conclusion of the precontroversy discovery period, the 180-day arbitration period was initiated on October 17, 2000. Hearings were held over the next 180 days, and the Panel filed its report with the Librarian of Congress on April 16, 2001. On June 5, 2001, after review of the Panel's report and the petitions to modify the report on the recommendation of the Register, the Librarian issued an order rejecting the Panel's decision and remanding the case to the Panel for modification of its decision. In the June 5 Order, the Librarian stated that the Panel acted arbitrarily in three ways: 1) the Panel did not follow the decisional guidelines and intent of an order issued earlier in the proceeding regarding dismissal of any claimants listed in IPG's written direct case who did not have a written representation agreement with Worldwide Subsidy Group in place on or before July 31, 1998; 2) the Panel arbitrarily included two programs in IPG's award when IPG did not introduce evidence as to the value of the programs; and 3) the Panel did not provide any explanation of the methodology or analysis it used to arrive at the distribution percentages set forth in the report. On June 20, 2001, the Panel submitted its modified decision to the Librarian, and the parties filed their petitions to modify the revised report. At the end of the fiscal year, the Register was reviewing the Panel's modified report and the parties' petitions. The Librarian will issue his decision in Fiscal Year 2002.

Claims Filed for Royalty Fees

The Office received and processed claims from copyright owners who are entitled to receive royalty fees generated from the use of their copyrighted works during 2000 under the terms of the cable, satellite, and Digital Audio Recording Technology (DART) statutory licenses. In January and February of 2001, the Office received 33 claims for DART royalty fees. In July 2001, it received 616 claims for cable royalties and 217 claims for satellite royalties. Distribution proceedings will begin for these royalty funds after the Office ascertains whether a controversy exists concerning the distribution of the funds among the claimants.

[Regulations related to statutory licenses are listed in the Regulatory Activities, Policy Assistance, and Litigation section of this report.]

