

95th

ANNUAL REPORT OF THE
REGISTER OF COPYRIGHTS

For the fiscal year ending September 30

1992

Library of Congress Catalog Card Number 10-35017
ISSN 0090-2845 *Key title:* Annual report of the Register of Copyrights

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

CONTENTS

A PARTNER IN CHANGING TIMES	1
INTERNATIONAL ACTIVITIES	3
Berne Protocol	4
International Copyright Institute	4
Bilateral Agreements	5
COPYRIGHT OFFICE REPORTS	6
Digital Audio Transmissions	6
Cable Compulsory License	6
Eastern Europe and Soviet Union Symposium	7
PUBLIC ANNOUNCEMENTS	7
Registration of Costume Designs	7
Recordation of Documents	7
Artists' Resale Royalties	7
Study on Waiver of Moral Rights in Visual Artworks	7
COPYRIGHT OFFICE REGULATIONS	8
Registry of Documents Pertaining to Computer Shareware and Donation of Public Domain Software	8
Deposit Requirement for CD-ROM Format	8
Registration of Foreign Works	8
Definition of Cable System	8
Computer Programs that Generate Typefaces	9
Group Registration of Daily Newspapers	9
Registration of Architectural Works	9
Fees	9
Corrections and Technical Amendments	9
LEGISLATIVE DEVELOPMENTS	9
Copyright Renewal	9
Film Preservation	10
Library Photocopying	10
Fair Use	10
Computer Program Piracy	10
Audio Home Recording Act	10
Cable License	11
Technology Transfer	12
Broadcast Monitoring	12
The Satellite Home Viewer Act Amendments	12
Copyrightability of Court Reports	12
Film Labeling	13

COPYRIGHT OFFICE OPERATIONS 13

- Copyright Automation Group 13
- Cataloging Division 14
- Examining Division 15
- Information and Reference Division 17
- Licensing Division 19
- Receiving and Processing Division 20
- Ergonomics Training 22

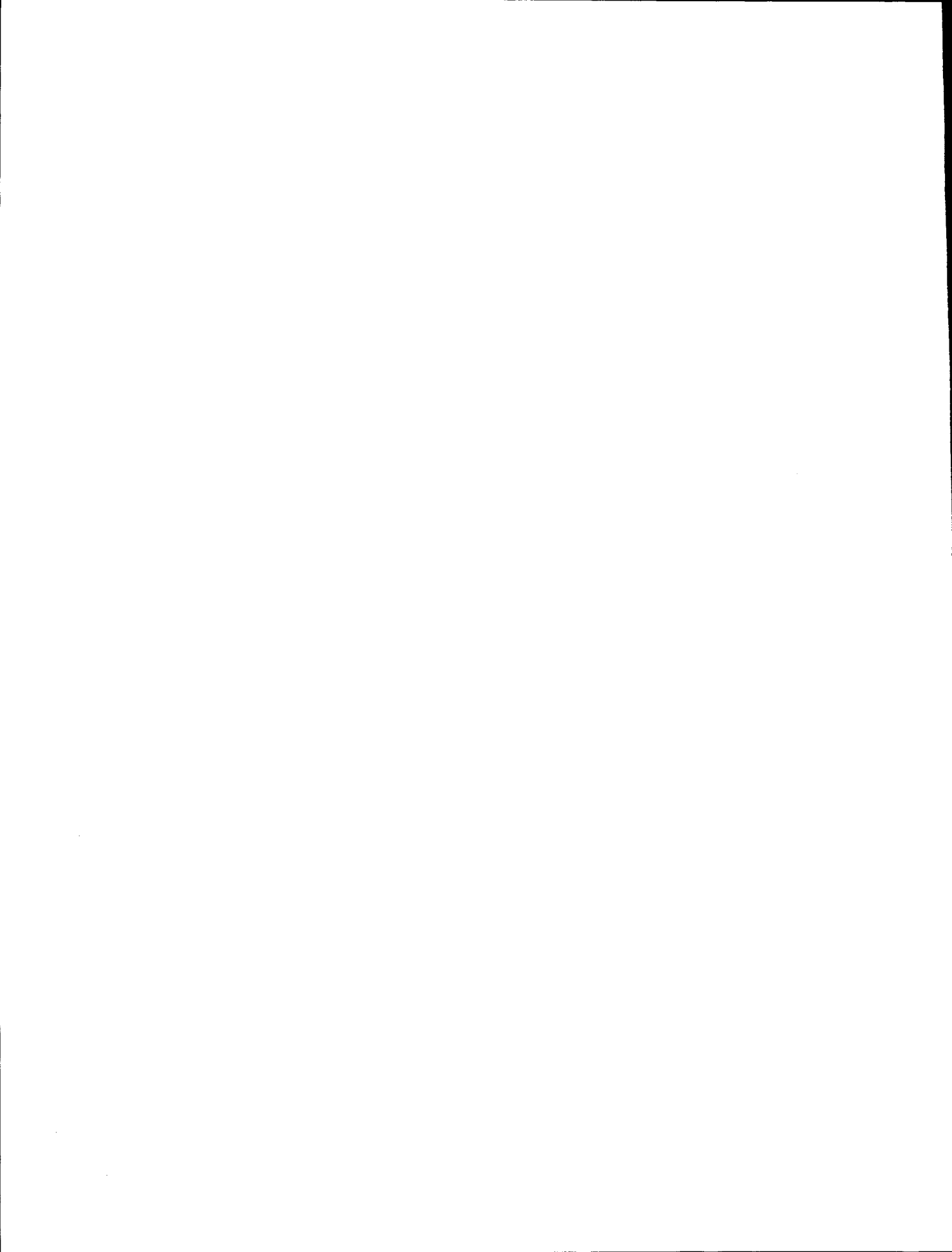
JUDICIAL DEVELOPMENTS 22

- Copyright Office Litigation 22
- Copyright and Computer Software 22
- The Cable Compulsory License 24
- Fair Use 25
- Compilations - Post *Feist* 25
- Derivative Works 26
- Formalities - Notice 26
- Copyright Renewal 27
- Copyright Ownership - Work for Hire 27
- Copyrights, Treaties and International Law 27
- Ownership of Copyright - Audio Sampling 27

Tables

- International Copyright Relations of the United States as of September 30, 1991 29
- Number of Registrations by Subject Matter, Fiscal 1992 35
- Number of Registrations Cataloged by Subject Matter, Fiscal 1992 36
- Information and Reference Services, Fiscal 1992 37
- Summary of Copyright Business, Fiscal 1992 38
- Disposition of Copyright Deposits, Fiscal 1992 39
- Estimated Value of Materials Transferred to the Library of Congress 40
- Financial Statement of Royalty Fees for Compulsory Licenses for Secondary Transmissions by Cable Systems for Calendar Year 1991 41
- Financial Statement of Royalty Fees for Statutory Licenses for Secondary Transmissions by Satellite Carriers for Calendar Year 1991 42
- Copyright Registrations, 1790-1991 43

"To promote the Progress of Science and useful Arts. . ."



*Report to the Librarian of Congress
by the Register of Copyrights*

THE COPYRIGHT OFFICE

A PARTNER IN CHANGING TIMES

In 1976 when Congress passed the current Copyright Act, it hoped it was providing a framework that would accommodate the changing forces of technology. Congress realized it could not foresee what these changes might be, but it knew they were bound to come. What is doubtful is whether anyone realized how strong and unrelenting the forces of change would be. Not only has technology wrought change, but other forces—the results of court decisions and international politics, to name just two—have come into play. Fortunately, the law has proved accommodating, having been amended repeatedly since its passage. This fiscal year proved no exception. The law was changed to create a royalty system for digital audio recording technologies, to clarify the fair use provision, to make renewal automatic, and to eliminate the library photocopying report. Other legislation, while not amending the Act, imposed criminal penalties for certain copyright infringements, reauthorized the National Film Preservation Board, and instituted “retransmission consent.”

The point at which legislation becomes law represents only the final stage in what is usually a period of protracted negotiations among many varied parties. Often the momentum begins when a Member of Congress requests the Register of Copyrights to conduct an inquiry and publish a formal study, such as this year’s “best seller” on the cable compulsory license. Moreover, legislation represents only one segment of the intellectual property scene today. Beside the important decisions of the court, there are the major administrative procedures and rulemakings of the Register—among them this year’s decisions on the

definition of a cable system, on costume designs, and on computer programs that generate digitized typeface. And the domestic scene, it must be said, represents only a fraction of the global activity, as well as only a portion of the activity involving the Copyright Office. Propelled both by the forces of change and by the desire to harness those forces for the good of the Library of Congress and the copyright community, the Register of Copyrights and the Office he leads act as the partner to many—both creators and users, domestic interests and those internationally—in the highly charged, multifaceted intellectual property environment of today.

As a service unit of the Library of Congress, the Office’s partnership is naturally most immediate with the Library itself. As the Library strives to harmonize traditional concerns with the requirements of the electronic age, the Copyright Office works hand in hand to promote Library goals. Registration requirements are geared as much as possible to the needs of the Library. This fiscal year the Office amended its final regulations relating to the deposit of CD-ROM (Compact Disk Read Only Memory) format, which requires that any work published in CD-ROM format be deposited in this form, along with any operating software and manuals. The deposit requirements are in direct support of the Library’s Machine-Readable Collections Reading Room. The Register also arranged for talks with newspaper publishers, which led to a new regulation permitting the group registration of daily newspapers for a single \$40 fee, provided that the deposit is a month’s issue on microfilm. The Register believes this new group form will encourage more newspapers to register, thus saving the Library considerable sums now spent for microfilm copies.

The Office took a major step toward the 21st century this year when it contracted for the development of an optical storage system. This system will not only make the Office more productive by eliminating repetitive manual tasks, such as the handstamping of applications, but it also will enable staff and the public to retrieve information in a matter of seconds, since the applications will be stored optically online. The security of the applications will be increased immeasurably, because there will no longer be a need to handle the paper copies directly. With the originals stored off site, valuable space at the Library will be opened up.

The Register also prepared a report for the Librarian of Congress, outlining possible Copyright Office strategies for the year 2000. Other ways the Register and his staff are furthering the Library's entrance into the electronic age include working with a vendor to produce digitized versions of the registration forms, requesting proposals for an outside information broker to convert the 45 million card catalog into a wider distribution format, and beginning to plan for a research and development project that will make selected Copyright Office records more readily available in electronic and digital format.

Another natural partnership is the Office's relationship to Congress. A major portion of the Register's time is devoted to legislation: analyzing, commenting, and testifying on proposed legislation before committees of Congress, drafting copyright law amendments, and hosting numerous meetings aimed at either assisting the passage of legislation or, depending upon the subject, helping to avoid the need for legislation. The Register also produced three extensive reports this fiscal year, two of which dealt with critical high technology issues—digital audio transmission and the cable and satellite compulsory licenses—and the third reported on the results of a conference the Office sponsored for copyright officials from Eastern Europe and the former Soviet Union.

Working in partnership with Congress also means working to assist the private sector, some-

times the users, sometimes the creators, often both. The passage of the automatic renewal legislation this year—legislation the Register's Office originally drafted, prompted first by interested parties in the private sector following a series of meetings the Register had hosted—ultimately benefits the creator, or even more particularly, the survivors of creators. The hearings the Register held this year on artists resale royalty rights were to gather information for a report due to Congress next year, but the results of any action Congress takes ultimately affect private parties. Congress' request for a study on the extent to which artists are waiving their moral rights in visual artworks, for which the Register requested comments this fiscal year, is intended to safeguard the rights of the creator.

These examples of the partnership role the Office has played—be it as an active partner or a "silent" partner—no doubt contributed to the honor awarded the Copyright Office by the Recording Industry Association of America. On behalf of all the staff of the office, the Register accepted the Recording Industry Association of America's Cultural Award at a gala banquet and musical program on March 10, 1992, before an audience of several hundred members of Congress and recording industry executives. The Nineteenth Cultural Award Dinner recognized the Copyright Office for its years of dedicated service on behalf of the U.S. recording industry both domestically and internationally. The award honored the Copyright Office not only for effective administration of U.S. copyright law since 1897 and for serving as an international advocate for copyright, but also for nurturing the creative process by providing protection for intellectual property.

Promoting creativity and a recognition of the place copyright plays in that effort was the focus of the Young Inventors' and Creators' Competition. On October 19, 1991, the Register announced the winners of the 1991 Young Inventors' and Creators' Competition from among more than 2,550 student entries received from throughout the

United States. The Copyright Office and the Patent and Trademark Office organized a team of patent attorneys and examiners, and arts, literature, and music staff from the Library of Congress to judge entries. The Register helped select the final winners in photography and painting. The Young Inventors' and Creators' Competition was sponsored by the Foundation for a Creative America in partnership with the Copyright Office, the Patent and Trademark Office, the National School Boards Association of Secondary School Principals, and corporate sponsors.

Children and creativity were also the subject of benefit premieres in Washington and Los Angeles for "Little Man Tate" in October 1991. Assisted by the film's director, Jodi Foster, the Register issued more than 150 honorary copyrights to children who participated in a sidewalk drawing competition.

The Office's partnership with the private sector includes outreach to address academic and professional groups on contemporary copyright problems. The Register and several members from the Copyright Office spoke at the American Intellectual Property Law Association (AIPLA) in Arlington, Virginia, on the "Patent-Copyright Laws Overlap Study." The Register was joined by the General Counsel in discussing "Recent Legislative Developments" at a copyright law class at New York University Law School. The Register also addressed the Patent, Trademark, and Copyright Section at the annual convention of the American Bar Association in San Francisco, the annual meeting of the Copyright Society in Bolton Landing, New York, the inaugural meeting of the Philadelphia chapter of the Copyright Society, and numerous other meetings.

INTERNATIONAL ACTIVITIES

The importance of copyright industries to the U.S. balance of trade and the growing place of copyright and copyright-intensive industries in

domestic employment has thrust the Office into virtually every nook and cranny of U.S. foreign trade policy. This year saw the Register and the Office's policy planning advisors serving on U.S. delegations headed by the Office of the U.S. Trade Representative and the Departments of State and Commerce. The fora in which the international programs of the Register's Office function include the multilateral arrangements administered by the World Intellectual Property Organization, the General Agreement on Tariffs and Trade (GATT), and the evolution of a hemispheric arrangement through the North American Free Trade Agreement (NAFTA) and dozens of bilateral trade related arrangements. Policy Planning Advisor Lewis Flacks served on the U.S. negotiating team for the NAFTA and spent much of 1991 shuttling between Ottawa and Mexico City.

In addition to these areas, the Register spoke at a number of important international conferences, and he directed the governmental response to proposals for a Protocol to the Berne Convention and a new independent instrument for the protection of performers and producers of phonograms.

In December 1991 the Register spoke on "Impact of New Technologies on Copyright Law" and "Enforcement of the Law on Copyright and Neighboring Rights" at an African Regional Seminar on Copyright in Kampala, Uganda. The Register also participated in a roundtable on "Collective Administration of Copyright and Neighboring Rights," a seminar organized by the World Intellectual Property Organization in cooperation with the Organization for African Unity. The Register was the keynote speaker at the 24th Congress of the International Publishers Association in New Delhi in January.

In July 1992 the Register presented a paper on "Computer Programs and Semiconductor Layout Design" at a conference in Munich, Germany, on protection of intellectual property in Central and Eastern Europe sponsored jointly by the Organization for Economic Cooperation and Development and the Max Planck Institute. The concerns

of the library community were the focus of a visit by the Register and William Ellis, Associate Librarian for Science and Technology Information, to the Document Supply Centre of the British Library in West Yorkshire, England, in February 1992.

Berne Protocol

No norm setting activity in which the United States is involved is more potentially important and problematic than the development of a possible protocol to the Berne Convention. The purpose of the Protocol, which was the subject of general consideration this fiscal year, would address a number of important areas of copyright where the application of the 1971 Paris Act of Berne is either unclear or the subject of dispute. These areas include distribution rights, rental rights, concepts of "public communication" of works, the place of compulsory licensing in emerging satellite and cable telecommunications systems, private copying, and the scope of the Berne national treatment obligation.

The Register and Policy Planning Advisor Lewis Flacks attended the Berne Protocol meeting at the World Intellectual Property Organization in Geneva from November 4-8, 1991. In February the next year, the Register headed a powerhouse U.S. delegation (that included Chairman William Hughes of the House Subcommittee on Intellectual Property and Judicial Administration and Chief Counsel Hayden Gregory) to the second session of the Committee of Experts on a Possible Protocol to the Berne Convention.

A major part of the Protocol negotiating process is consultation between industrialized states—largely because the problems crystallized in the Protocol process are between industrialized economies. On May 20-21, 1992, the Register headed a U.S. team to the first meeting of U.S. trading partners in consultations on the possible protocol to the Berne Convention. These discus-

sions continued in September and the informal group of participants has come to be known as "The Stockholm Group."

International Copyright Institute

One of the most important initiatives launched by the Register has been the International Copyright Institute, devoted to promoting copyright law modernization in developing countries, encouraging two-way dialogue between U.S. copyright owners and users in the developing world and contributing practical information and training to the global fight against piracy of U.S. copyrighted works.

In November 1991 the Register welcomed 18 representatives from nine nations in Eastern Europe and the former Soviet Union under the aegis of the Office's International Copyright Institute for a week-long program. The symposium provided a forum to discuss changes in the copyright regimes of these newly democratized nations. Many experts from the U.S. copyright community in both the government and private industry addressed the gathering.

From February 16 through March 8 the Copyright Office was host to two representatives of the Nigerian Copyright Council who participated in an advanced copyright training program offered by the International Copyright Institute. Most of the three-week visit was spent in the Examining Division. The Examining Division Chief presented a general introduction to copyright law and the ICI participants studied the Examining Division organization and process. Twenty Examining Division staff members were involved in training the Nigerian copyright officials.

The Copyright Office and the World Intellectual Property Organization jointly sponsored a week-long International Copyright Institute training seminar from September 21 through 25, 1992. A delegation of 15 people representing different segments of the Nigerian copyright community

and two nationals of Ghana participated in the program. The focus of the program was to assess the impact of piracy on the African market, to give training in copyright law, and to encourage development of effective enforcement.

Bilateral Agreements

Marybeth Peters, Policy Planning Advisor, served as a technical expert in copyright law on the U.S. Government team that concluded on January 17, 1992, a memorandum of understanding with the People's Republic of China. This involved many meetings in both Washington and Beijing; the final document resulted in the establishment of bilateral relations between the PRC and the United States on March 17, 1992. It also committed China to become a member of the Berne Convention by October 15, which it did, and to use its best efforts to become a member of the Geneva Phonograms Convention by June 1, 1993. In addition, China recognized computer programs as literary works and acknowledged that all works, including sound recordings, enjoy the right to control rental.

Policy Planning Advisor Eric Schwartz travelled to Moscow in April 1991 with a delegation, headed by the Office of the U.S. Trade Representative, to renegotiate with Russia and the newly independent republics a trade agreement similar to the one signed by the Soviet Union in 1990. Agreements were reached with Russia, the Ukraine, and five of the other new republics to develop the copyright laws in each of these countries, including adherence to the Berne Convention and the Geneva Phonograms Convention, and to improve copyright relations with the United States. In September 1992, Schwartz returned to Moscow for the first meeting of the Working Group on Intellectual Property of the United States and Russia. The Working Group was established by the bilateral trade agreement signed in June 1992 by President Bush and Presi-

dent Yeltsin in order to monitor the progress of the copyright laws of each country. A comprehensive copyright law is under consideration in Russia, including protection for computer programs and sound recordings and enhanced enforcement provisions.

Schwartz was also a member of a U.S. delegation that met a half dozen times in Washington and Warsaw with representatives of the Polish government to discuss the progress of the Polish copyright law, which is undergoing major revisions, and to discuss serious piracy and trade concerns with high-level Polish officials. He participated in similar meetings with representatives of Estonia, Hungary, Latvia, Lithuania, and Romania to monitor the progress of the copyright laws in each of these countries.

Policy Planning Advisor Marybeth Peters served as a technical expert on copyright law on the U.S. Government team for Taiwan. On April 29, 1992, the United States Trade Representative designated Taiwan as a "priority country," in accordance with the "Special 301" statute of the Trade Act of 1974, because of widespread copyright piracy. On May 29 an investigation was initiated. However, as a result of almost three weeks of negotiations, the United States and Taiwan negotiators reached agreement that resulted in an understanding that committed Taiwan to improve its intellectual property rights system.

Some key provisions of that agreement are as follows. Taiwan will establish an export licensing system for compact disks, computer software, and videogames; the possibility of conversion of prison terms into fines will be eliminated; motion picture viewing salons that perform unlicensed motion pictures will be raided and infringers prosecuted. The agreement calls for quarterly meetings to review the implementation of the agreement, the first of which took place in Taipei the week of August 24.

Policy Planning Advisor Marybeth Peters also served as a technical adviser on copyright to a U.S. Government mission in May to the Persian

Gulf region, with visits to Bahrain, Oman, the United Arab Emirates, Saudi Arabia, Kuwait and Greece. The president of the U.A.E. signed the U.A.E. copyright law on September 29, 1992; it will take effect six months after it is published in the official gazette. Kuwait and Bahrain are in the process of enacting copyright laws. Saudi Arabia has a copyright law, but it does not protect foreign works. Greece is in the process of revising its law.

COPYRIGHT OFFICE REPORTS

Digital Audio Transmissions

The Register submitted a comprehensive report, *Copyright Implications of Digital Audio Transmission Services*, to Congress on October 1, 1991. Sen. Dennis DeConcini and Rep. William Hughes, chairmen of the two congressional subcommittees that deal with intellectual property, had asked the Office to conduct a study to assess the effect of the introduction of digital audio services on copyright holders and their works. Digital audio transmissions services—be they digital audio broadcasting, which promises to be a replacement for current FM and AM radio, or digital audio services made available via cable—deliver interference-free transmissions with a compact-disc quality. Since consumers may make perfect quality recordings of prerecorded works by taping the digital transmissions in their homes, the recording industry fears the loss of legitimate sales.

To evaluate the impact of this new technology, the Copyright Office examined the statements of the commentators, reports on the European experience, and the conclusions of various home taping and performance rights studies. The Office found that the introduction of this technology would increase the potential for economic harm to copyright owners of recorded works. The Office endorsed in principle the agreement already reached to place a royalty on blank digital audio tapes and recording machines.

The report also reaffirmed the long-standing position of the Copyright Office in support of an amendment to the Copyright Act to include a performance right in sound recordings. In doing so the report noted that sound recordings represent the only category of copyrighted works capable of performance that is denied such a right. As a result, existing law unfairly deprives authors and copyright owners of sound recordings of the right to get paid for performance of their works.

Cable Compulsory License

The Copyright Office also conducted a thorough examination of the cable (section 111) and satellite carrier (section 119) compulsory licenses at the request of Senators Dennis DeConcini and Orrin Hatch. The study, entitled *The Cable and Satellite Carrier Compulsory Licenses: An Overview and Analysis*, which was issued March 1, 1992, also covered "retransmission consent." Retransmission consent would require cable systems to receive permission from broadcast stations before retransmitting their signals via cable. The Office concluded that retransmission consent directly contradicts the cable compulsory license.

The report presents a history of the cable license from 1976 to present. It also records the history of the elimination of certain Federal Communications Commission (FCC) rules on cable that put the Office in the position of applying section 111 to a regulatory scheme frozen 16 years ago. The report reviews legislative options to address problems caused by modern conditions in the cable industry, including substituting a flat per subscriber rate for various types of signals in place of the current complicated royalty fee structure, expanding the license to include new technologies (including wireless cable), and a phased elimination of the license.

The Office made suggestions for reforming the compulsory licenses and recommended against retransmission consent as long as the cable license is in effect.

Eastern Europe and Soviet Union Symposium

On May 1, 1992, the Register presented to Congress a report entitled *International Copyright Institute Symposium: Reports on Copyright Developments in Eastern Europe and the Soviet Union*. The report is a transcript of reports presented by copyright experts, publishers, legal scholars and representatives of authors' rights societies from nine Eastern European countries and the former Soviet Union, during a symposium hosted by the Office's International Copyright Institute on November 18-22, 1991. The discussion focused on the protection and enforcement of copyrighted works in these countries in the context of recent legal and market reforms. The report also contains supplementary material provided by participants and brief biographies of participants and speakers during the week-long program.

PUBLIC ANNOUNCEMENTS

Registration of Costume Designs

On November 5, 1991, the Office issued a policy decision clarifying its practices as to when it will register masks and fanciful costumes. Under the adopted practices, masks will be registered on the basis of pictorial and/or sculptural authorship. Costumes will be treated as useful articles and will be registered only upon a finding of separable artistic authorship.

The Office will not treat masks as useful articles, but will instead determine eligibility for registration on the existence of minimum pictorial and/or sculptural authorship. Garment designs (excluding separately identifiable pictorial representations of designs imposed upon the garment) will not be registered even if they contain ornamental features or are intended to be used as historical or period dress. Fanciful costumes will be treated as useful articles and will be registered only upon a finding of separately identifiable pictorial and/or sculptural authorship.

Recordation of Documents

On June 17, 1992, the Office issued a policy decision announcing new practices with respect to the recordation of documents pertaining to copyright. In the past, the Office would examine a document not merely for compliance with the Copyright Act and Office regulations, but, as a service to the public and in the interest of creating an accurate record, the Office would, to a limited extent, also examine the document for formal sufficiency, i.e., that it did not obviously fail to satisfy the requirements to be a legal document. In order to minimize delays in recording documents and to cope with the substantial increase in the number of documents submitted for recordation, the Office will examine documents only to ensure compliance with the recordation requirements of the Act and Office regulations. The Office will record documents without examining them for obvious errors, and it cautioned remitters to prepare the document in a way that satisfies applicable legal requirements.

Artists' Resale Royalties

On January 13, 1992, the Office published a notice of public hearings in connection with a report to Congress on the feasibility of federal legislation that would provide for artists' resale royalties. The Office invited comment or participation in the public hearings from individuals or groups involved in the creation, exhibition, dissemination, and preservation of works of arts. A hearing was held January 23 in San Francisco and a second hearing was held March 6 in New York. A report will be issued in the next fiscal year.

Study on Waiver of Moral Rights in Visual Artworks

The Office published a notice of inquiry on June 10, 1992, to inform the public that the Office is examining the extent to which authors are

waiving moral rights in their visual artworks under the waiver provisions of the Visual Artists Rights Act of 1990. This act directs the Office to prepare a study on waivers of moral rights within five years of enactment. An interim report is due December 1, 1992. The Office seeks public comments on and information about artists' contracts for the purpose of investigating how the waiver provision is working. Congress wants to monitor the waiver provision to determine whether or not patterns are developing in artists' contracts that routinely provide for waiver of moral rights.

COPYRIGHT OFFICE REGULATIONS

Registry of Documents Pertaining to Computer Shareware and Donation of Public Domain Software

On October 8, 1991, the Office issued interim regulations establishing a registry for documents pertaining to computer shareware and procedures for donating copies of public domain software. The Judicial Improvements Act of 1990 authorized the creation of these new systems of public records. The shareware system of marketing software is an increasingly popular way for authors of computer software to enter the software market. The Computer Shareware Registry is intended as a means for notifying the public of the licensing terms applicable to individual programs marketed on a shareware basis. With minor modifications, the Computer Shareware Registry is patterned after the existing section 205 recording system for documents pertaining to copyright. The addition of software to the collections of the Library of Congress is determined solely by the Library. In order to assist the staff of the Library in evaluating the appropriateness of a deposit for accession to the collections, the regulations specify the conditions for acceptance of a donation.

Deposit Requirement for CD-ROM Format

Effective October 21, 1991, the Office amended its regulations governing the deposit for copyright registration of works fixed in a CD-ROM format to clarify that the required deposit is the best edition CD-ROM package of any work, including the accompanying operating software, instruction manual, and a printed version, if available. The deposit requirements for automated databases, compilations, statistical compendia and the like are not changed if the works are available only online, or if they are not available in a CD-ROM format. The deposit requirement applies to both registration and mandatory deposit.

Registration of Foreign Works

On November 27, 1991, the Office amended its regulations to permit the deposit of the best edition for a foreign work for copyright registration. In the case of works first published outside the United States, Office regulation had required the deposit of the first published edition. The deposit regulation is now the same for foreign and domestic works.

Definition of Cable System

On January 29, 1992, the Office published a final regulation affirming its decision announced in a proposed rulemaking on July 11, 1991. The regulations affirm the Office's decision that satellite carriers are not cable systems within the meaning of section 111 of the Copyright Act of 1976 notwithstanding the decision in *National Broadcasting System, Inc. v. Satellite Broadcast Networks, Inc.*, 940 F.2d 1467 (11th Cir. 1991). The Office also confirms that multipoint distribution service (MDS) and multichannel distribution service (MMDS) are not cable systems within the meaning of section 111. The status of satellite master antenna television facilities (SMATV) is not part of this regulation. The final regulation spelled out that

satellite carriers, satellite resale carriers, multipoint distribution services, and multichannel multipoint distribution services are not eligible for the cable compulsory license based upon an interpretation of the whole of section 111.

Computer Programs that Generate Typefaces

In October 1991, the Office held a public hearing and comment period on the Copyright Office's practices regarding registration of claims to copyright in computer programs used in the generation of digitized representations of typeface designs. A final regulation was issued February 21, 1992. The regulation amends 37 CFR 202.1 (material not subject to copyright) adding subsection (e), "Typeface as typeface," to the categories of works not subject to copyright. The Office amended the regulation as a substitute for attempting to limit the claims in computer programs on the applications to disclaim copyright in computer generated digitized representations of typeface.

Group Registration of Daily Newspapers

On September 1, 1992, the Office amended paragraph 202.3 of its regulations to permit group registration of daily newspapers. The new procedure will allow the registration of all issues of a given title published in one calendar month on the basis of one application, a deposit of microfilm of the registered issues, and a fee of \$40.

Registration of Architectural Works

The Office added a new section 202.11 and amended section 202.20 of its regulations to establish the registration procedures for this new category of authorship and to determine the nature of the required deposit for registration and mandatory deposit. The regulations became effective October 1, 1992.

Fees

The Copyright Fees and Technical Amendments Act of 1989, which became effective January 3, 1991, increased fees for all statutory services offered by the Copyright Office. In addition to increasing the fees, the Act changed the manner in which fees will be calculated in the case of recordings of documents and for the issuance of certifications other than additional certificates of registration. On November 26, 1991, the Office issued housekeeping amendments correcting the fees appearing in its regulations so that they correspond to the fee schedule enacted into law by the fee legislation.

Corrections and Technical Amendments

In a housekeeping amendment published December 16, 1991, the Office issued a final rule to correct paragraph designations in the fee amendments regulation published November 26, 1991. The Office also made technical amendments in paragraph designations in the Group Registration for Serials regulation published December 7, 1990.

LEGISLATIVE DEVELOPMENTS

Copyright Renewal

On June 26, 1992, President Bush signed S. 756 (introduced by Sen. DeConcini), the Copyright Amendments Act of 1992 (P.L. 102-307). Title I of that Act, the Copyright Renewal Act of 1991, makes renewal registration optional. The Act contains several inducements to encourage renewal registration, but, in the absence of renewal registration, the copyright is renewed automatically. Renewal registration may be made in the last year of the original term or during the renewed and extended term, after automatic renewal occurs, but the legal effects of such registration differ

from registration during the last year of the first term of copyright. The Act only affects renewal of copyrights in works for which copyright was originally secured between January 1, 1964, and December 31, 1977. The renewed copyright will endure for a further term of 47 years. Renewal registration made during the last year of the original term of copyright or at any time during the renewal term is not a condition of the renewal and extension of copyright.

If a claim to the renewal term is made within one year before expiration of the original term of copyright and the claim is registered, the renewal term will vest in the person or entity entitled to make the renewal claim on the effective date of registration. If no such application is made and registered, the renewal term will vest in the person or entity entitled to claim the renewal term on the last day of the original term of copyright.

Renewal registration may be made at any time during the renewed and extended term whether or not registration was made for the original term of copyright. If no original term registration was made, the Register is authorized to request information with respect to the existence, ownership, or duration of the copyright for the original term.

The Act also increased the renewal registration filing fee from \$12 to \$20.

Film Preservation

Title II of the Copyright Amendments Act of 1992 reauthorizes the National Film Preservation Board for four additional years and requires that the Library of Congress prepare a study, to be submitted no later than one year after enactment, of the current state of film preservation and restoration activities. The Library is authorized to continue to select 25 additional films worthy of preservation each year and to locate archival quality prints of such films. The Act no longer requires that colorized or altered films must be labeled as such.

Library Photocopying

Title III of the Copyright Amendments Act of 1992 repeals the requirement in section 108(i) of the Copyright Act that the Copyright Office submit a report every five years to Congress on how section 108 (library photocopying) is accomplishing its intended purpose.

Fair Use

On August 11, 1992, the House passed a fair use measure, H.R. 4412, introduced by Rep. Hughes, which clarifies that the fair use provisions of section 107 of the Copyright Act apply to unpublished works as follows: "The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above [section 107] factors." The Senate passed the same version on October 7, 1992, and the President signed the legislation, P.L. 102-492, on October 24, 1992.

Computer Program Piracy

Congress passed S. 893, legislation introduced by Sen. Hatch, which amends title 18 to impose stiff criminal penalties for the reproduction and distribution of multiple copies of computer programs and all other works distributed in 10 or more copies with a value of \$2500 or more. The President signed P.L. 102-561 on October 28, 1992.

Audio Home Recording Act

This act is the result of a historic agreement between representatives of the audio hardware and music industries and deals with fears that the new digital audio recording technology will cause an increase in at-home copying, resulting in the loss of legitimate sales of prerecorded music.

The Audio Home Recording Act implements both a technological solution and a royalty com-

compensation solution. It applies to all current and future digital audio recording technologies (hardware and media) and it requires all digital audio recorders—except for professional models, dictating machines, telephone answering machines and similar devices not used to copy music—to contain the Serial Copy Management System (SCMS). This SCMS prevents copies from being copied. Only one generation of copying is allowed, except that an unlimited number of copies may be made from an original digital source.

The bill also requires importers and domestic manufacturers of digital hardware and media to make royalty payments to the Copyright Office. The Copyright Royalty Tribunal will divide the payment into two funds: the “sound recording fund” and the “musical works fund.” Specified proportions will be paid to composers, publishers, musicians (featured and nonfeatured) and recording companies based on sales and air play.

Under the legislation, consumers will be exempt from copyright infringement suits for private, noncommercial audio recording of either digital or analog products. Similarly, manufacturers are shielded from suits for contributory infringement. The Register testified in favor of the Audio Home Recording Act on February 19, 1992, before the House Subcommittee on Intellectual Property and Judicial Administration. The Senate passed Sen. DeConcini’s S. 1623 on June 17, 1992, and the House passed H.R. 3204, introduced by Reps. Brooks and Hughes, on September 22, 1992. The Senate concurred with the House version on October 7, 1992, and the President signed P.L. 102-563 on October 28, 1992.

Cable License

Congress continued to wrestle with the question of whether or not the cable compulsory license (section 111 of the Copyright Act) has outlived its usefulness; whether it should be amended to incorporate new technologies such as wireless cable systems, or whether it should be phased out

and replaced by a negotiated licensing system. Rep. Hughes introduced H.R. 4511, which expands the license for several years to cover new technologies, such as wireless cable and satellite carriers, and then phases it out and replaces it with a negotiated license. On April 1, 1992, the Register testified on the Copyright Broadcast Retransmission Act before the House Subcommittee on Intellectual Property and Judicial Administration. He noted that the Office supports the goals and objectives of H.R. 4511, and that there is a clear and present need to bring the compulsory license into line with the current realities of the marketplace, including the extension of the license to other types of video transmission besides cable and satellite carriers. On April 6, 1992, the Register testified to the same effect at a cable oversight hearing before the Senate Subcommittee on Patents, Copyrights and Trademarks. H.R. 4511 was approved by the Subcommittee on June 18, 1992.

Meanwhile, on January 31, 1992, the Senate passed Sen. Danforth’s comprehensive cable legislation, S. 12, one section of which gives broadcasters “retransmission consent,” which the Copyright Office believes to be inconsistent with section 111 of the Copyright Act. Retransmission consent means cable systems will have to receive permission from broadcast stations before retransmitting their signals by cable. The House passed its counterpart legislation, H.R. 4850, on July 23, and the resulting compromise legislation, the Cable Television Consumer Protection and Competition Act of 1992, was agreed upon on September 9, 1992. Primarily a piece of communications legislation that amends the Communications Act of 1934, the act allows local authorities to regulate cable subscription rates for basic service in accordance with FCC guidelines, reinstates former FCC rules on “must carry,” and prevents discrimination against distributors, among other provisions. Congress overrode a presidential veto on October 5, 1992, and the legislation became P.L. 102-385.

Technology Transfer

On May 6, 1992, the Register testified before the House Subcommittee on Intellectual Property and Judicial Administration in support of the Technology Transfer Improvements Act of 1991 (H.R. 191, introduced by Rep. Morella), which would permit federal agencies to own and to transfer copyright in computer software developed under cooperative research and development agreements with industry, known as "CRADAs." The bill would also permit payment of royalties to federal software creators for the commercial exploitation of their computer programs created under a CRADA. The Senate version, S. 1581, was introduced by Sen. Rockefeller. The House version passed on September 23, 1992, as part of another piece of legislation, H.R. 5231, and in the Senate was substituted for the text of S. 1330, which was not enacted into law.

Broadcast Monitoring

On June 16, 1992, the Register testified before the Senate Judiciary Committee in opposition to S. 1805, legislation introduced by Sen. Hatch, which would amend the fair use provision of the Copyright Act (section 107) to permit monitoring of broadcast news reporting. Copyright owners of broadcast programming have the exclusive right to reproduce, distribute and prepare a copy of their programming. Some broadcast monitors are now performing all of these functions. By making their acts a fair use, S. 1805 would constitute a substantial departure from prevailing fair use precedents, which do not permit commercial reproduction and subsequent preparation of derivative works without the owner's permission.

Senators DeConcini and Hatch asked the Register to bring the parties together to discuss these issues and to work out a mutually satisfactory agreement to eliminate the necessity of legisla-

tion. The Register chaired two meetings with interested parties, and their efforts will continue in the new year.

The Satellite Home Viewer Act Amendments

On June 4, 1992, the Register testified before the Senate Subcommittee on Patents, Copyrights and Trademarks in support of S. 2013, the Satellite Home Viewer Act Amendments of 1991. S. 2013, which was introduced by Sen. Leahy, would amend section 109 of the Copyright Act to allow a local distributor to sue a satellite carrier for copyright infringement, if the distributor believes that the carrier is charging a discriminatory fee for distribution of signals. The present copyright law allows only copyright owners or their designees to sue for infringement, and distributors are generally not copyright owners. Allowing distributors standing to sue would be a historical departure. Rep. Boucher introduced H.R. 3864, the House companion legislation, on November 21, 1991.

Copyrightability of Court Reports

On May 14, 1992, the Register testified before the House Subcommittee on Intellectual Property and Judicial Administration on H.R. 4426, a bill introduced by Rep. Frank that would amend section 105 of the Copyright Act to exclude from protection the names, numbers, and citations of state and federal laws and regulations, and the volume and page numbers of state and federal regulations and judiciary decisions even if compiled by a private sector publisher. The bill would also clarify that states could continue to charge reasonable fees for making available laws, regulations, and judicial opinions. The Register questioned the need for this bill and suggested that if Congress wished to make such an amendment that it amend section 102 covering general subject matter, rather than section 105, which covers government works.

Film Labeling

On September 22, 1992, the Senate Subcommittee on Patents, Copyrights and Trademarks held a hearing on S. 2256, the Film Disclosure Act of 1992, which was introduced by Sen. Simpson. The bill would allow directors and screenwriters of motion pictures the opportunity to express their objections to material alterations of their works. Under an amendment to the Lanham Act, the bill would require that if authors of films object to alterations—such as colorization, time compression, or panning and scanning—labels indicating the objections would be affixed to the motion picture and its container. When a film is sold or rented, alteration information would be shown prior to the showing of the altered work.

The Register submitted a written statement in which he observed that authors' rights are involved in film labeling, referring to the Copyright Office March 1989 report on the subject, posed several alternative solutions to the legislation, but took no position as to the applicability of the Lanham Act to film labeling issues. Rep. Mrazek introduced identical legislation, H.R. 5868, in the House on August 12, 1992.

COPYRIGHT OFFICE OPERATIONS

Copyright Automation Group

The Exception Tracking System (ETS) is the replacement for the 13-year-old Correspondence Management System. The new system is used to track the 100,000 cases each year that require further information from the remitters as well as other cases that do not follow routine processing. Final development and testing was successfully completed, and the system was installed in production on July 13. The ETS Task Group in cooperation with the COINS coordinators prepared a comprehensive user's manual and provided training to affected staff.

A contract for an optical storage system was awarded to IA Corporation of Alameda, California, (formerly the Integrated Automation Division of Litton Industries at the time of the Library's selection of a contractor) for a system that will eliminate the present handstamping of registration numbers and replace it with bar code labeling equipment that will be part of new scanner workstations to capture an online computer stored image of each registration; streamline the printing of registration certificates through use of high speed printers working from the stored image; eliminate the slow and costly microfilming of copyright applications; and eliminate prospectively the filing, retrieval and refiling of paper applications used by the public.

The contractor proceeded with development in accordance with the original specifications in the request for proposals and more detailed information provided to them by the Office on May 18.

The Copyright Automation Group worked with Elite Business Applications, Inc. to create digitized versions of all copyright application forms as well as software to enable a "fill in the blanks" system for use on microcomputers. The digitized forms are stored in plug-in laser printer modules that allow rapid printing of high quality reproductions of the forms together with the information entered through the microcomputer. The software also allows storing of the information on magnetic disks, which may open up the possibility of receiving the information in a machine readable form. The office is very close to approval of the forms, at which time it anticipates use by our high volume remitters.

The Copyright Office has decided to pursue the avenue of outside funding for the conversion of the 45 million card catalog (pre-1978) in the hope that an information broker may see it as a profitable product to make available to its customers. A Request for Proposals was prepared and approved and sent to Contracts and Logistics for processing. Proposals will be evaluated in the first quarter of fiscal year 1993 and a contract awarded

to the offeror presenting the best plan for converting the card information to a format that promises wider distribution of the data.

DIALOG Information Services Incorporated continues to make available to its customers the registration records from 1978 to the present. They have also requested copies of the machine readable catalog records recorded through the COPICS I system from 1974 to 1978 and the current in-process records. The Automation Group has worked with the Library's Information Technology Services (ITS) to identify and make copies of the COPICS I tape records to be provided to DIALOG in exchange for access to these records by the Copyright Office. Discussions are also under way with the Catalog Distribution Service to make available a version of the Office's in-process records to all interested subscribers.

Cataloging Division

Fiscal year 1992 represented a productive year for the Cataloging Division. Though the overall clearances declined slightly from the 1991 high, there were several record-breaking weeks during the last quarter. The successful reduction in the on-hand amount was influenced by several factors: the decrease in receipts, ongoing efforts to streamline processes and rules, and the sense of ownership and participation felt by the staff in the creation of the division's records.

In the Documents Unit, increased receipts continued during the year as a result of the 1990 *Pergrine* case, which resulted in remitters filing with the Copyright Office mortgages and security interests previously filed in state offices. Significant improvement in productivity, however, is expected from changes in compendium practices that will require fewer conditions for examination by the documents specialists. Processing time has also benefitted from a streamlining of cataloging practices.

In the Compliance Records Unit nearly all categories of material showed increased receipts and increased unit productivity compared to the previous fiscal year. Throughout the year catalogers from other sections within the division and the unit's deposit recorders worked to virtually eliminate the long-standing backlog. In March, the unit ceased counting inkprint copies of newspapers not retained by the Library and ceased checking in inkprint newspapers. After extensive consultation with a number of other Library units, a waiver letter was developed that will be sent to publishers of newspapers that are not retained by the Library and is expected to result in a dramatic decrease in receipt of non-retained newspapers. An extensive review was also done on the LC serials discard list, and a similar letter will be sent to the depositors of non-retained serials.

During the fiscal year 10 issues of the *Catalog of Copyright Entries* were published, covering portions of the year 1982; there remain nine issues for 1982 to publish. In the meantime, the division is also exploring possible ways to have its computerized databases substitute for the publication of catalogs.

Simplification and streamlining have been perennial concerns of the Cataloging Division as receipts rose and budgets remained static or were cut. During fiscal year 1992 the division's Streamlining Advisory Group worked out and experimented with rules for unpublished materials, which were completed and endorsed as of July 1. The group immediately began its work on rules for published materials, with general a consensus to immediately apply the rules for copyright facts and for personal name indexing that had been developed for unpublished materials. The implementation of streamlined rules appears to have contributed to the increased average weekly clearances in the division.

An issue related to rules revision and streamlining is the cross-training of catalogers to handle all classes of material. During the year, a task group composed of section heads put together

several proposals for the cross-training of senior catalogers. Preliminary discussions with staff indicate that these proposals require further gestation and should follow the completion of the rules streamlining process. In the meantime, sections that were in a position to offer assistance found ready volunteers to catalog for sections with high on-hand figures. Catalogers in the Performing Arts, Literary and Serials sections offered substantial assistance to Audiovisual and Visual Arts sections, as well as to the Documents Unit.

Discussions continued on how the usefulness of COPICS records to the Library of Congress can be enhanced. Further informal discussions were held with Motion Picture, Broadcasting and Recorded Sound Division (M/B/RS) regarding the use being made of COPICS records as a finding aid for sound recordings. In September, study began on the data and workflow overlap between COPICS and the Library's bibliographic records to determine the extent of overlap and whether data migration is desirable.

The possible development of a resource database file for M/B/RS has led to cooperation between the Cataloging Division and Network Development/MARC Standards to create a mapping of COPICS records to USMARC. This is nearing completion. The purpose is the possible conversion of selected COPICS records to USMARC for loading into the anticipated resource database.

Examining Division

Following meetings with the Register and representatives of the National Newspaper Association and the American Newspaper Publishers Association, the division office planned and implemented a group registration system for daily newspapers. Beginning September 1, 1992, one complete month's issue dates of foreign and domestic newspapers available in microfilm may be registered on a single application G/DN with a

\$40.00 fee. Newspapers must meet the Library definition of a "daily" designed to inform the general public or particular groups about current events in order to qualify. They must also be works made for hire, rather than works authored by individuals, and must be all-new collective works to qualify for this group rate. It is expected that the new group form will achieve the Register's goal of encouraging more dailies to register, thereby saving the Library substantial sums that it now expends for microfilm copies.

The division continued to administer the new regulation requiring the deposit of the CD-ROM (Compact Disk Read Only Memory) format plus operating software and manuals for all works published in ROM format. The division requires automated updated databases registered at three-month intervals to be submitted in ROM format if so published. A deposit of identifying material must be made to show the new material on which copyright is based, and the accompanying application should conform to instructions for registration of updated databases.

The Literary Section received approximately 75 claims in CD-ROM format. The staff is examining the works using equipment in the Library's National Demonstration Lab until the division's equipment arrives.

Although the regulation [C.F.R. 202.20(d)] governing secure tests was written at a time when secure tests were produced in print format, the Office has recently taken the position that its language is sufficiently broad to encompass an automated database of pretest questions to be administered on a computer under secure testing conditions. A database deposit will be submitted for examination and returned to the applicant, with sufficient portions retained to constitute an archival record.

An increased number of architecture claims were received this year, but the total number of registrations continues to be disappointingly lower than anticipated by the enactment of the architecture amendment. Many claims require

correspondence and few represent the culturally important works that the Library would like to collect.

The division continues heading a task force convened jointly with the Register and the General Counsel to review and decide precedent setting cases arising under the recent architecture amendment that allows registration for original building designs. Among the decisions reached are those refusing registration for claims limited solely to the redesign of interior spaces in preexisting buildings (on grounds that interior space arrangements can be protected only as part of an overall new building design), accepting registration for a child's playhouse that meets the originality standard, and refusing registration for a kiosk type wet bar. Similarly, designs for mobile homes, recreational vehicles, houseboats, and wet bars have been rejected as subject matter not covered by the Act. A few designs, including an unadorned octagonal kiosk and a rectangular storage building, were rejected as insufficiently original to be protectable by copyright. Some of these decisions were reflected in the final regulation published on September 1, 1992, 57 Fed. Reg. 39615 (1992).

The General Counsel issued a policy that permits registration under the Office "rule of doubt" for certain sound recording claims whose eligibility is based only on UCC membership.

The Performing Arts Section began to receive works in CD-I (Compact Disk Interactive) format and other new technology formats. While the Motion Picture teams have equipment to examine some of these formats, they have cooperated with the National Demonstration Lab to examine other formats.

The incoming work fluctuated throughout the year, but the division was able to maintain an excellent level of productivity. Over 600,000 registrations were completed during the fiscal year. The division ended the year in a generally current state, with an average of two to three weeks of work on hand in the three larger sections. The

Renewals Section experienced quite a drop in receipts in the last quarter, possibly due to the amendment to the law that increased the fee and made renewal protection automatic.

As a result of the automatic renewals legislation, the RE form, Circular 15, and the section's guide letters and practices are being revised.

Throughout the year the staff continued the efforts that were begun in fiscal year 1991 to reduce in-processing time for claims, the TRIM project. Meetings were held with staff at all levels to discuss changes in practices and procedures with an emphasis on maximizing productivity without sacrificing the validity of the claim to copyright. Several practice changes were implemented division-wide that permitted more registrations without correspondence. A task group of senior examiners from each section worked with the assistant chief to revise a procedure for handling intersectional referral cases more efficiently.

The ETS (Exception Tracking System) replaced the CMS (Correspondence Management System) for tracking in-process correspondence. Several staff members were involved from February until September in the final planning and training for implementation of the new online system designed to track and locate claims and other fee services that require correspondence or consultation.

The first group registrations for serials were received in December. Guide letters were created to assist the staff in handling these claims and Circular 62a was incorporated into the general serial circular, Circular 62.

The Online Index Group completed the first phase of a project by putting online the division-wide practices. A Computer Program Glossary Task Group compiled an online glossary of computer-related terms frequently encountered in examining software claims. This online tool is expected to help examiners keep abreast of the changing vocabulary that occurs with new technological developments.

In the Visual Arts Section, a new practice was

developed based on a review of works made for hire and creation of joint works with a view toward the Supreme Court decision in *Community for Creative Non-Violence v. Reid*. The practice enables the staff to avoid complex discussion of "scope of employment" situations involving agency law principles, and it provides guidance on considering works as "joint works" when one author's contribution is the preliminary artwork and the other's is the finished work—either artwork or sculpture.

The division's seminar series, The View From the Other Side, continued with a lecture in November by Ekatarina Yakovleva, who was on a three-month internship in the Copyright General Counsel's office beginning in September. She was a 1987 graduate of Moscow State University with a First Class Diploma of the Lawyer and a Master of Laws. Since 1987 she had worked as a consultant for the Artists' Union of the USSR and she discussed her legal work for the Artists' Union.

Information and Reference Division

Examples of higher productivity could be seen in every dimension of the division's operations. The processing rate in the Preservation Unit almost doubled as the staff microfilmed the highest number of reels ever, and the Reference and Bibliography Section had the largest volume ever of incoming telephone calls from the public. The Clerical Support Unit cleared the highest volume of incoming telephone requests for publications from the Order-Recorder, and the number of additional certificates prepared in the Certifications and Documents Unit rose to an all-time high. These were just a few of the areas in which there were substantial productivity increases.

The staff contributed in numerous ways to the support of the Library's mission. The division chief served as the representative of the Copyright Office on the Library's overall task force on security. The division office continued to work with the Librarian's Office in exploring ways to utilize

the copyright collections to develop new marketing potentials for the Library. The division also continued to cooperate with the custodial divisions throughout the Library in utilizing the copyright deposits as fully as possible to enhance the Library's collections.

In September a program was initiated to mail sets of copyright application forms and Circular 1 to over 15,000 public libraries throughout the nation. This was done in an effort to make these application forms more widely available to the general public and decrease the number of applications received with short fees.

Upon passage of the Americans with Disabilities Act, the division began taking steps to comply with its provisions. In September the Information Section obtained a Telecommunications Device for the Deaf (TDD) so that information specialists can communicate directly with hearing impaired persons. Copies of Circular 1 in oversized print were made available to those who are visually impaired and other circulars in oversized print are available upon request. Work also began on developing scripts for informational audio tape cassettes for public distribution.

Various avenues were utilized to inform the public of the change in the Public Office telephone number including contacting professional organizations, trade associations, the media, deposit account holders, and congressional offices. All copyright publications and circulars were updated with the new telephone number, which became effective in April, and telephone directory services throughout the nation were given the new number.

The biggest operational change in both the Information and the Publications Sections was the activation of the AT&T CONVERSANT automatic telephone answering system. This telephone system has two major components: the recorded message information system and the "Hotline" Order-Recorder component. Initial cutover to the new system was done in October, but due to problems with the Order-Recorder

function, the system was deactivated. After a series of meetings with AT&T personnel and further testing and modifications to the system, the system was activated again in January. The performance of this system for the remainder of the fiscal year was mixed.

On one hand, the new system provided some relief for the information specialists by providing information for the simpler, more frequently asked questions. As a result, the information specialists answered 15 percent fewer telephone calls than the prior year, averaging over 550 incoming calls each work day. However, due to technical problems with the system, the staff received numerous complaints from the public regarding the system's poor performance. Also, because of the unreliability of the Order-Recorder component the information specialists were unable to transfer public callers to that function. In order for callers to the Information Section to leave their names and addresses for forms and publications, this information had to be taken manually.

On the other hand, in the Clerical Support Unit, there was a tremendous increase in the number of incoming calls received via this system over the prior fiscal year. The unit cleared over 128,000 calls from the Order-Recorder during this fiscal year, as compared to over 95,400 for the previous year, approximately a 34 percent increase. But technical problems continued to plague the system, in part brought about by the high volume of calls being received daily, from 2,000 to 3,000, which were beyond original estimates of expected volume. As the fiscal year ended, efforts were being made to determine how to best correct these problems and deliver the highest level of service possible to the public.

On a more successful note, the audiovisual equipment in the permanent Copyright Exhibit was replaced with updated technology. The aging videotape machines were replaced with laser disc equipment, vastly improving the exhibit's visual/audio quality and reliability. The Copyright Office audio/visual slide presentation was revised

and updated to reflect changes in the Office and the copyright law since the original version was done. The Publications Section was also responsible for designing and printing the International Copyright Institute logos, brochure, and several other related items.

The Certifications and Documents Section implemented changes in office policy and procedures to improve the overall service the section provides. Improvements in service to the public were also made with the acquisition of new equipment for the inspection of deposits. At the same time, the staff handled a dramatically increased workload over the prior year.

For the Records Management Section fiscal year 1992 was also quite productive. The processing rate in the Preservation Unit almost doubled, the backlog of deposits at the Deposit Copies Storage Unit (DCSU) was significantly reduced, and a backlog of unfiled applications in the Records Maintenance Unit was eliminated. However, the critical shortage of space at DCSU continues to be a problem. For every cubic foot of material received to be stored, a cubic foot must be transferred out of this unit. During the year new boxes of material were ready to be placed on the shelves before space could be created by removing the old boxes. While awaiting a long-term solution to this problem, the short-term solution of sending material to the Washington National Records Center (WNRC) continues. During the year, 21 accession groups containing 3,654 cubic feet were transferred.

In the Reference and Bibliography Section, a major step was made toward further utilization of automation support with the installation of an automation workstation for each bibliographer. These workstations provide direct access to the online automated copyright files (COHM, COHD, COHS) for each bibliographer, greatly improving their efficiency in searching the files. Also, much time was saved through the preparation of draft correspondence on the personal computer and downloading onto a floppy disc for final typing

by the correspondence and information assistants. Another effort to improve the efficiency of the operation was made by using the print-outs from the automated files as part of the search report, reducing the amount of typing of registration and document citations for the search report.

As part of the effort to improve service to the public an instruction sheet on "How to Search Copyright Files" was developed by a task group for public distribution.

Licensing Division

The formal acceptance of release 1.0 of the Licensing Division's new automated system in July represented a major milestone and signaled the completion of more than four years work by various contributors, including staff members from Information Technology Services (ITS), the Copyright Automation Group, and staff of the Licensing Division.

The automated system contains information on the compulsory licenses for cable systems, satellite carriers, as well as the jukebox license program. The system began actual tracking of statements of account and royalty fee receipts and deposits in the early months of 1992 and has made the division's work more efficient and its operations more streamlined. For example, before the system was installed, cross-reference cards were prepared by the Information Section to enable the public to identify statement of account filings on record by community served. This manual preparation of over 26,000 cards per year is no longer necessary as the new system generates a report of this data by community, by legal name, or in any other form desired. Similarly, it is no longer necessary to manually type folder labels for each statement. The system develops and formats the label based on the stored data.

Security, tracking, and mailing of the over 13,000 statement of account forms submitted semiannually by cable television systems—the 16-

page Form SA1-2 and the lengthy 28-page Form SA-3—has always presented an interesting challenge. To alleviate some of the inefficiencies associated with these forms, including the handstamping of each page with the remittance number, a customized statement of account form was produced for the first accounting period of 1992. Cable system data from the division's new automated system was extracted onto magnetic tape, and a contractor was selected to produce the statement form and to fill in information for each cable system. Identification information was printed on the top of each page, thereby eliminating the need for staff to handstamp the pages. The contractor also handled the mailing of the forms, which the staff used to do by applying the labels by hand. This program resulted in a net savings of staff resources and some reduction of the stress that is created in such time-critical processes.

Electronic funds transfers were successfully initiated by the Licensing Division in fiscal year 1991 to receive cable television and satellite carrier royalty fees via the U.S. Treasury's Fedwire Deposit System ("Fedwire"). This year, the division obtained approval from the U.S. Treasury to accept "Fedwire" payments of \$50,000 or more where previously payments were required to be at least \$100,000. To further publicize the program, letters were sent to all eligible multi-system owners who had not yet availed themselves of the electronic funds transfers program. By the first accounting period of 1992, the success of these efforts could be effectively measured by a 91 percent increase of cable royalties submitted through electronic funds transfers. Sixty-four percent of the total royalties are now submitted by electronic transfers.

Support to the Copyright Royalty Tribunal continued to increase during fiscal year 1992. Cable royalty fee distributions totalled \$234,300,000, and the division made 256 separate investments, earning about \$26,300,000 in interest.

Four statistical surveys were conducted to de-

termine the percentage breakdown of cable royalty fees submitted by fund type—3.75 percent fees, base rate fees, and syndicated exclusivity surcharge fees. One report covered all fees submitted for both accounting periods of 1990, less refunds and transfers. The other three reports, covering 1987, 1988, and 1989 cable funds, represent only those additional royalties submitted since the original report was compiled.

Licensing Division staff monitored legislative activity relating to the division's work, particularly the Audio Home Recording Act of 1992 (see "Legislative Developments"), which requires royalty payments on digital audio recording hardware and media, and which will be the division's responsibility to administer. The division offered suggestions for modifying the language of the bills to the Register of Copyrights for his testimony to congressional committees, and a committee was established to prototype a notice filing and the quarterly and annual statement of account forms. By year's end, the prototype forms had been completed, and the staff briefed on the bills presented, putting the division in an excellent position to begin work with this new license once the legislation was enacted. (The legislation became effective October 29, 1992.)

Final regulations were published by the Copyright Office relating to its notice of proposed rulemaking concerning definition of a cable system. The Office excluded multichannel, multi-point distribution services ("MMDS") effective January 1, 1994. The immediate effect of this rulemaking on the Licensing Division was to necessitate a better identification of MMDS systems that have filed statements of account and withhold these fees from distribution by the Copyright Royalty Tribunal in the event that refunds are requested.

In February, a microcomputer was installed in the Licensing Division to establish a network utilizing Banyan software, and efforts were started to establish software applications with the assistance of ITS and the Copyright Automation

Group. The computer, or "Banyan server," as it is called, enlarges the capability of the entire division staff who are connected via "token ring" technology to the mainframe computer.

Receiving and Processing Division

The imminent replacement of the present registration numbering and certificate production process with a state-of-the-art optical disk system engaged the efforts of the division office, section managers, and staff in the Registration Numbering and Certificate Production Unit. Within the next year, this new system will replace the manual numbering of registration applications and the photocopying certificate production process, and will make applications accessible online on optical disk terminals located at various points throughout the Office. Division staff were fully involved in developing the requirements of the new system, especially in how the system would accommodate the daily needs of users. The staff also helped plan the layout for the new workstations.

A year ago the Office projected that the short fee operation would be sufficiently low in new short fee receipts so that this operation could be absorbed into the normal workload and handled through the Incomplete Claims Handling Area (ICHA). Unhappily, short fees have stabilized at the rate of around 600 new cases per week and do not appear to be dropping as expected. As a result, instead of forwarding a short fee claim through to registration, it is being held in the Short Fee Area while awaiting a reply from the remitter. After the reply is received, the application is annotated with the new effective date of registration (i.e., the date that the second portion of the fee was received), and then forwarded to the Examining division. Where no reply is received after 120 days, the file is closed and applications and unpublished deposits are returned to the remitter. Published deposits are forwarded to

the Library as Section 407 deposits. Implementing this procedure required consultation with affected staff and detailing staff from other areas. The project was incorporated into the Materials Control Section, which will eventually take the short fees as normal incomplete submissions handled in ICHA.

Although group registration of serials became effective early last calendar year, the full effects were felt most profoundly during this fiscal year. There was some confusion with the rules governing this type of registration, and many early group registration applications were completed incorrectly. Division staff worked to identify the problems and to develop new policy tailored to the inconsistencies that were being received.

New renewals regulations, which came mid-year, presented a fresh set of issues that had to be resolved. Aside from dealing with the second fee increase in two years, staff received requests from the public for unusual accommodations when remitters learned that renewal registration is now optional.

The introduction this year of the Exception Tracking System (ETS) to replace the Correspondence Management System (CMS) was of great benefit to the staff, because it allows accessing of the Receipt/In Process (RIP) Record together with the correspondence record, a process which formerly required consulting two separate screens on the computer system, and provides many enhancements over the old system. Planning for ETS involved staff from all the affected divisions, and division staff participated in training for ETS according to the needs of each area, from simple overviews to extensive hands-on exercises.

Security in the Copyright Office, as throughout the Library of Congress, became a prominent issue this year. Meetings were held among staff from the Mail Units, the Data Preparation Unit, and Materials Control Section, and procedures for ensuring the security of deposits were agreed upon. Agreement was also reached with the Examining Division on new security procedures for

Performing Arts (PA) claims.

The accessioning of newspapers became a thing of the past during the year. In an effort to reduce the processing time for the many newspapers that are received for deposit under Section 407, it was decided that newspapers would be separated and placed in their own tub, but it would no longer be necessary to apply the accession stamp to them.

The Correspondence Control Unit went through a rather extensive restructuring during the past year. New workstations were installed, and each workstation was outfitted with a COINS terminal. The restructuring also permitted the enhancement of the layout in the oversized deposit room.

The Fiscal Control Section head, the unit supervisor, and the assistant chief, attended a series of meetings with the Financial Management Office and Price Waterhouse regarding financial system management priorities and how new Library initiatives may affect this division. Two Fiscal Control Section staff members also attended a seminar on the CA\$HLINK Agency Access System, sponsored by the Financial Management Service of the U.S. Treasury. This system, which was installed for use by this division late in the year, provides immediate access to deposit and transfer information in the Office's Treasury account and should make monthly and yearly reports much easier to reconcile.

The division has continued to modernize its operations whenever possible by updating equipment and acquiring newer technology tools to make our work more efficient. A FAX machine was procured during the year and its use has exceeded expectations, as the staff utilizes it to exchange deposit account information, registration or prior correspondence information to assist in searches, and even to receive deposits (bulletins) where timeliness is essential. The division staff also met with the supervisors and section heads in a series of meetings with the expressed intention of "How can we serve you better?"

Ergonomics Training

Datahealth Ergonomics Training, conducted by three staff members who were formally trained and certified by The Joyce Institute, was offered to all Copyright Office staff members who could profit by it, in particular—but not limited to—those who work with video display terminals. The trainers tailored the course to the specific needs of class participants, by meeting first with managers in each division to become familiar with divisional operations. Twenty-eight classes were conducted for 443 employees. In addition, each class participant received an individual work site consultation to apply principles learned in class. A special course was designed and conducted for the Mail Room and training was also offered off-site for the staff at Landover, Md. The Office will continue to offer training for new employees.

JUDICIAL DEVELOPMENTS

Copyright Office Litigation

In *Motion Picture Association of America v. Oman*, 969 F.2d 1154, 23 U.S.P.Q.2d 1447 (D.C. Cir. 1992), the District of Columbia Circuit affirmed a lower court decision upholding the Copyright Office's regulation barring retroactive assessment of interest on late royalty payments under the cable compulsory license. The case was brought by the MPAA after it asked the Office to issue a rulemaking requiring cable operators to pay interest on late royalty payments, specifically those that accrued following the initial decision in *Cablevision Systems Development Co. v. MPAA*, 836 F.2d 599 (D.C. Cir. 1988). The court in *Cablevision* affirmed the Office's definition of "gross receipts" used to calculate cable royalty payments. In *MPAA v. Oman*, the court said that if Congress has not conferred retroactive rulemaking power on an

agency, the agency, in this case the Copyright Office, has no such power to exercise.

The Copyright Office continued its litigation in *Atari Games Corp. v. Oman*, 888 F.2d 878 (D.C. Cir. 1989), concerning the videogame "Breakout." Following remand from the U.S. Court of Appeals for the District of Columbia, the Office considered "Breakout" under the court's mandate and again rejected it for lack of sufficient creativity as an audiovisual work. The Office was affirmed in its decision by the district court. The case is now before the Court of Appeals awaiting review.

The Copyright Office has responded to plaintiffs' complaint in *Satellite Broadcasting and Communications Association of America, et al. v. Ralph Oman*, (N.D. GA, Case No. 1:92-CV-666-HTW, March 19, 1992). Plaintiffs contest a July 11, 1991, determination by the Copyright Office that satellite carriers do not qualify as "cable systems" under the copyright cable compulsory license, section 111 of the 1976 Copyright Act. In making its determination, the Office disagreed with an 11th Circuit Court decision relating to the issue in *National Broadcasting Company v. Satellite Broadcast Networks*, 940 F.2d 1467 (11th Cir. 1991). In the current case, certain satellite carriers filed a declaratory judgment suit asking that the Office's decision be declared improper. The Office has filed a request for a change of venue from the northern Georgia district to the district court of the District of Columbia.

Copyright and Computer Software

Litigation involving rights to computer software rose to the forefront this past year. In *Consul Tec. Inc. v. Interface Systems, Inc.*, 22 U.S.P.Q.2d 1538 (E.D. Mich. 1991), the court enjoined use of the computer interface and accompanying manuals that copied the defendant's "unique compilation of commands, command line syntax, and status message codes" contained in its program. It ruled that these elements embody unique, creative expression separate from the program's

"idea" of enabling two computers to communicate with one another. The district court adopted the Ninth Circuit approach of evaluating substantial similarity of computer programs and rejected defendant's argument that its verbatim use of features was justified by "commercial necessity," by which defendant meant that because consumers were used to the copyright owner's program they would not want to learn a new program.

In *Sega Enterprises, Ltd. v. Accolade, Inc.*, 785 F. Supp. 1392 (N.D. Cal. 1992), a district court issued a preliminary injunction preventing Accolade from replicating Sega's system software to achieve interoperability. The court held that reverse engineering of software constituted infringement. Sega sells the successful Genesis console and video game cartridges and also licenses its video games. Accolade makes software including game cartridges compatible with the Genesis console. This case involved disassembly and translation of object code into assembly language, making intermediate copies of the translated material, the writing of original game programs, and copying of the Sega code to the extent necessary to play defendant's games on the Genesis console. The court held that Accolade's intermediate copying was an infringement, and it denied the defendant's fair use argument in light of Accolade's intent to profit from the copying of Sega's program. The Ninth Circuit dissolved the preliminary injunction on August 28, 1992 (No. 92-15655), in a decision not released before the end of the fiscal year.

Another case involved Nintendo of America, Inc. and Nintendo Co. Ltd., which make and sell a home video game package, the Nintendo Entertainment System (NES). Nintendo designed a computer program—the 10NES—to prevent the NES from accepting a non-Nintendo or unauthorized game cartridge. Both the "master chip" or "lock" on the NES console and the "slave chip" or "key" on an authorized cartridge are programmed with the 10NES.

Atari Games Corporation tried to replicate the

NES security system in 1986 by chemically peeling layers from the NES chips to allow microscopic examination of circuitry representing the object code. When this reverse engineering effort failed, Atari took a license from Nintendo in December 1987.

In 1988, Atari's lawyer applied to the Copyright Office for a reproduction of the 10NES program, falsely stating that it was then a defendant in an infringement suit in California and that it needed a copy of 10NES for that litigation. The 10NES source code obtained from the Copyright Office enabled Atari to replicate the 10NES object code and to develop its own program (the Rabbit) to unlock the Nintendo system.

In subsequent litigation the District Court for the Northern District of California enjoined Atari from infringing Nintendo's copyrighted computer program. On appeal the U. S. Court of Appeals for the Federal Circuit affirmed the district court's holding that plaintiff is likely to establish that defendant infringed by obtaining and copying the "literal" elements of the 10NES source code with the following important qualification. The U. S. Court of Appeals for the Federal Circuit rejected the district court's conclusion that intermediate copying for reverse engineering infringed the plaintiff's copyright. In the view of the court, such intermediate copying may constitute fair use.

Judge Rader, writing for the Court of Appeals, however, underscored that fair use reproduction of software must not be more than necessary to understand the unprotected elements of the work. "Any reproduction of protectable expression must be strictly necessary to ascertain the bounds of protected information within the work." Moreover, the court explained, one must possess an authorized copy of the work in order to invoke the fair use limitation. The court found Atari's acquisition of the 10NES source code constituted fraud on the Copyright Office in violation of 37 CFR 201.2(d)(2). Consequently, the only portion of Atari's reverse engineering that qualified as fair

use was that part "untainted" by the improperly obtained source code. *Atari Games Corp. v. Nintendo*, 91-1293, 1992 U.S. App. LEXIS 21817 (Sept. 10, 1992).

The Second Circuit endorsed the judgment of the lower court in *Computer Associates v. Altai, Inc.*, 23 U.S.P.Q. 2d 1241 (2d Cir. 1992). The case deals with the question of whether, and to what extent, the nonliteral aspects of a computer program may be protected by copyright. The decision rejects the broad "look and feel" approach for finding substantial similarity in computer programs used in an earlier significant case, *Whelan Associates, Inc. v. Jaslow Dental Laboratory, Inc.*, 797 F.2d 1222 (3d Cir. 1986), *cert. denied*, 479 U.S. 1031 (1987). The Altai court declined to find infringement even when faced with strong evidence of access and copying of nonliteral elements.

Altai admitted copying one version of the plaintiff's program, and damages were assessed. The real dispute concerned a second "clean" version prepared by Altai programmers who did not have access to plaintiff's source code, which was used in preparing the first infringing version. The second version related to the interoperability of plaintiff's and defendant's products.

The appeals court affirmed the district court's ruling that there was no copying of the computer code nor any unlawful copying of nonliteral elements of the program. Any similarities were found to be dictated by the functionality of the program. Instead of focusing on similarities in structure, sequence and organization, the court applied the "abstractions test" first set forth by Judge Learned Hand in *Nichols v. Universal Pictures*, 45 F.2d 119 (2d Cir. 1930), *cert. denied*, 282 U.S. 902 (1931). Comparing programs in order of "increasing generality" from object code, to source code, to parameter lists, to services required, to general outline, the court found that plaintiff failed to prove substantial similarity between its OSCAR 3.5 program and its ADAPTER interface. Thus, the court awarded damages only for infringement of its OSCAR 3.4 interface.

A district court asked if, and to what extent, defendant copied plaintiff's 1-2-3 user interface to create its Quattro spreadsheet program in *Lotus Development Corp. v. Borland International, Inc.*, 1992 U.S. Dist. LEXIS 11358 (D.Mass. 1992). The court held that a reasonable jury could find that Borland copied less than the whole Lotus 1-2-3 user interface, but did copy some parts of 1-2-3. Defendant's motion for summary judgment was denied, and plaintiff's motion for summary judgment was granted in part. The court said the menu command hierarchy of the Lotus spreadsheet program is copyrightable, and was infringed by the 1-2-3 mode of defendant's Quattro spreadsheet program. The court left for trial questions on whether the 1-2-3 "long prompts" were copied, whether the arrangement of the menu commands was functionally dictated, and the scope of substantial similarity and the nature and scope of the remedies for infringement.

In yet another case discussing rights in computer works, the Ninth Circuit affirmed the district court's ruling for the plaintiff in *Lewis Galoob Toys, Inc. v. Nintendo of America, Inc.*, 964 F.2d 965, 22 U.S.P.Q.2d 1857 (9th Cir. 1992). This case involved issues of fair use and derivative works. The defendant's video game enhancer, which could not itself produce an audiovisual display, was held not to be a derivative work. The lower court was held not to have erred in finding that defendant's video game enhancer made fair use of plaintiff's work, since it was used in-home and was not a for-profit use.

The Cable Compulsory License

The issue in *National Broadcasting Co. Inc. v. Satellite Broadcast Networks Inc.*, 940 F.2d 1467 (11th Cir. 1991), was whether a satellite rebroadcasting company is a "cable system" within the meaning of section 111 of the Copyright Act of 1976. The defendant claimed to qualify for the compulsory license as it took copyrighted programs owned by the plaintiff off the air and then

court's summary judgment dismissal of a copyright infringement claim. The appeals court held that the plaintiff's pitching form, used to predict the outcomes of baseball games, was sufficiently original to qualify for protection. In addition, neither the "blank form" doctrine nor the "merger" doctrines were applicable since there was sufficient creativity in the selection of performance criteria used by the plaintiff to qualify as protectable expression.

In *U.S. Payphone, Inc. v. Executives Unlimited of Durham, Inc.*, 18 U.S.P.Q.2d 2049 (4th Cir. 1991), the Fourth Circuit affirmed the lower court's holding that the defendant's manual infringed the plaintiff's compilation of state tariff regulations for coin operated telephones. The tariff section of plaintiff's material was deemed sufficiently subjective and original to warrant copyright protection, due to its analysis and summarization of information into a simple state-by-state format. The Court rejected defendant's argument that the plaintiff's material was uncopyrightable because it was a mere listing of legislative enactments in the public domain.

Following the *Feist* decision, the plaintiff engineering service moved for limited reconsideration in *Allen-Myland, Inc. v. IBM*, 770 F.Supp. 1004 (E.D. Pa. 1991). Judgment had been entered in IBM's favor dismissing claims alleging antitrust, tortious interference with contract, and breach of a 1956 consent decree, and upholding IBM's counterclaim for copyright infringement. See 746 F.Supp. 520 (E.D. Pa. 1990). The plaintiff contended that under *Feist*, tape 2 of the 3090 microcode that plaintiff was found to infringe should have been analyzed in isolation from the rest of the microcode and also argued that tape 2 lacked sufficient creativity for copyright protection. The court denied the motion, holding that (1) the *Feist* decision did not alter the court's conclusion that originality of the contents of one tape of computer software should not be analyzed in isolation, (2) the disputed tape was not a "compilation" of pre-existing facts, and (3) even if analyzed separately,

tape 2 was sufficiently original to merit copyright protection.

Derivative Works

In *Rogers v. Koons*, 960 F.2d 301, 22 U.S.P.Q.2d 1492 (2d Cir. 1992), the court affirmed a district court decision awarding summary judgment to the plaintiff. Rogers, a photographer, sued Koons, a sculptor, for reproducing his copyrighted photograph called "Puppies" as a sculpture called "String of Puppies." The Second Circuit held that copying was established by direct and undisputed evidence that the defendant told his staff that he wanted "Puppies" copied just as it appeared in the photograph. Defendant also admitted he had access to the plaintiff's photo. In light of overwhelming similarity to plaintiff's protected work, the court concluded that elements added to the sculpture were insufficient to raise any genuine issues of material fact regarding copying. Defendant's fair use defense failed because the photo was not copied for the purpose of criticism, comment, news reporting, teaching, scholarship or research. In addition, the copying was done for commercial purposes. The defendant's other defense, that of copying for the purpose of parodying the photograph, was unpersuasive to the court.

Formalities - Notice

The court looked to the 1909 Copyright Act to rule on validation of copyright in author J.R. Tolkien's *Lord of the Rings* ("the work") in *Eisen, Durwood & Co., Inc. v. Tolkien*, 23 U.S.P.Q.2d 1150 (S.D.N.Y. 1992). The plaintiff, a book packaging firm specializing in arranging for new editions of previously published material, sought declarations that any U.S. copyright on the work was invalid, that its original edition was in the public domain, and that plaintiff would not infringe any U.S. copyrights by publishing it. Defendants, the author's executors, heirs, and others, claimed the

retransmitted them via satellite to home subscribers. The defendant's equipment was located in three different states as well as in orbit around the earth (the satellite). The lower court found for the plaintiff, holding that defendant's facilities were not located entirely within a single state, a requirement for being termed a "cable system" under copyright law. The Eleventh Circuit reversed, finding the Congress did not intend to limit the copyright definition to local cable systems alone. The language "located in any State" cannot be read so narrowly as to exclude satellite retransmission, especially in light of the definition of "secondary transmission" in the statute, the court said. No infringement was found.

The court referred to the contract between the parties in order to make its decision in *CBS, Inc. v. Viacom International, Inc.*, IA Part 9 (N.Y. App. Div.) 1992. In this case the plaintiff moved to collect royalties under section 111 of the Copyright Act of 1976 that resulted from the retransmission on cable television of certain programs that plaintiff had licensed to the defendant. The plaintiff had authorized Viacom to syndicate some of its television programs to local, non-network television stations. The licensing agreement in question was made before cable television systems were widespread. Cable operators began to pick up the rebroadcasts of CBS' syndicated shows and deliver them to cable subscribers. Cable operators paid royalty fees under the copyright compulsory license provisions. Both CBS and Viacom claimed the right to the royalties as dispersed by the Copyright Royalty Tribunal. The court followed the Ninth Circuit's decision in *Barris Industries, Inc. v. Workvision Enterprises, Inc.*, 875 F.2d 1446 (9th Cir. 1989), saying that ownership of the relevant part of the copyright and, hence, the right to collect and retain the royalties is a matter to be determined by the parties' contract. Here the contract did not expressly address the issue. But the court determined that Viacom's right to a "distribution fee" under the contract was limited to sums derived from the licensing of programs, not sums

paid as statutory royalties paid expressly because no license was obtained by cable operators. Plaintiff's motion for summary judgment was granted.

Fair Use

In the class action suit *American Geophysical Union, et al. v. Texaco, Inc.*, 23 U.S.P.Q. 2d 1561 (S.D.N.Y. 1992), the question was whether a for-profit company may legally make unauthorized copies of copyrighted articles published in scientific and technical journals for use by the company's scientists employed in research. Plaintiffs are publishers of scientific and technical journals that publish copyrighted material under assignment from authors. The defendant is a very large petroleum company that engages in all aspects of the oil business. Texaco scientists made single copies from plaintiffs' journals, claiming fair use under section 107 of the Copyright Act of 1976. The court reviewed the facts in light of the fair use test, which includes four factors. They are (1) the purpose and character of the use, (2) the nature of the copyrighted work, (3) the amount and substantiality of the portion used, and (4) the effect of the use on the potential market for the copyright. The court found that under this analysis the defendant's photocopying of articles from a scientific journal for use by a Texaco scientist in his research was not fair use.

Compilations - Post *Feist*

In 1991 the Supreme Court issued a landmark decision *Feist Publications, Inc. v. Rural Telephone Service, Co., Inc.*, -U.S.-, 111 S. Ct. 1282(1991) clarifying the law on telephone directories. It held that originality, not industriousness, is the touchstone of copyright protection in directories and other fact-based works. This decision provided a guide for courts in cases that followed. For example, in *Kregos v. Associated Press*, 937 F.2d 700 (2d Cir. 1991), the Second Circuit reversed the lower

U.S. copyright on the work was valid. Plaintiff claimed that copyright in the work had been forfeited because it was distributed in the United States without copyright notice during a period when "ad interim" copyright under section 9 of the 1909 Act was the sole U.S. protection for the work. Looking at the plain meaning of section 9 language, the court failed to find copyright invalidated where notice is omitted. Also, under current post-Berne law, foreign authors may obtain copyright in the United States without registration and even domestic authors no longer must display notice on their works.

Copyright Renewal

A dispute over rights to interests in the renewal term of copyrights to the musical compositions of the late country singer Hank Williams led to *Stone v. Williams*, 20 U.S.P.Q.2d 1028 (S.D.N.Y. 1991). Plaintiff, the illegitimate daughter of Williams, sought a declaration that she is a child of the singer within the meaning of the copyright law and, as such, is entitled to share in the copyright renewal term of his works. Plaintiff also asserted that defendants conspired to withhold information that would have prompted her to file this action sooner. The court dismissed plaintiff's first claim on the grounds that (1) the three-year statute of limitations of the 1976 Copyright Act applied to the claim, (2) the cause of action accrued on October 17, 1979, the date on which plaintiff acknowledged knowing who her natural father was, and (3) the plaintiff did not file the action within the statute of limitations. The court also dismissed the conspiracy claim for failure to state a claim for the tort supporting the conspiracy charge.

Copyright Ownership - Work for Hire

The plaintiff sought summary judgment against the defendant for infringing the plaintiff's copyrighted Foreign Service Exam in *Educational*

Testing Service v. Miller, 21 U.S.P.Q.2d 1467 (D.D.C. Sept. 30, 1991). The court found that the exam did not fall within the definition of "work made for hire" under section 101 of the Copyright Act of 1976, because the relationship of the plaintiff to the State Department was that of independent contractor, not an employee. Plaintiff is the owner of the copyright in the exam since the agreement between the plaintiff and the State Department stipulated that the exam was to be subject to plaintiff's copyright. The copyright in the exam includes the order and arrangement of the questions as well as the questions themselves. The court ruled that the defendant's copying of the exam and keying it into a computer to create an electronic copy amounted to copyright infringement. The court granted plaintiff's motion for summary judgment.

Copyrights, Treaties and International Law

In *New York Chinese TV Programs, Inc. v. U.E. Enterprises, Inc.*, 954 F.2d 847 (2d Cir. 1992), the issue was whether or not plaintiff's television programs were eligible for copyright protection. The lower court had found that defendant's counterfeiting operation, involving import, distribution, and rental of plaintiff's copyrighted Taiwanese soap operas, infringed plaintiff's copyrights. On appeal, the defendant questioned whether Taiwan had a valid copyright treaty with the United States. It claimed the Treaty of Friendship, Commerce, and Navigation (FCN) lapsed when the United States de-recognized Taiwan in 1979. The Second Circuit held that works authored by Taiwanese citizens receive copyright protection pursuant to FCN and that enforcement of the treaty was not dependent on continued U.S. diplomatic relations with Taiwan.

Ownership of Copyright - Audio Sampling

The court held that audio "sampling" constitutes copyright infringement in *Grand Upright*

Music Ltd. v. Warner Brothers Records, Inc., 780 F.Supp. 182, 22 U.S.P.Q.2d 1556 (S.D.N.Y. 1991). Plaintiff was granted a preliminary injunction against defendants for the improper and unlicensed use of the musical composition "Alone Again (Naturally)," written and performed on records by Raymond "Gilbert" O'Sullivan. Defendant admitted that the Biz Markie album "I Need A Haircut" embodied a rap recording that used three words from O'Sullivan's song and a portion of the music taken from the O'Sullivan recording. Parts of the song and its recorded master were unlawfully incorporated by defendants into their music, the court said. The conclusion was based on a showing of original copyright certificates, a

deed vesting title to copyrights in the composer, a second deed transferring copyrights to the plaintiff, testimony of the composer that the plaintiff owned the copyrights, and the defendants' actions both before and after issuance of the infringing work to try to get a license to use the copyrighted material.

Respectfully submitted,
RALPH OMAN

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

International Copyright Relations of the United States as of September 30, 1991

This table sets forth U.S. copyright relations of current interest with the other independent nations of the world. Each entry gives country name (and alternate name) and a statement of copyright relations. The following code is used:

- Berne** Party to the Berne Convention for the Protection of Literary and Artistic Works as of the date given. Appearing within parentheses is the latest Act¹ of the Convention to which the country is party. The effective date for the United States was March 1, 1989. The latest Act of the Convention to which the United States is party is the revision done at Paris on July 24, 1971.
- Bilateral** Bilateral copyright relations with the United States by virtue of a proclamation or treaty, as of the date given. Where there is more than one proclamation or treaty, only the date of the first one is given.
- BAC** Party to the Buenos Aires Convention of 1910, as of the date given. U.S. ratification deposited with the government of Argentina, May 1, 1911; proclaimed by the President of the United States, July 13, 1914.
- None** No copyright relations with the United States.
- Phonogram** Party to the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms, Geneva, 1971, as of the date given. The effective date for the United States was March 10, 1974.
- SAT** Party to the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, Brussels, 1974, as of the date given. The effective date for the United States was March 7, 1985.
- UCC Geneva** Party to the Universal Copyright Convention, Geneva, 1952, as of the date given. The effective date for the United States was September 16, 1955.
- UCC Paris** Party to the Universal Copyright Convention as revised at Paris, 1971, as of the date given. The effective date for the United States was July 10, 1974.
- Unclear** Became independent since 1943. Has not established copyright relations with the United States, but may be honoring obligations incurred under former political status.

Afghanistan	UCC Geneva Feb. 13, 1958	Bahamas, The
None	Berne June 10, 1967 (Brussels) ²	Berne July 10, 1973 (Brussels) ²
Albania	Phonogram June 30, 1973 ³	UCC Geneva Dec. 27, 1976
None		UCC Paris Dec. 27, 1976
Algeria	Australia	Bahrain
UCC Geneva Aug. 28, 1973	Bilateral Mar. 15, 1918	None
UCC Paris July 10, 1974	Berne April 14, 1928 (Paris) ²	Bangladesh
Andorra	UCC Geneva May 1, 1969	UCC Geneva Aug. 5, 1975
UCC Geneva Sept. 16, 1955	Phonogram June 22, 1974	UCC Paris Aug. 5, 1975
Angola	UCC Paris Feb. 28, 1978	
Unclear	SAT Oct. 26, 1990	Barbados
Antigua and Barbuda	Austria	UCC Geneva June 18, 1983
Unclear	Bilateral Sept. 20, 1907	UCC Paris June 18, 1983
Argentina	Berne Oct. 1, 1920 (Paris) ²	Berne July 30, 1983 (Paris) ²
Bilateral Aug. 23, 1934	UCC Geneva July 2, 1957	Phonogram July 29, 1983
BAC April 19, 1950	SAT Aug. 6, 1982 ⁴	Belau
	UCC Paris Aug. 14, 1982	Unclear
	Phonogram Aug. 21, 1982	

Belgium

Berne Dec. 5, 1887 (Brussels)²
 Bilateral July 1, 1891
 UCC Geneva Aug. 31, 1960

Belize

UCC Geneva Dec. 1, 1982

Benin

(formerly Dahomey)
 Berne Jan. 3, 1961 (Paris)²

Bhutan

None

Bolivia

BAC May 15, 1914
 UCC Geneva Mar. 22, 1990
 UCC Paris Mar. 22, 1990

Botswana

Unclear

Brazil

BAC Aug. 31, 1915
 Berne Feb. 9, 1922 (Paris)²
 Bilateral April 2, 1957
 UCC Geneva Jan. 13, 1960
 Phonogram Nov. 28, 1975
 UCC Paris Dec. 11, 1975

Brunei

Unclear

Bulgaria

Berne Dec. 5, 1921 (Paris)²
 UCC Geneva June 7, 1975
 UCC Paris June 7, 1975

Burkina Faso

(formerly Upper Volta)
 Berne Aug. 19, 1963 (Paris)²
 Phonogram Jan. 30, 1988

Burma

Unclear

Burundi

Unclear

Cambodia

UCC Geneva Sept. 16, 1955

Cameroon

Berne Sept. 21, 1964 (Paris)²
 UCC Geneva May 1, 1973
 UCC Paris July 10, 1974

Canada

Bilateral Jan. 1, 1924

Berne April 10, 1928 (Rome)²
 UCC Geneva Aug. 10, 1962

Cape Verde

Unclear

Central African Republic

Berne Sept. 3, 1977 (Paris)²

Chad

Berne Nov. 25, 1971 (Brussels)²

Chile

Bilateral May 25, 1896
 BAC June 14, 1955
 UCC Geneva Sept. 16, 1955
 Berne June 5, 1970 (Paris)²
 Phonogram Mar. 24, 1977

China

Bilateral Jan. 13, 1904⁵
 Bilateral Mar. 17, 1992⁹

Colombia

BAC Dec. 23, 1936
 UCC Geneva June 18, 1976
 UCC Paris June 18, 1976
 Berne Mar. 7, 1988 (Paris)²

Comoros

Unclear

Congo

Berne May 8, 1962 (Paris)²

Costa Rica⁶

Bilateral Oct. 19, 1899
 BAC Nov. 30, 1916
 UCC Geneva Sept. 16, 1955
 Berne June 10, 1978 (Paris)²
 UCC Paris Mar. 7, 1980
 Phonogram June 17, 1982

Côte d'Ivoire (Ivory Coast)

Berne Jan. 1, 1962 (Paris)²

Cuba

Bilateral Nov. 17, 1903
 UCC Geneva June 18, 1957

Cyprus

Berne Feb. 24, 1964 (Paris)²
 UCC Geneva Dec. 19, 1990
 UCC Paris Dec. 19, 1990

Czechoslovakia

Berne Feb. 22, 1921 (Paris)²
 Bilateral Mar. 1, 1927
 UCC Geneva Jan. 6, 1960

UCC Paris April 17, 1980
 Phonogram Jan. 15, 1985

Denmark

Bilateral May 8, 1893
 Berne July 1, 1903 (Paris)²
 UCC Geneva Feb. 9, 1962
 Phonogram Mar. 24, 1977
 UCC Paris July 11, 1979

Djibouti

Unclear

Dominica

Unclear

Dominican Republic⁶

BAC Oct. 31, 1912
 UCC Geneva May 8, 1983
 UCC Paris May 8, 1983

Ecuador

BAC Aug. 31, 1914
 UCC Geneva June 5, 1957
 Phonogram Sept. 14, 1974
 UCC Paris June 6, 1991
 Berne Oct. 9, 1991 (Paris)²

Egypt

Berne June 7, 1977 (Paris)²
 Phonogram April 23, 1978

El Salvador

Bilateral June 30, 1908, by virtue of
 Mexico City Convention, 1902
 Phonogram Feb. 9, 1979
 UCC Geneva Mar. 29, 1979
 UCC Paris Mar. 29, 1979

Equatorial Guinea

Unclear

Ethiopia

None

Fiji

UCC Geneva Oct. 10, 1970
 Berne Dec. 1, 1971 (Brussels)²
 Phonogram April 18, 1973³

Finland

Berne April 1, 1928 (Paris)²
 Bilateral Jan. 1, 1929
 UCC Geneva April 16, 1963
 Phonogram April 18, 1973³
 UCC Paris Nov. 1, 1986

France

Berne Dec. 5, 1887 (Paris)²

- Bilateral July 1, 1891
UCC Geneva Jan. 14, 1956
Phonogram April 18, 1973³
UCC Paris July 10, 1974
- Gabon**
Berne Mar. 26, 1962 (Paris)²
- Gambia, The**
Unclear
- Germany**¹⁰
Berne Dec. 5, 1887 (Paris)^{2,7}
Bilateral April 16, 1892
UCC Geneva Sept. 16, 1955
Phonogram May 18, 1974
UCC Paris July 10, 1974
SAT Aug. 25, 1979⁴
- Ghana**
UCC Geneva Aug. 22, 1962
Berne Oct. 11, 1991 (Paris)²
- Greece**
Berne Nov. 9, 1920 (Paris)²
Bilateral Mar. 1, 1932
UCC Geneva Aug. 24, 1963
SAT Oct. 22, 1991
- Grenada**
Unclear
- Guatemala**⁶
BAC Mar. 28, 1913
UCC Geneva Oct. 28, 1964
Phonogram Feb. 1, 1977
- Guinea**
Berne Nov. 20, 1980 (Paris)²
UCC Geneva Nov. 13, 1981
UCC Paris Nov. 13, 1981
- Guinea-Bissau**
Berne July 22, 1991 (Paris)²
- Guyana**
Unclear
- Haiti**
BAC Nov. 27, 1919
UCC Geneva Sept. 16, 1955
- Holy See**
(See entry under Vatican City)
- Honduras**⁶
BAC April 27, 1914
Berne Jan. 25, 1990 (Paris)²
Phonogram Mar. 6, 1990
- Hungary**
Bilateral Oct. 16, 1912
Berne Feb. 14, 1922 (Paris)²
UCC Geneva Jan. 23, 1971
UCC Paris July 10, 1974
Phonogram May 28, 1975
- Iceland**
Berne Sept. 7, 1947 (Rome)²
UCC Geneva Dec. 18, 1956
- India**
Berne April 1, 1928 (Paris)²
Bilateral Aug. 15, 1947
UCC Geneva Jan. 21, 1958
Phonogram Feb. 12, 1975
UCC Paris Jan. 7, 1988
- Indonesia**
Bilateral Aug. 1, 1989
- Iran**
None
- Iraq**
None
- Ireland**
Berne Oct. 5, 1927 (Brussels)²
Bilateral Oct. 1, 1929
UCC Geneva Jan. 20, 1959
- Israel**
Bilateral May 15, 1948
Berne Mar. 24, 1950 (Brussels)²
UCC Geneva Sept. 16, 1955
Phonogram May 1, 1978
- Italy**
Berne Dec. 5, 1887 (Paris)²
Bilateral Oct. 31, 1892
UCC Geneva Jan. 24, 1957
Phonogram Mar. 24, 1977
UCC Paris Jan. 25, 1980
SAT July 7, 1981⁴
- Ivory Coast**
(See entry under Côte d'Ivoire)
- Jamaica**
None
- Japan**⁸
Berne July 15, 1899 (Paris)²
UCC Geneva April 28, 1956
UCC Paris Oct. 21, 1977
Phonogram Oct. 14, 1978
- Jordan**
Unclear
- Kenya**
UCC Geneva Sept. 7, 1966
UCC Paris July 10, 1974
Phonogram April 21, 1976
SAT Aug. 25, 1979⁴
- Kiribati**
Unclear
- Korea**
Democratic People's Republic of Korea
Unclear
Republic of Korea
UCC Geneva Oct. 1, 1987
UCC Paris Oct. 1, 1987
Phonogram Oct. 10, 1987
- Kuwait**
Unclear
- Laos**
UCC Geneva Sept. 16, 1955
- Lebanon**
Berne Sept. 30, 1947 (Rome)²
UCC Geneva Oct. 17, 1959
- Lesotho**
Unclear
- Liberia**
UCC Geneva July 27, 1956
Berne Mar. 8, 1989 (Paris)²
- Libya**
Berne Sept. 28, 1976 (Paris)²
- Liechtenstein**
Berne July 30, 1931 (Brussels)²
UCC Geneva Jan. 22, 1959
- Luxembourg**
Berne June 20, 1888 (Paris)²
Bilateral June 29, 1910
UCC Geneva Oct. 15, 1955
Phonogram Mar. 8, 1976
- Madagascar**
(Malagasy Republic)
Berne Jan. 1, 1966 (Brussels)²
- Malawi**
UCC Geneva Oct. 26, 1965
Berne Oct. 12, 1991 (Paris)²

- Malaysia**
Berne Oct. 1, 1990 (Paris) ²
- Maldives**
Unclear
- Mali**
Berne Mar. 19, 1962 (Paris) ²
- Malta**
Berne Sept. 21, 1964 (Rome) ²
UCC Geneva Nov. 19, 1968
- Mauritania**
Berne Feb. 6, 1973 (Paris) ²
- Mauritius**
UCC Geneva Mar. 12, 1968
- Mexico**
Bilateral Feb. 27, 1896
UCC Geneva May 12, 1957
BAC April 24, 1964
Berne June 11, 1967 (Paris) ²
Phonogram Dec. 21, 1973 ³
UCC Paris Oct. 31, 1975
SAT Aug. 25, 1979 ⁴
- Monaco**
Berne May 30, 1889 (Paris) ²
Bilateral Oct. 15, 1952
UCC Geneva Sept. 16, 1955
Phonogram Dec. 2, 1974
UCC Paris Dec. 13, 1974
- Mongolia**
None
- Morocco**
Berne June 16, 1917 (Paris) ²
UCC Geneva May 8, 1972
UCC Paris Jan. 28, 1976
SAT June 30, 1983 ⁴
- Mozambique**
Unclear
- Nauru**
Unclear
- Nepal**
None
- Netherlands**
Bilateral Nov. 20, 1899
Berne Nov. 1, 1912 (Paris) ²
UCC Geneva June 22, 1967
- UCC Paris Nov. 30, 1985
- New Zealand**
Bilateral Dec. 1, 1916
Berne April 24, 1928 (Rome) ²
UCC Geneva Sept. 11, 1964
Phonogram Aug. 13, 1976
- Nicaragua** ⁶
BAC Dec. 15, 1913
UCC Geneva Aug. 16, 1961
SAT Aug. 25, 1979 ⁴
- Niger**
Berne May 2, 1962 (Paris) ²
- Nigeria**
UCC Geneva Feb. 14, 1962
- Norway**
Berne April 13, 1896 (Brussels) ²
Bilateral July 1, 1905
UCC Geneva Jan. 23, 1963
UCC Paris Aug. 7, 1974
Phonogram Aug. 1, 1978
- Oman**
None
- Pakistan**
Berne July 5, 1948 (Rome) ²
UCC Geneva Sept. 16, 1955
- Panama**
BAC Nov. 25, 1913
UCC Geneva Oct. 17, 1962
Phonogram June 29, 1974
UCC Paris Sept. 3, 1980
SAT Sept. 25, 1985
- Papua New Guinea**
Unclear
- Paraguay**
BAC Sept. 20, 1917
UCC Geneva Mar. 11, 1962
Phonogram Feb. 13, 1979
Berne Jan. 2, 1992 (Paris) ²
- Peru**
BAC April 30, 1920
UCC Geneva Oct. 16, 1963
UCC Paris July 22, 1985
SAT Aug. 7, 1985
Phonogram Aug. 24, 1985
Berne Aug. 20, 1988 (Paris) ²
- Philippines**
Bilateral Oct. 21, 1948
- Berne Aug. 1, 1951 (Brussels) ²
UCC status undetermined by UNESCO. (Copyright Office considers that UCC relations do not exist.)
- Poland**
Berne Jan. 28, 1920 (Rome) ²
Bilateral Feb. 16, 1927
UCC Geneva Mar. 9, 1977
UCC Paris Mar. 9, 1977
- Portugal**
Bilateral July 20, 1893
Berne Mar. 29, 1911 (Paris) ²
UCC Geneva Dec. 25, 1956
UCC Paris July 30, 1981
- Qatar**
None
- Romania**
Berne Jan. 1, 1927 (Rome) ²
Bilateral May 14, 1928
- Rwanda**
Berne Mar. 1, 1984 (Paris) ²
- Saint Christopher and Nevis**
Unclear
- Saint Lucia**
Unclear
- Saint Vincent and the Grenadines**
UCC Geneva April 22, 1985
UCC Paris April 22, 1985
- San Marino**
None
- São Tomé and Príncipe**
Unclear
- Saudi Arabia**
None
- Senegal**
Berne Aug. 25, 1962 (Paris) ²
UCC Geneva July 9, 1974
UCC Paris July 10, 1974
- Seychelles**
Unclear
- Sierra Leone**
None
- Singapore**
Bilateral May 18, 1987

Solomon Islands

Unclear

Somalia

Unclear

South Africa

Bilateral July 1, 1924

Berne Oct. 3, 1928 (Brussels)²**Soviet Union**

UCC Geneva May 27, 1973

SAT Jan. 20, 1989

SpainBerne Dec. 5, 1887 (Paris)²

Bilateral July 10, 1895

UCC Geneva Sept. 16, 1955

UCC Paris July 10, 1974

Phonogram Aug. 24, 1974

Sri Lanka

(formerly Ceylon)

Berne July 20, 1959 (Rome)²

UCC Geneva Jan. 25, 1984

UCC Paris Jan. 25, 1984

Sudan

Unclear

SurinameBerne Feb. 23, 1977 (Paris)²**Swaziland**

Unclear

SwedenBerne Aug. 1, 1904 (Paris)²

Bilateral June 1, 1911

UCC Geneva July 1, 1961

Phonogram April 18, 1973³

UCC Paris July 10, 1974

SwitzerlandBerne Dec. 5, 1887 (Brussels)²

Bilateral July 1, 1891

UCC Geneva Mar. 30, 1956

Syria

Unclear

Tanzania

Unclear

Thailand

Bilateral Sept. 1, 1921

Berne July 17, 1931 (Berlin)²**Togo**Berne April 30, 1975 (Paris)²**Tonga**

None

Trinidad and TobagoBerne Aug. 16, 1988 (Paris)²

UCC Geneva Aug. 19, 1988

UCC Paris Aug. 19, 1988

Phonogram Oct. 1, 1988

TunisiaBerne Dec. 5, 1887 (Paris)²

UCC Geneva June 19, 1969

UCC Paris June 10, 1975

TurkeyBerne Jan. 1, 1952 (Brussels)²**Tuvalu**

Unclear

Uganda

Unclear

United Arab Emirates

None

United KingdomBerne Dec. 5, 1887 (Paris)²

Bilateral July 1, 1891

UCC Geneva Sept. 27, 1957

Phonogram April 18, 1973³

UCC Paris July 10, 1974

Upper Volta

(See entry under Burkina Faso)

Uruguay

BAC Dec. 17, 1919

Berne July 10, 1967 (Paris)²

Phonogram Jan. 18, 1983

Vanuatu

Unclear

Vatican City

(Holy See)

Berne Sept. 12, 1935 (Paris)²

UCC Geneva Oct. 5, 1955

Phonogram July 18, 1977

UCC Paris May 6, 1980

Venezuela

UCC Geneva Sept. 30, 1966

Phonogram Nov. 18, 1982

Berne Dec. 30, 1982 (Paris)²**Vietnam**

Unclear

Western Samoa

Unclear

Yemen (Aden)

Unclear

Yemen (San'a)

None

YugoslaviaBerne June 17, 1930 (Paris)²

UCC Geneva May 11, 1966

UCC Paris July 10, 1974

SAT Aug. 25, 1979⁴**Zaire**Berne Oct. 8, 1963 (Paris)²

Phonogram Nov. 29, 1977

Zambia

UCC Geneva June 1, 1965

Berne Jan. 2, 1992 (Paris)²**Zimbabwe**Berne April 18, 1980 (Rome)²

¹"Paris" means the Berne Convention for the Protection of Literary and Artistic Works as revised at Paris on July 24, 1971 (Paris Act); "Stockholm" means the said Convention as revised at Stockholm on July 14, 1967 (Stockholm Act); "Brussels" means the said Convention as revised at Brussels on June 26, 1948 (Brussels Act); "Rome" means the said Convention as revised at Rome on June 2, 1928 (Rome Act); "Berlin" means the said Convention as revised at Berlin on November 13, 1908 (Berlin Act). NOTE: In each case the reference to Act signifies adherence to the substantive provisions of such Act only, e.g., Articles 1 to 21 of the Paris Act.

²The Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Paris on July 24, 1971, did not enter into force with respect to the United States until March 1, 1989.

³The Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms done at Geneva on October 29, 1971, did not enter into force with respect to the United States until March 10, 1974.

⁴The Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite done at Brussels on May 21, 1974, did not enter into force with respect to the United States until March 7, 1985.

⁵The government of the People's Republic of China views this treaty as not binding on the PRC. In the territory administered by the authorities on Taiwan the treaty is considered to be in force.

⁶This country became a party to the Mexico City Convention, 1902, effective June 30, 1908, to which the United States also became a party, effective on the same date. As regards copyright relations with the United States, this Convention is considered to have been superseded by adherence of this country and the United States to the Buenos Aires Convention of 1910.

⁷Date on which the accession by the German Empire became effective.

⁸Bilateral copyright relations between Japan and the United States, which were formulated effective May 10, 1906, are considered to have been abrogated and superseded by the adherence of Japan to the UCC Geneva, effective April 28, 1956.

⁹Bilateral copyright relations between the People's Republic of China and the United States of America were established, effective March 17, 1992, by a Presidential Proclamation of the same date, under the authority of section 104 of title 17 of the United States Code, as amended by the Act of October 31, 1988 (Public Law 100-568, 102 Stat. 2853, 2855).

¹⁰The dates of adherence by Germany to multilateral treaties include adherence by the Federal Republic of Germany when that country was divided into the Federal Republic of Germany and the German Democratic Republic. However, through the accession, effective October 3, 1990, of the German Democratic Republic to the Federal Republic of Germany, in accordance with the German Unification Treaty of August 31, 1990, the German Democratic Republic ceased, on said date, to be a sovereign state. Previously, the German Democratic Republic had become party to the Paris Act of the Berne Convention for the Protection of Literary and Artistic Works on February 18, 1978, but ceased to be a party to the said Convention on October 3, 1990. The German Democratic Republic had also been a member of the Universal Copyright Convention, having become party to the Geneva text of the said Convention on October 5, 1973, and party to the revised Paris text of the same Convention on December 10, 1980.

Number of Registrations by Subject Matter, Fiscal 1992

Category of material	Published	Unpublished	Total
Nondramatic literary works			
Monographs and machine-readable works	143,722	46,562	190,284
Serials	92,904		92,904
Total	236,626	46,562	283,188
Works of the performing arts, including musical works, dramatic works, choreography and pantomimes, and motion pictures and filmstrips			
	46,509	115,568	162,077
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 art			
	53,253	24,647	77,900
Sound recordings	11,242	21,820	33,062
Grand total	347,630	208,597	556,227
Renewals			49,095
Total, all copyright registrations			605,322
Mask work registrations			931

Number of Registrations Cataloged by Subject Matter, Fiscal 1992

Category of material	Total
Nondramatic literary works	
Monographs and machine-readable works	184,838
Serials	110,982
Total	295,820
Works of the performing arts, including musical works, dramatic works, choreography and pantomimes, and motion pictures and filmstrips	197,542
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 art	86,026
Sound Recordings	26,253
Renewals	52,288
Total, all claims cataloged	657,929
Documents recorded	16,557

Information and Reference Services, Fiscal 1992

Direct reference services	
In person	32,514
By correspondence	148,245
By telephone	306,531
Total	¹ 487,290
Search requests received	10,182
Titles searched	194,705
Search reports prepared	5,087
Additional certificates	8,518
Other certifications	838
Deposits copied	1,472

¹Includes 725 in-person services, 1,481 correspondence services and 2,983 telephone reference services provided by the Licensing Division.

Summary of Copyright Business, Fiscal 1992

Receipts	Fees
Copyright claims	\$11,467,054
Renewals	668,346
Group Serials	142,030
Total fees all claims	\$12,277,430
Fees for recording documents	604,548
Fees for certified documents	112,908
Fees for searches made	290,565
Fees for special handling	493,600
Fees for expedited services	39,992
Fees for mask works at \$20	21,280
Fees for 407 deposits at \$2	1,452
Fees for other services (photocopying, etc.)	16,915
Total fees exclusive of copyright claims	\$1,581,260
Total fees	\$13,858,690
Transfers	
Fees transferred to appropriation	\$14,000,000
Fees transferred to miscellaneous receipts	14,412
Total fees transferred	\$14,014,412

Disposition of Copyright Deposits, Fiscal 1992

Category of material	Received for copyright registration and added to copyright collection	Received for copyright registration and forwarded to other departments of the Library	Acquired or deposited without copyright registration	Total
Nondramatic literary works				
Monographs and machine-readable works	120,681	193,134	21,800	335,615
Serials	0	221,964	260,066	482,030
Works of the performing arts, including musical works, dramatic works, choreography and pantomimes, and motion pictures and filmstrips				
	164,730	61,823	86	226,639
Sound recordings	20,128	12,857	623	33,608
Works of the visual arts, including two-dimensional works of fine and graphic art, sculptural works, technical drawings and models, photographs, commercial prints and labels, and works of applied art				
	82,868	1,226	127	84,221
Cartographic works	106	3,108	564	3,778
Total, all deposits	388,513	494,112	283,266	1,165,891

Estimated Value of Materials Transferred to the Library of Congress

	Items accompanying copyright registration	Items submitted for deposit only under 407	Total items transferred	Average unit price	Total value of items transferred
Books	124,054	21,800	145,854	\$35.34	\$5,154,480
Books, periodicals (for Exchange and Gift)	102,299	18,025	120,324	3.00	360,972
Periodicals	188,669	307,121	495,790	6.94	3,440,782
Motion Pictures	7,073	593	7,666	¹	2,023,640
Music	42,448	86	42,534	22.00	935,748
Sound Recordings	9,440	623	10,063	10.00	100,630
Maps	3,026	564	3,590	26.00	93,340
Prints, pictures, and works of art	1,225	127	1,352	18.00	24,336
Total	478,234	348,939	827,173		\$12,133,928

¹ 6,133 Video @ \$ 80.00 = \$ 490,640
1,533 Films @ \$1,000.00 = \$1,533,000
 7,666 \$2,023,640

*Financial Statement of Royalty Fees for Compulsory Licenses for Secondary
Transmissions by Cable Systems for Calendar Year 1991*

Royalty fees deposited	\$178,119,662.52	
Interest income paid on investments	18,464,190.03	
Gain of matured securities	24,768.74	
		\$196,608,621.29
Less: Operating costs	\$1,765,661.00	
Refunds issued	593,727.29	
Cost of investments	183,418,473.33	
Cost of initial investments	10,740,837.96	
Transfers	75.00	
		\$196,518,774.58
Balance as of September 30, 1991		\$ 89,846.71
Face amount of securities due		185,990,000.00
Less: Pending Refunds		1,011,229.51
Cable royalty fees for calendar year 1991 available for distribution by the Copyright Royalty Tribunal		\$185,052,617.20

*Financial Statement of Royalty Fees for Statutory Licenses for Secondary
Transmissions by Satellite Carriers for Calendar Year 1991*

Royalty fees deposited	\$ 3,663,455.41	
Interest income paid on investments	181,400.00	
Gain of matured securities	35,882.64	
		\$ 3,880,738.05
Less: Cost of investments	\$ 3,803,273.08	
Cost of initial investments	59,950.42	
		\$ 3,863,223.50
Balance as of September 30, 1992	\$ 17,514.55	
Face amount of securities due	3,814,584.38	
Less: Pending operating costs	50,741.00	
Satellite carrier royalty fees for calendar year 1991 available for distribution by the Copyright Royalty Tribunal	\$ 3,781,357.93	

Copyright Registrations, 1790-1991

	District Courts ¹	Library of Congress ²	Patent Office ³			Total
			Labels	Prints	Total	
1790-1869	150,000					150,000
1870		5,600				5,600
1871		12,688				12,688
1872		14,164				14,164
1873		15,352				15,352
1874		16,283				16,283
1875		15,927	267		267	16,194
1876		14,882	510		510	15,392
1877		15,758	324		324	16,082
1878		15,798	492		492	16,290
1879		18,125	403		403	18,528
1880		20,686	307		307	20,993
1881		21,075	181		181	21,256
1882		22,918	223		223	23,141
1883		25,274	618		618	25,892
1884		26,893	834		834	27,727
1885		28,411	337		337	28,748
1886		31,241	397		397	31,638
1887		35,083	384		384	35,467
1888		38,225	682		682	38,907
1889		40,985	312		312	41,297
1890		42,794	304		304	43,098
1891		48,908	289		289	49,197
1892		54,735	6		6	54,741
1893		58,956		1	1	58,957
1894		62,762		2	2	62,764
1895		67,572		6	6	67,578
1896		72,470	1	11	12	72,482
1897		75,000	3	32	35	75,035
1898		75,545	71	18	89	75,634
1899		80,968	372	76	448	81,416
1900		94,798	682	93	775	95,573
1901		92,351	824	124	948	93,299
1902		92,978	750	163	913	93,891
1903		97,979	910	233	1,143	99,122
1904		103,130	1,044	257	1,301	104,431
1905		113,374	1,028	345	1,373	114,747
1906		117,704	741	354	1,095	118,799
1907		123,829	660	325	985	124,814
1908		119,742	636	279	915	120,657
1909		120,131	779	231	1,010	121,141
1910		109,074	176	59	235	109,309
1911		115,198	576	181	757	115,955
1912		120,931	625	268	893	121,824
1913		119,495	664	254	918	120,413
1914		123,154	720	339	1,059	124,213

Copyright Registrations, 1790-1991

	District Courts ¹	Library of Congress ²	Patent Office ³			Total
			Labels	Prints	Total	
1915		115,193	762	321	1,083	116,276
1916		115,967	833	402	1,235	117,202
1917		111,438	781	342	1,123	112,561
1918		106,728	516	192	708	107,436
1919		113,003	572	196	768	113,771
1920		126,562	622	158	780	127,342
1921		135,280	1,118	367	1,485	136,765
1922		138,633	1,560	541	2,101	140,734
1923		148,946	1,549	592	2,141	151,087
1924		162,694	1,350	666	2,016	164,710
1925		165,848	1,400	615	2,015	167,863
1926		177,635	1,676	868	2,544	180,179
1927		184,000	1,782	1,074	2,856	186,856
1928		193,914	1,857	944	2,801	196,715
1929		161,959	1,774	933	2,707	164,666
1930		172,792	1,610	723	2,333	175,125
1931		164,642	1,787	678	2,465	167,107
1932		151,735	1,492	483	1,975	153,710
1933		137,424	1,458	479	1,937	139,361
1934		139,047	1,635	535	2,170	141,217
1935		142,031	1,908	500	2,408	144,439
1936		156,962	1,787	519	2,306	159,268
1937		154,424	1,955	551	2,506	156,930
1938		166,248	1,806	609	2,415	168,663
1939		173,135	1,770	545	2,315	175,450
1940		176,997	1,856	614	2,470	179,467
1941		180,647				180,647
1942		182,232				182,232
1943		160,789				160,789
1944		169,269				169,269
1945		178,848				178,848
1946		202,144				202,144
1947		230,215				230,215
1948		238,121				238,121
1949		201,190				201,190
1950		210,564				210,564
1951		200,354				200,354
1952		203,705				203,705
1953		218,506				218,506
1954		222,665				222,665
1955		224,732				224,732
1956		224,908				224,908
1957		225,807				225,807
1958		238,935				238,935
1959		241,735				241,735
1960		243,926				243,926

Copyright Registrations, 1790-1991

	District Courts ¹	Library of Congress ²	Patent Office ³			Total
			Labels	Prints	Total	
1961		247,014				247,014
1962		254,776				254,776
1963		264,845				264,845
1964		278,987				278,987
1965		293,617				293,617
1966		286,866				286,866
1967		294,406				294,406
1968		303,451				303,451
1969		301,258				301,258
1970		316,466				316,466
1971		329,696				329,696
1972		344,574				344,574
1973		353,648				353,648
1974		372,832				372,832
1975		401,274				401,274
1976		410,969				410,969
1976	Transitional qtr. ⁴	108,762				108,762
1977		452,702				452,702
1978		⁵ 331,942				⁵ 331,942
1979		429,004				429,004
1980		464,743				464,743
1981		471,178				471,178
1982		468,149				468,149
1983		488,256				488,256
1984		502,628				502,628
1985		539,165				539,165
1986		560,212				560,212
1987		581,276				581,276
1988		565,801				565,801
1989		611,328				611,328
1990		643,602				643,602
1991		663,684				663,684
1992		606,253				606,253
Total	150,000	24,374,839	55,348	18,098	73,446	24,671,731

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 in the Library of Congress under the Librarian, calendar years 1870-1897 (source: *Annual Reports of the Librarian*). Registrations made in the Copyright Office under the Register of Copyrights, fiscal years 1898-1971 (source: *Annual Reports of the Register*).

³ Labels registered in Patent Office, 1875-1940; Prints registered in Patent Office, 1893-1940 (source: memorandum from Patent Office, dated Feb. 13, 1958, based on official reports and computations).

⁴ 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.

⁵ Reflects changes in reporting procedure.