
ANNUAL REPORT OF THE
LIBRARIAN OF CONGRESS

FOR THE FISCAL YEAR ENDING
SEPTEMBER 30, 1997

LIBRARY OF CONGRESS
WASHINGTON
1998

Copyright Issues

Legislation was introduced during the 105th Congress which challenged the historic role of the Copyright Office in the legislative branch. Following passage of a House resolution (H.R. 400), the Library worked with the Senate Judiciary Committee to preserve the role of the Copyright Office. The committee reported a bill (S. 507) which did not affect the Copyright Office, and work continued with Senate staff on crafting language to amend Title 17 of the United States Code to codify the policy role of the Copyright Office. The full Senate had not acted on this legislation at the end of fiscal 1997.

Systems that served Congress and the copyright and legal communities and those that provided bibliographic and fiscal control and human resources management were enhanced. These included the Legislative Information System (LIS) for Congress; an improved congressional request tracking system (ISIS 96); a test-bed Copyright Office Electronic Registration, Recordation, and Deposit System (CORDS); a system for sharing foreign legal material through the Global Legal Information Network (GLIN); the Federal Financial System (FFS) with links to a procurement module (Procurement Desktop); and a human resource management system (LEADS).

COPYRIGHT SERVICES

During fiscal 1997, the Copyright Office expanded pilot testing of the electronic registration and recordation system, supplied Congress with information on current copyright legislative issues, and provided the courts with expertise on legal and regulatory matters. The office increased its participation in the international copyright arena, reduced the arrearage of registration claims, and improved security for its staff and for deposit materials.

The Copyright Office received 627,864 claims and registered 569,226 claims. In all, 13,890 documents were cataloged, covering 260,590 titles. The office continued its efforts to reduce the backlog of unprocessed claims. Using innovative team efforts and overtime, the Examining Division reduced its backlog from 114,500 to 75,500 during the last quarter of the fiscal year. The division achieved a 34 percent decrease in its arrearages during a three-month period.

Each year, the Copyright Office collects and distributes more than \$200 million in royalty fees from cable systems and satellite carriers that make secondary transmissions of broadcast signals under the terms of their respective compulsory licenses, 17 U.S.C. 111 and 119. The Copyright Office also collects royalty fees under a statutory license from manufacturers and distributors of digital audio recording technology (DART). The Copyright Arbitration Royalty Panels (CARP) system is administered by the Copyright Office with the Librarian of Congress making all final decisions.

During fiscal 1997, the Librarian announced the final determination of the 1990–92 cable royalties, which amounted to \$550 million, and the final determination of the contested amounts in the Musical Works Fund for the 1992–94 DART royalties. Both decisions have been appealed to the Court of Appeals for the District of Columbia.

The office presented a series of four instructional seminars for members of Congress and their staffs entitled “Copyright Principles and the Legislative Agenda.” The lectures covered the recent World Intellectual Property Organization treaties, basic principles of copyright law for policymakers, the history of adapting copyright law to technological change, and the future of copyright

in a networked world. The sessions, which qualified for Continuing Legal Education (CLE) credit, were enthusiastically received. Representative Ed Pease (R-Ind.) attended the sessions and congratulated the office for “the professionalism of the staff and the assistance they have given us.” He noted that Register Marybeth Peters and her staff “led one of the most professionally conducted seminars on intellectual property that I have ever seen.”

In response to security assessments by several independent consultants, the Copyright Office appointed a security officer; installed four surveillance cameras in the vicinity of the Copyright Card Catalog; and reviewed the risk assessment of compact disk and CD-ROM format material. The office issued a contract to study security in the Copyright Office mailroom; restricted public access to work areas; established protective storage areas for high-risk materials; and established a tracking system group to monitor missing items.

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

Significant advances in research, development, testing, planning, and outreach were made on the Copyright Office Electronic, Registration, Recordation, and Deposit System, which permits electronic registration and deposit via the Internet.

Highlights of the year’s initiatives included opening test sites at Stanford University and the Massachusetts Institute of Technology Press/Journals Division, initiating CORDS Electronic Recordation planning with major copyright industries including publishers, motion picture companies, and sound recording producers, and creating a generic CORDS registration certificate after publishing a “Notice of Inquiry” in the *Federal Register*. Collaborating with expert consultants, system staff developed a framework and concepts for an “access management system” for the Copyright Office and Library of Congress secure digital repositories, completed a detailed long-range CORDS business plan analyzing costs and benefits, and continued operational and technical planning of “Mixed CORDS” for receipt of electronic claims with hard copy deposits. Technical developments included coding the Serial and Visual Arts input forms. Planning was initiated with several potential CORDS test partners for the submission of digital dissertations, electronic newsletters, digital images, and digital audio files.

CORDS outreach expanded with more than fifteen formal briefings and demonstrations of CORDS, both within the Library of Congress and externally. A CORDS technical survey was distributed to about one hundred serial and monograph publishers with Copyright Office deposit accounts, and a contract for development of two CORDS videos was awarded.

Cable and Satellite Compulsory Licensing

On August 1, the Copyright Office delivered a comprehensive report to Congress in response to a request from Senator Orrin Hatch (R-Utah) for a review of the various copyright licensing regimes that cover the retransmission of cable and satellite broadcast signals.

The cable compulsory license, which has been part of the copyright law since 1978, permits cable systems to transmit over-the-air television and broadcast signals to subscribers upon payment of statutory fees based upon the number of distant signals the cable system imports. The satellite carrier license permits a satellite carrier to retransmit television broadcast signals to its subscribers for private home viewing.

Based upon information gleaned through public hearings and a *Federal Register* Notice of Inquiry, the report did not recommend elimination of the existing cable and satellite compulsory licenses. The Copyright Office traditionally opposes compulsory licenses that diminish an author's control; the report, however, recognized that the two licenses in the United States "have become an integral part of the means of bringing video services to the public, that business arrangements and investments have been made in reliance upon them, that some copyright owners . . . favor their continuation, and that, at this time, the parties advocating elimination have not presented a clear path toward eliminating the licenses."

The report recommended that Congress reform the complex cable rate structure to a flat per-subscriber, per-signal, per-month fee with the amount of the fee to be determined by a Copyright Arbitration Royalty Panel. The report also recommended that the December 31, 1999, expiration date for the satellite carrier license be eliminated and that the license be modified to resolve confusion over the "underserved household" restriction. The office declined to adopt arguments to extend the compulsory licensing scheme to Internet operations.

Database Protection

On August 18, 1997, the Copyright Office delivered a report to Congress in response to a request from Senator Orrin Hatch that the office identify issues related to database protection and examine the advantages and disadvantages of creating *sui generis* (peculiar) intellectual property protection for those valuable works.

In preparing its report, the office held sixteen meetings with a broad spectrum of affected industries, scholars, science groups, educators, and library groups and had informal talks with other interested persons. The report also described the history and legal status of database protection, both domestic and international. It discussed issues raised by recent proposals to create a new federal intellectual property right in databases and outlined various options to address the concerns that were voiced. The report made no final recommendations but offered an informed starting point for Congress to evaluate the need for new legislation.

International Activities

Databases also commanded a considerable amount of the office's efforts on the international level. Their protection as copyrightable subject matter was guaranteed by two major international treaties: the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Berne Convention for the Protection of Literary and Artistic Works. In addition, the European Union and the United States submitted a new draft treaty for consideration at the World Intellectual Property Organization (WIPO) Diplomatic Conference held in Geneva last December. The draft treaty proved extremely controversial and had not been sufficiently discussed at the international level. Action on the proposed treaty was delayed, therefore, until after a special WIPO information meeting scheduled for September 1997. The Copyright Office delivered its report on database protection to each delegation. An analytic document summarizing issues that were discussed in the informal meeting will be distributed by WIPO at the end of fiscal 1998.

The Register of Copyrights and the Associate Register for Policy and International Affairs were members of the U.S. delegation to the diplomatic conference that formulated and adopted two new World Intellectual Property Organization treaties in Geneva in December 1996. Both of the treaties—the

WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT)—are designed to respond to digital technologies and to standardize international practice. On September 16, 1997, Register of Copyrights Marybeth Peters testified at a House Subcommittee hearing in support of quick ratification of the treaties and enactment of domestic implementing legislation.

The WIPO Copyright Treaty will update the Berne Convention by acknowledging that Berne protects both computer programs and original databases. It will establish a rental right for certain categories of works and provide for a distribution right. It will also ensure that authors have the exclusive right to control communication of their works to the public in today's digital environment, including control of on-demand transmissions. It will allow individual countries to create exceptions and limitations, as long as these do not conflict with the normal exploitation of the work or unreasonably prejudice the author's interests.

The Performances and Phonograms Treaty will provide an international framework of protection for performers and producers of sound recordings to cover technological developments since the 1961 Rome Convention. It will recognize performers' and producers' rights to authorize the reproduction, distribution, rental, and on-demand transmission of works and accord performers protection against bootlegging. The treaty will not completely resolve the level of performers' and producers' rights with respect to the broadcasting and communication of their works in the digital age. Moreover, the treaty will not cover audiovisual performers. A protocol to the treaty to cover such performers was, however, under consideration at year's end. A Committee of Experts meeting was held in Geneva in September 1997 and another one was scheduled for June 1998.

The Copyright Office continued its successful international initiative to provide training for high-level government officials from developing and newly industrialized countries who are responsible for copyright policy and enforcement. By the end of fiscal 1997, training has been offered to more than two hundred officials from approximately ninety countries. In conjunction with WIPO, the office held a four-day program for governmental officials from fourteen Asian and Pacific countries.

Apart from her participation in the formal International Copyright Institute, the Register of Copyrights presented a paper and participated in the UNESCO–WIPO Worldwide Forum on the Protection of Folklore held in Phuket, Thailand, in April 1997. She spoke at two WIPO regional seminars for Latin American and Caribbean countries held in Bogota, Colombia, in April 1997 and served as the copyright expert in the WIPO regional seminar on intellectual property for Asian and Pacific countries held in Colombo, Sri Lanka, in August 1997. She presented a discussion of current issues for the Standing Committee on Civil Law of the Swedish Parliament, and the Copyright Office sponsored a visiting scholar from Nigeria for a six-week study program with representatives of U.S. copyright industries.

The Library of Congress Today

The core of the Library remains its incomparable collections—and the specialists who interpret and share them. The Library's 111 million items cover more than 530 miles of shelf space and include research materials in more than 450 languages and almost all media through which knowledge and creativity are preserved and communicated.

The Library has more than 26 million volumes, including 5,700 volumes printed before the year 1500; 13 million prints, photographs, and posters; 4 million maps, old and new; 700,000 reels of film, including the earliest movies and television shows; 4 million pieces of music; 48 million pages of personal papers and manuscripts, including those of presidents from Washington through Coolidge; and hundreds of thousands of scientific and government documents.

The American Folklife Center warrants a special mention since it was created by Congress in 1976 as part of the Library and incorporated the Archive of Folk Culture dating from the 1920s. The folklife collection includes more than one million photographs, manuscripts, audio recordings, and moving images. It is the oldest and largest such repository in the world. The Library has been working closely with the Board of the Folklife Center to increase acquisitions and private funding and to pursue permanent authorization for the Center in order to ensure that its invaluable collections continue to be preserved, made accessible, and used in conjunction with other related collections at the Library of Congress.

New treasures are added each year. Recent acquisitions, to name a few, include the collection of Marion S. Carson, probably the nation's most extensive collection of Americana still in private hands (including the earliest photographs ever taken of a human face and of an urban scene, as well as more than 10,000 manuscripts, rare books, broadsides, photographs, drawings, prints, and other original documents); the personal papers and several hundred original drawings of cartoonist, playwright, and screenwriter Jules Feiffer; the collection of jazz great Ella Fitzgerald, comprising some 10,000 music scores; and important rare books such as Antonio de Medina's *Viaggio di terra Santa* (1590), an extremely rare and richly illustrated Italian translation of a Spanish account of pilgrimage to the eastern Mediterranean.

Every day the Library's staff takes in 7,000 new items for its collections, organizes them, catalogs them, and finds ways to share them with the Congress and the nation—increasingly through online access across America, but also through in-person access in the Library's reading rooms as well as exhibitions and other cultural programs that feature the Library's collections and reach across the country via the Internet.

Library of Congress programs and activities are funded by four salaries and expenses (S&E) appropriations, which support congressional services, national library services, copyright administration, and library services to blind and physically handicapped people. A separate appropriation funds furniture and furnishings. For fiscal 1998, the Library is requesting \$387.6 million (including \$30.4 million in authority to use receipts) for fiscal year 1998 to support its mission and strategic priorities. This is an increase of 7.1 percent over fiscal 1997; it includes \$14.7 million to fund mandatory pay raises and unavoidable price-level increases and \$11 million to meet critical, growing workload increases (net of program decreases).

During nearly 200 years, the Congress and the Library have, at critical times, taken necessary steps to integrate into Library operations the technology that will keep the Library's collection useful and relevant to the Congress and to the nation. The Library currently faces the fundamental challenge of effecting a full transition to the new electronic services and more efficient operations required for the Information Age while, at the same time, continuing its basic established services. To ensure the Library's future utility to the Congress and the nation, we are requesting this year new funds for: (1) a modern electronic Integrated Library System (ILS) that will provide inventory control, make vastly more efficient core library functions

(acquisitions, cataloging, collections security, and circulation), and ultimately save money; (2) continued implementation of our highest priority security initiatives, including additional police to cover newly renovated space and additional staff for an expanded reader registration program; (3) a temporary increase in additional full-time equivalents (FTE) and funds to support our staff succession plan to help ensure continuity of high-quality congressional and national services; (4) a temporary increase of \$0.5 million for the Copyright Office to maintain registration processing at an acceptable level; and (5) \$2.5 million for the purchase of an additional 10,000 talking book machines to ensure the continued availability of essential equipment and uninterrupted service without long waiting periods for blind and physically handicapped people.

In this time of budget austerity, the Congress has been very supportive of the Library of Congress, continuing to increase its budget in the past several years. However, the actual number of appropriated full-time equivalent positions has declined by 435 or 10 percent since fiscal 1992. The Library's budget has simply not increased enough to support the same number of FTE's that were funded in fiscal 1992. The Library has so far managed to accomplish its mission with fewer staff by: (1) identifying functions and activities that may have been desirable in the past but do not support high enough priorities to justify their costs in today's budget environment (for example, the Library has eliminated less popular reading room hours on Sundays and Tuesday and Friday evenings for the Main Reading Room, Law Library, and five other reading rooms); and (2) implementing changes in its business processes that improve the efficiency of operations (for example, the Library re-engineered the Federal Transfer Program, dramatically reducing the receipt and processing of millions of surplus materials from federal agencies, thereby eliminating substantial handling costs).

Since the Library's services are extremely labor intensive (some 70 percent of our budget is for payroll costs), future economies and productivity gains must come primarily from re-engineering our major operations and from investing further in automation. The Library's fiscal 1998 budget requests an increase of \$6.1 million for automation projects needed to improve internal operations and make the collections more accessible. The investment in better automation now will greatly improve service and save money in the long-term. The investment the Congress made during the late 1980s and early 1990s in the Library's automation program made possible both the rapid implementation of THOMAS in 1994 and the first release of a retrieval component of the Legislative Information System in January 1997. Investments made today may take several years to bear fruit but will produce major productivity and quality improvements in our basic library and copyright operations.

If we are to stay at the cutting edge for the Congress and the nation, we must invest today in three automation projects—the Global Legal Information Network (GLIN), the Copyright Office Electronic Registration, Recordation, and Deposit System (CORDS), and the Integrated Library System (ILS). These major re-engineering and automation projects must be completed if the Library is to be as relevant to the emerging needs of the Congress and the nation as it has been to those of the recent past.

Services to the Nation

Major Library services to the nation (Attachment A) include annually responding to some 500,000 congressional requests, registering more than 560,000 copyright claims, cataloging some 300,000 books and serials, and circulating more than 23 million audio and braille books and magazines to blind and physically handicapped individuals all across America. The Library also now processes some one million electronic transactions every day (which provide access to the Library's on-line information files that contain more than 40 million bibliographical records).

The Library has become a world leader in providing high quality content for the expanding Internet and for the Congress. This Committee's early interest in and support of American Memory has made it possible for the Library to help bring the Legislative Branch into the Information Age. We believe that much more can be accomplished by investing further in the transforming technology required to exploit this unique national resource.

GLIN

Toward this end, the Library's fiscal 1998 budget asks for important investments in technology and staff resources. In 1994, we described to this Committee a nascent effort to organize and make available an international database through our Law Library. Three years later, the Law Library is rapidly expanding such a multinational electronic database. It is now called the Global Legal Information Network (GLIN)—to ensure that the Congress has rapid and reliable information on foreign, international, and comparative law. Such information is critical to many members of this Committee in their work on international relations, trade, the environment, and other subjects key to America's economic and political health.

GLIN made its debut on the Library's home page in July 1996. Member nations are contributing abstracts and full text of laws at the rate of 15 entries a day and growing.

Eleven members are participating via the Internet, and the Library projects that GLIN membership will soon increase to fifteen or twenty nations. The fiscal year 1998 budget requests \$223,362 and three additional FTE's to support the expansion of GLIN. The Library has been funding GLIN so far by reallocating existing resources; NASA has provided satellite communications support; and international agencies (e.g., the World Bank) have provided support to participating nations. We project that GLIN will attract at least fifty members by 2002 and will create an easy-to-use database, allowing faster service to the Congress. It should eventually produce savings in the Library's budget as other nations begin sharing the costs to acquire, catalog, and make accessible international laws.

CORDS

In 1994, I also discussed the need for copyright registration and deposit functions to be modernized for a digital environment. Again, with critical support from the Congress, the Copyright Office has developed CORDS, the Copyright Office's pioneering Electronic Registration, Recordation, and Deposit System (CORDS). We have reached a critical point in the development and implementation of CORDS. The Copyright Office has proved during its pilot of 1996 that electronic registration and deposit works. Now the CORDS system is being perfected through a number of critical test phases with external participants. CORDS will both (1) help the Copyright Office streamline its complex internal registration, recordation, and deposit processes; and (2) provide the Library with copies of new copyrighted works in digital form for its collections. Re-engineering the Copyright Office's registration processes and integrating them with the Library's acquisition and cataloging processes are essential to the long-term cost-effectiveness of operations. Electronic publishing is growing exponentially, and the Library must be a leader in testing and demonstrating the means to acquire, authenticate, store securely, and provide authorized access to this vast body of new copyrighted works in electronic form. CORDS is a crucial component. The Copyright Office continues to be a critical element in the Library—the means through which the Library has been able to build a collection which is a mint record of the nation's creativity. The office is an important source of objective advice to the Congress on intellectual property matters—issues that are essential to both the U. S. economy and the American educational and research communities. This Committee should be aware of the importance of maintaining the Copyright Office in the Library within the Legislative Branch—and not, as was suggested by some last year, making it an adjunct to an Executive Branch department or agency.

14. COPYRIGHT REGISTRATIONS

(number of registrations by subject matter, fiscal 1997)

<i>Category of Material</i>	<i>Published</i>	<i>Unpublished</i>	<i>Total</i>
Nondramatic literary works			
Monographs and computer-related works	131,762	44,626	176,388
Serials			
Serials (non-group)	74,156	—	74,156
Group daily newspapers	2,155	—	2,155
Group serials	7,013	—	7,013
TOTAL, literary works	215,086	44,626	259,712
Works of the performing arts, including musical works, dramatic works, choreography and pantomimes, and motion pictures and filmstrips	46,259	108,153	154,412
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 the applied arts	59,022	30,613	89,635
Sound recordings	14,610	21,132	35,742
TOTAL	334,977	204,524	539,501
Renewals	—	—	28,649
Mask work registrations	—	—	1,076
GRAND TOTAL, all registrations	—	—	569,226
Documents recorded	—	—	16,548

15. COPYRIGHT BUSINESS SUMMARY
 (fees received, fiscal 1997)

<i>Receipts</i>	<i>Fees</i>
Applications for registration	\$12,206,713
Fees for mask works	21,920
Renewals	<u>558,558</u>
TOTAL	<u>12,787,191</u>
Fees for recordation of documents	821,159
Fees for certifications	127,897
Fees for searches	207,092
Fees for expedited services	1,017,471
Fees for other services	<u>108,286</u>
TOTAL	<u>2,281,905</u>
GRAND TOTAL	<u><u>\$15,069,096</u></u>
Fees Applied to the Appropriation, Fiscal 1997	\$15,076,608