



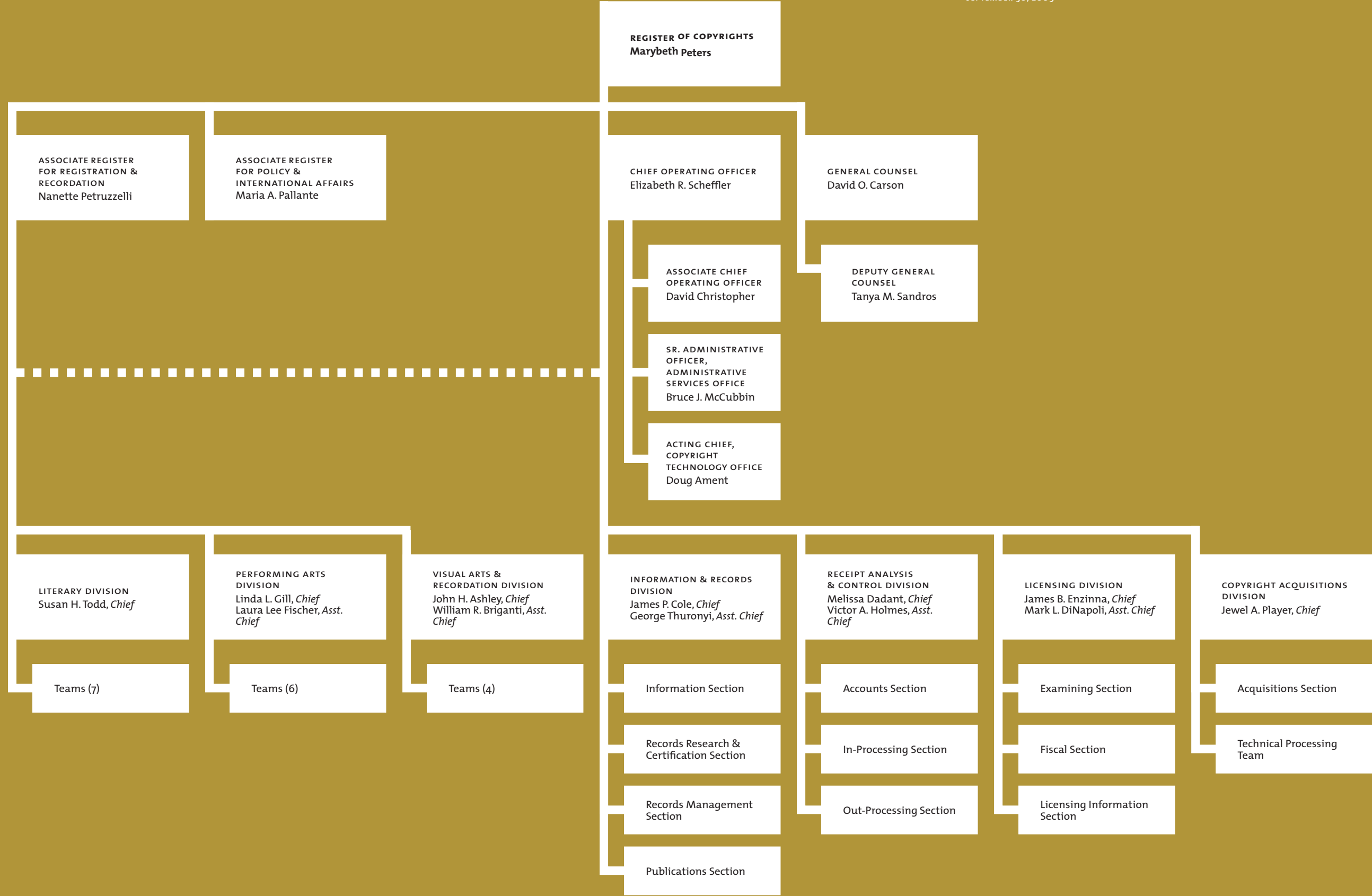
Annual Report of the Register of Copyrights

FISCAL YEAR ENDING SEPTEMBER 30, 2009

Copyright
United States Copyright Office

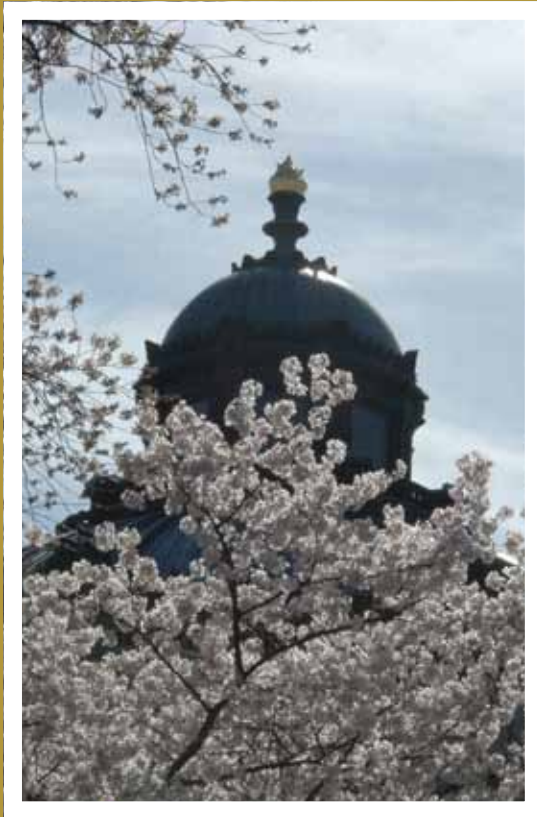
Organization of the U.S. Copyright Office

SEPTEMBER 30, 2009



Annual Report of the Register of Copyrights

FISCAL YEAR ENDING SEPTEMBER 30, 2009



United States Copyright Office

A message from the Register



*Register of Copyrights
Marybeth Peters*

Fiscal 2009 was our most challenging year in recent memory, but it was also a year of successes. The number of copyright claims in process continued to increase through most of the year, mostly because of a backlog in paper claims that accumulated in the months before the July 2008 launch of eService, causing claimants to have to wait many months for their certificates. Growth in the number of in-process claims in all systems and from all sources reached a peak of over 500,000 near the end of the fiscal year before beginning a modest but steady decline. By that time, hardware upgrades, software modifications, and the hiring of additional registration specialists had begun to have a significant positive impact on the Office's productivity and the claims backlog.

Even as the Office worked through the paper claims, the eService component of eCO was delivering on the promise of reengineering. In particular, the mix of claims received in the Office shifted significantly as fiscal 2009 progressed. The percentage of eService claims received each week grew from about 50 percent at the beginning of the year to around 60 percent by the final weeks of the fiscal year. A corresponding decline occurred in the number of traditional paper claims received, a trend we expect to continue as the volume of eService claims increases. We still have much work ahead of us, but the trends look excellent for reducing the backlog significantly in fiscal 2010 and reaching our historical average of claims in process in fiscal 2011.

Much of the legislative, legal, and policy agenda for the year focused on (a) licensing, (b) a proposed settlement in a class-action lawsuit brought against Google by authors and publishers alleging copyright infringement arising out of Google's mass digitization of books, and (c) a Supreme Court case involving copyright registration.

The Office assisted the Department of Justice in preparing and presenting the views of the U.S. government on the proposed settlement in the Google books case. We also urged the U.S. solicitor general to submit a brief to the Supreme Court in *Reed Elsevier v. Muchnick* and helped to prepare the brief. The case addresses whether a court has jurisdiction over a copyright infringement suit when the statutory prerequisite of copyright registration has not been satisfied. In addition, the Office

assisted Congress with the reauthorization of section 119 of the Copyright Act, which includes a statutory license for retransmission of television signals by satellite. On other legislation, the Office advised Congress about the proposed Performance Rights Act, which would strip broadcasters of their exemption from the obligation to pay royalties for the public performance of sound recordings.

The Copyright Records Digitization Project laid the groundwork for a massive effort to digitize some 70 million pre-1978 copyright records. The project's goals are to make the records available online, which will dramatically improve our services to the public, and to preserve the records, many of which are unique originals that have no duplicate copy.

Throughout this period, the staff of the Copyright Office showed extraordinary ingenuity and perseverance in stabilizing and addressing the backlog of claims in process. The participation and energy of Copyright Office employees was an inspiration, and I extend to every one of them my appreciation.



Marybeth Peters

Register of Copyrights

FACTS AT A GLANCE

In fiscal 2009 the Copyright Office

- Addressed the continuing challenges following reengineering implementation by improving workflow, hiring new staff, and improving eCO usability and functionality.
- Increased production levels and stabilized the number of claims on hand.
- Registered 382,086 claims; recorded 11,959 documents covering more than 350,000 titles of works; transferred 739,364 items to the Library valued at more than \$32 million; collected licensing royalties totaling close to \$262 million; distributed existing funds from the royalty pool totaling nearly \$273 million; and answered 359,882 requests for direct reference services.
- Provided ongoing assistance to Congress, including congressional testimony on copyright licensing in the digital age, performance rights and parity among music delivery platforms, and copyright implications of the proposed settlement in the Google books case.
- Participated in proceedings of international intellectual property and trade organizations, resulting in increased international protections for U.S. copyrighted works.
- Assisted the Department of Justice in copyright-related litigation regarding the nature of the requirement of copyright registration as a prerequisite to the filing of a copyright infringement suit; the Google book-scanning project; the constitutionality of certain provisions of copyright law; the constitutionality of the Librarian's appointment of Copyright Royalty Judges; the scope of the public performance right; and the Register's refusal to register works having no copyrightable authorship.
- Monitored other important copyright cases moving through lower courts.
- Issued legal opinions on a Copyright Royalty Board final order setting rates for the section 115 statutory license for making and distributing phonorecords of musical works.
- Experienced a 19 percent increase in visits to the Copyright Office website.

Executive summary



*Jefferson Building,
Library of Congress*

REGISTRATION AND RECORDATION

The Office expected fiscal 2009 to present challenges in the aftermath of implementing new information technology systems and processes. It continued to work on resolving a lengthened processing time, reducing a growing number of claims in process, and staffing strategically at levels necessary to address the backlog of work.

During the year, the Copyright Office focused on processing the outstanding backlog of copyright applications, particularly those submitted on paper forms rather than by eService. The Office's backlog-reduction efforts focused on three key areas: achieving optimal staffing, improving information technology systems, and providing incentives to increase eService use. The Office added 17 new registration specialists in spring 2009 and began the hiring process for 16 more to come on board in early fiscal 2010. Those hired in 2009 became fully productive following participation in an accelerated training program. The Office also improved its technology, supporting the processing of serial publications in fall 2009, through a combination of new hardware installation and new software. By the end of the fiscal year, eService had become the predominant claims filing method, accounting for 60 percent of weekly filings, and the Office had succeeded in stabilizing the backlog.

LEGISLATION

The Office advised Congress on several substantive legislative issues in fiscal 2009, including reauthorization of section 119 of the Copyright Act and legislation to require over-the-air radio stations to make royalty payments to recording artists.

Section 119 Reauthorization

The Office worked closely with staff of the House and Senate judiciary and commerce committees, as well as stakeholders, on the reauthorization of section 119 of the Copyright Act, a statutory license available to satellite services for the carriage of certain over-the-air television signals. The existing license was scheduled to expire on December 31, 2009. The *Section 109 Report*, which the Office submitted to Congress in 2008, analyzes the updating of the section 119 license as well as two other statutory licenses; it served as the beginning point for fiscal 2009 legislative activities. On February 25, 2009, the Register of Copyrights testified before the House Judiciary Committee on the continuing viability of the cable and satellite statutory licensing structures and their relevancy in today's ever-evolving digital marketplace. During the year, much discussion ensued, and bills H.R. 3570 and S. 1670, to extend and amend the section 119 license, were introduced.

Performance Rights

Two similar bills introduced in the Senate and the House, each called the Performance Rights Act, would amend the copyright law to expand the public performance right of sound recording copyright owners to include analog audio transmissions and make those transmissions subject to the existing statutory license in section 114 of the Copyright Act, which currently covers webcasters, subscription services, and some other services. This change would, for the first time, require over-the-air radio stations to make royalty payments to recording artists. Consistent with the Copyright Office's long-standing support for a performance right for sound recordings, the Register of Copyrights stated in her testimony that this legislation is long overdue, and she urged Congress to approve it. The Register noted that the United States is probably the only industrialized country that does not recognize performance rights for sound recordings, including performances made by means of broadcast transmissions.

LITIGATION

The Copyright Office weighed in on numerous legal proceedings in fiscal 2009, including the proposed settlement in the Google books case.

Google Books Case

The Copyright Office spent significant time during the year evaluating the legal and business implications of the proposed settlement of the *Authors Guild, Inc. et al. v. Google, Inc.*, a class-action lawsuit in U.S. District Court for the Southern District of New York based on Google's systematic reproduction of millions of protected books in their entirety, without permission of the copyright owners, through scanning operations set up with large research libraries.

If approved, the proposed settlement would release Google from liability for the alleged infringement and permit it to undertake new activities that were not at issue in the litigation, including selling full access to out-of-print books to consumers and institutions without prior permission of the rights holders. The proposed settlement would also create a central registry and payment mechanism for rights holders who choose to come forward and claim their works.

In September 10, 2009, testimony before the House Judiciary Committee at a hearing titled "Competition and Commerce in Digital Books: The Proposed Google Book Settlement," the Register addressed the potential impact of the proposed settlement on copyright law and expressed concern that the settlement would, in effect, create a private compulsory license through the judiciary rather than as an act of Congress; compromise the legal rights of authors, publishers, and other copyrights owners of out-of-print books; and potentially subject the United States to diplomatic stress from foreign authors and other rights holders and their governments.

The Office also assisted the Department of Justice in preparing a statement of interest submitted to the court on behalf of the U.S. government and assisted the department in preparing to appear at the fairness hearing, originally scheduled for October 2010. For full details, see page 17.

Other Litigation

In addition to the Google books litigation, the Office assisted the Department of Justice in other legal proceedings, some of which continued from previous years. They included a case before the Supreme Court to determine whether section 411(a) of the copyright law restricts the subject-matter jurisdiction of federal courts; a long-standing challenge to the constitutionality of the Uruguay Round Agreements Act; an infringement suit related to a new cable service enabling remote digital video

recording; litigation addressing whether downloading a digital music file embodying a particular song constitutes a “public performance” within the meaning of the copyright law; two challenges to the constitutionality of the appointment of the Copyright Royalty Judges; a challenge to royalty rates; and action against the Copyright Office for refusal to register certain works.

ANTICIRCUMVENTION RULEMAKING

Section 1201(a)(1) of the copyright law prohibits the circumvention of technological measures that protect access to copyrighted works. The Digital Millennium Copyright Act of 1998 requires the Copyright Office to conduct a rulemaking every three years to determine whether the prohibition on circumvention of technological measures that protect access to works has affected or is likely to affect users adversely in their ability to make noninfringing uses of copyrighted works. At the conclusion of the rulemaking, the Register presents the Librarian of Congress with a recommendation about whether to designate any particular classes of works with respect to which users engaging in noninfringing uses will not be liable for violating the prohibition on circumvention for the ensuing three-year period.

During fiscal 2009, the Copyright Office published a notice of inquiry in the *Federal Register* that solicited comments proposing classes of works for which exemptions were sought, and it received 25 proposed classes for consideration. The Office published a list and summaries of the classes of works proposed and solicited responses from both proponents and opponents of the proposed classes. The Copyright Office received 56 comments, followed by hearings in California and Washington, D.C. The Office was preparing its recommendations as the fiscal year ended.

LEGAL OPINIONS

On November 24, 2008, the Copyright Royalty Judges transmitted to the Register of Copyrights a copy of their “Final Determination of Rates and Terms in the Matter of Mechanical and Digital Phonorecord Delivery Rate Determination Proceeding.” The Register of Copyrights reviewed the judges’ final determination and found that the

resolution of certain material questions of substantive law under the copyright law that underlie or are contained in the final determination were in error, and she issued a decision correcting such errors.

The Prioritizing Resources and Organization for Intellectual Property Act (Pub. L. No. 110-403) amended section 411 of the copyright law by adding subsection (b) to create a new procedure for infringement actions that requires courts to seek the advice of the Copyright Office on issues that may involve fraud on the Copyright Office. On June 1, 2009, the U.S. District Court for Puerto Rico used this provision for the first time, issuing an order to the Register of Copyrights asking whether the Office would have refused registration if it had known that the individual indicated as the author on the application was not the author of the subject work, and whether the Office would have refused the supplementary registration if it had known that the claimant was involved in litigation disputing the validity of a signed transfer agreement giving him rights in the subject work. The Register responded promptly to both questions regarding the registration decisions of the Office.

EDUCATION AND OUTREACH

The Copyright Office participated in or sponsored numerous programs about its services and the law. The popular “Copyright Office Comes to...” meetings sponsored by the Office and the California Bar Association (Los Angeles and San Francisco), the New York State Bar Association (New York), and the First Amendment Center (Nashville) drew large crowds.

The Register of Copyrights made presentations in the United States and the United Kingdom. She was the keynote speaker at various symposia, and she and other Copyright Office officials spoke at numerous law schools and annual meetings. Senior policy and legal staff also delivered presentations in the United States and abroad on topics ranging from exclusive rights under copyright law, enforcement of copyright law, and exceptions and limitations to the law.

INTERNATIONAL

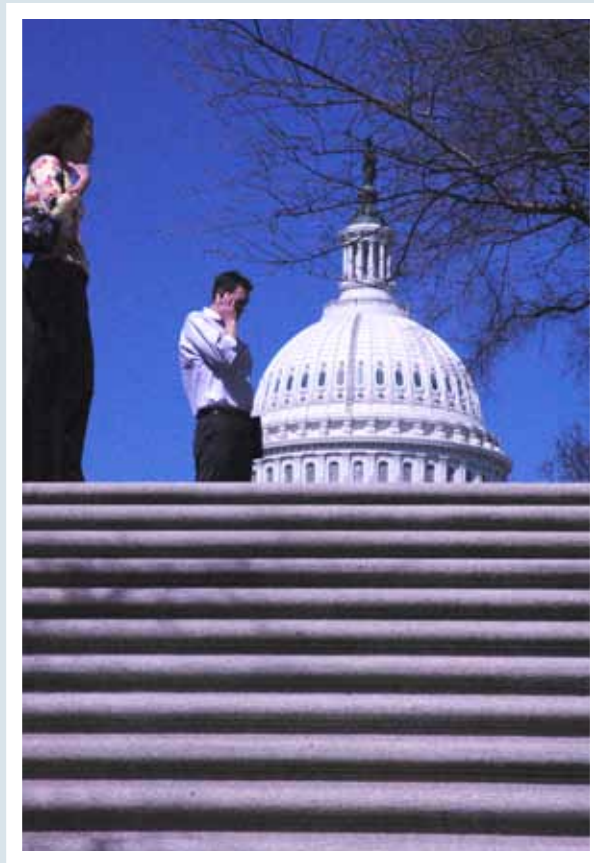
The Register, the Associate Register for Policy and International Affairs, and senior policy staff represented the United States at important international copyright meetings and negotiations and hosted foreign delegations.

The Office advised executive branch agencies on technical matters of foreign copyright law and international copyright treaties and obligations, including through trade discussions and participation in official U.S. delegations. The Office provided ongoing support to the Office of the U.S. Trade Representative, the Department of State, the Patent and Trademark Office, and the Department of Commerce.

The Register and Associate Register for Policy and International Affairs served on the U.S. government's delegation to the World Intellectual Property Organization (WIPO) General Assemblies meeting in September 2009. The Associate Register also joined U.S. delegations to WIPO's Standing Committee on Copyright and Related Rights in November 2008 and May 2009, a major focus of which was exceptions and limitations to copyright law, especially with respect to the blind, the visually impaired, and other print-disabled people. The Office's senior policy staff also attended other copyright-related meetings at WIPO, including the Fourteenth Session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore in June 2009 and the Informal Open-Ended Consultations on Protection of Audiovisual Performances in September 2009.

The Office spent considerable time in 2009 examining the ways in which the United States provides copyrighted works in accessible formats to the blind, visually impaired, and print-disabled, in part for the purpose of reporting to member states at the WIPO conference. The Office of Policy and International Affairs led an extensive consultation process, including a daylong public meeting, regarding the operation of the U.S. exception, found in section 121 of the copyright law, generally referred to as the "Chafee Amendment." The Office is currently working with the Library's National Library Service for the Blind and Physically Handicapped, as well as with advocates for the blind and other stakeholders, to explore ways to improve standards, resources, and responsible cross-border movement of works in accessible formats.

Service to government



Dome of the U.S. Capitol

The Copyright Office provides timely quality service to the Congress, the executive branch, and the courts to address current and emerging issues involving copyright policy and law.

HEARINGS, LEGISLATION, AND STUDIES

The Copyright Office offers testimony and nonpartisan assistance to Congress on copyright matters and proposed copyright legislation and undertakes studies leading to authoritative reports on current issues affecting copyright.

Hearings

The Register of Copyrights testified in five congressional hearings in fiscal 2009. Two presentations occurred in conjunction with the Librarian of Congress to present the fiscal 2010 appropriations request. The remaining three were

- “Copyright Licensing in a Digital Age: Competition, Compensation, and the Need to Update the Cable and Satellite TV Licenses” before the House Committee on the Judiciary on February 25, 2009;
- “The Performance Rights Act and Parity among Music Delivery Platforms,” a written statement to the Senate Committee on the Judiciary on August 4, 2009; and
- “Commerce and Competition in Digital Books: The Proposed Google Book Settlement” before the House Committee on the Judiciary on September 10, 2009.

Copyright Licensing in a Digital Age

The Register testified on the Office's *Section 109 Report* on the cable and statutory licenses found in Sections 111, 119, and 122 of the copyright law.

Sections 111, 119, and 122 (originally enacted in 1976, 1988, and 1999, respectively) govern the retransmission of distant and local over-the-air broadcast station signals by cable operators and satellite carriers. Specifically, these provisions cover the public performance of copyrighted works transmitted by over-the-air broadcast stations licensed by the Federal Communications Commission (FCC). Their purpose and intent reflect the factual and legal circumstances at the time of their inception.

The section 111 license allows a cable operator to retransmit both local and distant radio and television signals to its subscribers. Section 111 permits cable systems to carry distant broadcast signals while guaranteeing compensation (royalties) to copyright owners. The section 111 license is permanent and has not been substantially modified in the last 30 years.

The section 119 license permits a satellite carrier to retransmit distant television signals (but not radio signals) to its subscribers for private home viewing and to commercial establishments. The purpose of the section 119 license is to provide satellite carriers with an efficient means to license copyrighted works carried on a broadcast signal so that a satellite carrier can offer superstations to a home dish owner anywhere in the United States and network programming to a household that cannot receive an adequate over-the-air signal from a local network affiliate (a so-called "unserved household"). Congress intended section 119 to be a temporary license and set it to expire at the end of a five-year term. However, the statute was reauthorized in 1994, 1999, and 2004, and is scheduled to reach the end of its current term on December 31, 2009, unless Congress takes affirmative action.

The section 122 statutory license permits satellite carriers to offer "local-into-local" service—that is, to retransmit local television signals back into the stations' local television market—on a royalty-free basis contingent on the satellite carrier complying with the FCC's regulations under section 338 of the Communications Act governing the carriage of television broadcast signals (known as the "carry-one-carry-all" requirements). Section 122 is meant to encourage the retransmission of local broadcast signals rather than distant broadcast signals and to promote multichannel video competition by permitting satellite carriers to retransmit a package of local broadcast signals comparable to that offered by local cable operators.

Section 109 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (Pub. L. No. 108-447), required the Copyright Office to examine and compare the statutory licensing systems under sections 111, 119, and 122 and to recommend any necessary legislative changes in a report to Congress due no later than June 30, 2008. The Office completed and submitted that report, which is discussed in the fiscal 2008 annual report.

The Office's principal recommendation is that Congress move toward abolishing sections 111 and 119. Despite its stance on the distant-signal licenses, the Copyright Office also recognized that the digital television transition, set to occur in 2009, was likely to generate unanticipated signal-reception problems for millions of American households, and that some broadcast-only households might turn to cable or satellite television for a clear picture and the ability to access desired broadcast programming. The Office therefore recommended a lifeline distant-signal service for cable and satellite subscribers during the post-transition period.

On September 16, 2009, the House Committee on the Judiciary marked up H.R. 3570, the Satellite Home Viewer Update and Reauthorization Act. The stated purpose of this legislation is to modernize, improve, and simplify, to the extent possible, the statutory licenses governing the retransmission of distant television signals by cable and satellite television operators. H.R. 3570 would reauthorize the section 119 license prior to its scheduled December 31, 2009, expiration, and extend the license for another five years. In addition, the legislation proposes to update the sections 111, 119, and 122 statutory licenses to reflect the digital transition, heighten penalties for copyright infringement, and facilitate the availability of local-into-local service in all 210 television markets in the United States. The bill passed the committee by a 34 to 0 vote.

On September 24, 2009, leading members of the Senate Judiciary Committee also introduced legislation to reauthorize the section 119 statutory license. The bipartisan Satellite Television Modernization Act, S. 1670, was introduced by Patrick Leahy, chair of the Senate Judiciary Committee, and Jefferson Sessions, the ranking member, as well as committee members Orrin Hatch, Herbert Kohl, and Jon Kyl. Like its House counterpart, the Senate bill seeks to modernize and simplify the statutory licenses while making adjustments to encourage satellite providers to make more local broadcast content available. The bill passed the committee by a unanimous vote.

The House and Senate drafted their respective bills in light of information provided by the Copyright Office in its *Section 109 Report* to Congress. The Copyright

Office briefed members of Congress and their staff on the issues raised in the report and offered its expertise and insight on the respective bills as they worked their way through the legislative process.

One difference between the bills is that the Senate version would require the Copyright Office to conduct a study and issue a report, no later than 12 months after passage of the S. 1670, analyzing proposed mechanisms, methods, and recommendations on how to implement a phase-out of the current statutory licensing requirements set forth in sections 111, 119, and 122. A number of provisions in H.R. 3570 are not in S. 1670, including language addressing multicasting, filing fees, audits, emergency preparation, and waiver provisions designed for satellite television provider Echostar. Conversely, S. 1670 includes a provision allowing a satellite carrier to import a distant network station signal when there is no local network affiliate of that network in the local market, as well as the provision requiring the Copyright Office to report on the phasing out of the sections 111, 119, and 122 licenses, neither of which provisions are in H.R. 3570. The differences in the bills will have to be addressed before final passage, an effort in which the Copyright Office continued to be engaged in at the end of the fiscal year.

Performance Rights

The Performance Rights Act (H.R. 848 and S. 379) would amend the Copyright Act to expand the public performance right of sound recording copyright owners to include analog audio transmissions. This change would, for the first time, require over-the-air radio stations to make royalty payments to recording artists under the existing section 114 statutory license. Both bills include provisions to protect small, noncommercial, educational, and religious radio stations by establishing a tiered schedule of fees for such broadcasters based on gross revenue. Royalties paid by other broadcasters would be set by the Copyright Royalty Judges. The legislation also includes provisions to establish parity in the rate standard across platforms that publicly perform sound recordings as well as provisions to ensure the sound recording performance right cannot be used to adversely affect royalties paid to songwriters and music publishers for the public performance of the musical works that are fixed in the sound recordings.

Consistent with the Copyright Office's long-held support for a performance right for sound recordings, the Register of Copyrights submitted a statement in favor of S. 379 to the Senate Judiciary Committee. In her statement, the Register stated that the

legislation is long overdue, and she urged the committee to approve it. The Register noted that the United States is probably the only industrialized country that does not recognize performance rights for sound recordings, including performances made by means of broadcast transmissions. In 2007 testimony, the Register urged Congress to expand the scope of the performance right for sound recordings to cover all analog and digital transmissions by broadcasters, including over-the-air transmissions. She explained why the current exemption for terrestrial broadcasters is no longer justified and clarified the need to establish parity among commercial competitors that depend on the use of sound recordings. She recommended granting copyright owners of sound recordings a performance right for all audio transmissions, both digital and analog, subject to a statutory license. This is the approach taken in the proposed Performance Rights Act.

H.R. 848 was reported out favorably by the House Judiciary Committee and, at the end of the fiscal year, S. 379 was expected to be reported out favorably by the Senate Judiciary Committee. However, a majority of the members of the House and over a quarter of the members of the Senate cosponsored resolutions (the Local Radio Freedom Act, H. Con. Res. 49 and S. Con. Res. 14) that are strongly supported by the broadcast industry. The resolutions express the view that “Congress should not impose any new performance fee, tax, royalty, or other charge relating to the public performance of sound recordings on a local radio station for broadcasting sound recordings over the air, or on any business for such public performance of sound recordings.”

Proposed Settlement of Google Books Case

During fiscal 2009, the Copyright Office addressed the copyright implications of the proposed settlement of the *Authors Guild, Inc. et al. v. Google, Inc.* In this class-action lawsuit before the U.S. District Court for the Southern District of New York, authors and publishers allege that Google had willfully engaged in, and intended to resume, unauthorized, systematic scanning and partial digital display of copyrighted works (primarily books) without the permission of rights holders. The lawsuit is based on Google’s reproduction of millions of protected books in their entirety without permission of the copyright owners through scanning operations set up with large research libraries. Once scanned, the books are indexed electronically, allowing users to search by title and other bibliographic information. Google also enables users to

browse “snippets” (that is, several lines) of a book, except for public domain books, which can be viewed and downloaded in their entirety.

The parties announced a proposed settlement in October 2008 and submitted it to the court for approval. If approved, the settlement would not only release Google from liability for the alleged infringement, but also permit it to undertake new activities that were not at issue in the litigation, including selling full access to out-of-print books to consumers and institutions without prior permission of the rights holders. The proposed settlement would also create a central registry and payment mechanism for rights holders who choose to come forward and claim their works.

The Register raised initial questions about the proposed settlement at a Columbia University conference, the London Book Fair, and Fordham University’s International Intellectual Property Conference, held in Cambridge, England. The Copyright Office also analyzed the details of the proposed settlement between Google and the plaintiffs, the Association of American Publishers and the Authors Guild; developed a series of recommendations; and undertook extensive consultations with stakeholders and interested parties, both domestic and foreign, who expressed a range of views about the settlement. On September 7, 2009, an Office representative attended a European Commission hearing about the proposed settlement in Brussels.

On September 10, 2009, the Register testified at a hearing titled “Competition and Commerce in Digital Books: The Proposed Google Books Settlement” before the House Judiciary Committee. She expressed three major concerns. First, she stated that allowing Google to continue to scan millions of books into the future, on a rolling schedule with no deadline, is tantamount to creating a private compulsory license through the judiciary. Second, she stated that certain provisions of the proposed settlement dramatically compromise the legal rights of those holding rights in out-of-print books, by, among other things, allowing Google to sell such works without permission. She noted that the out-of-print settlement provisions also inappropriately interfere with the ongoing efforts of Congress to enact orphan works legislation. Orphan works are works that are still within their copyright term but for which a user cannot identify or locate a legitimate copyright owner. Third, the Register pointed out that foreign rights holders and foreign governments have raised concerns about the potential impact of the proposed settlement on their exclusive rights and national digitization projects.

The Copyright Office worked extensively with the Department of Justice and other executive branch agencies to develop a statement of interest of the United States on the proposed settlement, which was submitted to the district court on September 18, 2009. The statement expresses concerns about the proposed settlement in the areas of class-action procedures and antitrust and copyright law.

In particular, the statement raises concern about the broad scope of the proposed settlement, especially some of the forward-looking business arrangements contemplated by the parties. The statement also questions whether all members of the class had been adequately notified and represented, including rights holders of out-of-print works and foreign rights holders. The statement notes certain potential benefits of a settlement, including the creation of a registry for rights holders and search capabilities for millions of books, but it quotes the Register's testimony before Congress: "As the Register of Copyrights has explained, the proposed settlement's far-reaching authorization to the registry and ultimately Google to exploit out-of-print works without prior consent of the rights holders alters the traditional understanding of copyright law that allows the owner to exclude others from using a copyrighted work absent authorization of the copyright owner."

Legislation

In addition to copyright licensing and performance rights legislation, the Copyright Office advised Congress on bills related to webcasting and protection of fashion designs in fiscal 2009.

Webcaster Settlement Act of 2009

The Copyright Office assisted the House Judiciary Committee in its preparation of the Webcaster Settlement Act of 2009 (Pub. L. No. 111-36). The act allowed webcasters and SoundExchange, the sound recording royalty collective designated by the Copyright Royalty Judges, additional time to negotiate a settlement establishing alternative rates to those set by the Copyright Royalty Judges for the public performance of sound recordings under sections 112 and 114 of the Copyright Act. The determination of the judges, issued May 1, 2007, replaced a previous percentage-of-revenue scheme with a per-performance, per-listener escalating royalty rate for all stations that exceed a

monthly aggregate-tuning-hours threshold that users deemed too high. The judges also imposed a \$500 per-channel fee on all commercial webcasters.

Generally, the Webcaster Settlement Act of 2009 extended the same time-limited authority provided to SoundExchange by the Webcaster Settlement Act of 2008. Under the Webcaster Settlement Act of 2009, SoundExchange's authority to negotiate a settlement establishing alternative rates to those set by the Copyright Royalty Board for the public performance of sound recordings under sections 112 and 114 was extended for 30 days following the bill's enactment on June 30, 2009.

Design Piracy Prohibition Act

The Copyright Office assisted Congress in its consideration of the proposed Design Piracy Prohibition Act, H.R. 2196, which would provide design protection for fashion apparel in the United States for the first time. The Office reviewed and analyzed H.R. 2196 and the proposals leading up to its introduction on April 30, 2009. In addition, the general counsel's office conferred with and advised interested parties and congressional representatives. Under the proposed bill, protection would expire after three years. The measure would also require the Copyright Office to institute a registration system for fashion designs. No comparable bill has yet been introduced in the Senate, although similar bills were introduced in both chambers in previous sessions of Congress.

Section 108 Study

In March 2008, the Section 108 Study Group issued its final report, containing several substantive recommendations on amending the library and archives exceptions provision in section 108 of the copyright law in ways appropriate to digital works and digital access. Its recommendations cover a range of library and archives practices, from making replacement copies in digital form, to preserving online-only works, to outsourcing activities permitted by the exception.

The report was delivered to the Librarian of Congress and the Register of Copyrights, who has the responsibility of determining what, if any, legislative proposals to make reflecting the report's recommendations. In fiscal 2009, the Office reviewed the report's recommendations and considered how to best translate them into legislative proposals.

INTERNATIONAL ACTIVITIES

The Copyright Office's international activities include advising Congress and other U.S. government agencies on foreign copyright laws, international treaties, and trade agreements; participating in U.S. delegations to foreign countries and intergovernmental organizations; participating in international trainings; and hosting and visiting representatives of foreign governments for meetings on copyright issues.

The Copyright Office continued in fiscal 2009 to advise executive branch agencies on questions of domestic and foreign copyright law in the context of international trade negotiations and other policy initiatives, working particularly with the United States Trade Representative (USTR), the Patent and Trademark Office (PTO), and the Departments of State and Commerce.

The Office represented the United States at World Intellectual Property Organization (WIPO) meetings, serving on the U.S. delegation to the WIPO General Assemblies meeting in September 2009 and on U.S. delegations to meetings of the WIPO Standing Committee on Copyright and Related Rights (SCCR) in November 2008 and May 2009. The primary focus of these latter meetings was exceptions and limitations to copyright law, especially with respect to the blind, visually impaired, and other reading-disabled people. The meetings also included discussion of protection of audiovisual performances and broadcasting organizations.

Leading up to the May 2009 SCCR meeting, the Office worked with the PTO to conduct an extensive public consultation process about the operation of the U.S. copyright exception for the blind, found in section 121 of the copyright law and referred to as the "Chafee Amendment." The Copyright Office website contains an extensive record of the issues addressed. The Office consulted representatives of the blind and visually impaired, publishers, authors, trusted intermediaries, and nongovernmental organizations that had expressed an interest in the issues under discussion at WIPO. In addition, the Office published a *Federal Register* notice seeking detailed comments about U.S. national experience on the issues, including the operation of the Chafee Amendment for the general reading public and students at the K-12 and university levels; the cross-border movement of accessible works for the blind and visually impaired; the role of technology and trusted intermediaries; and existing systems for providing accessible versions of copyrighted works to the blind. The Office hosted an all-day public meeting to gain additional information.

The May 2009 SCCR meeting included a report on the U.S. investigation and a detailed overview of U.S. experiences and issues raised in the investigation regarding copyright exceptions for the blind or other persons with disabilities. At the same meeting, the members states of Brazil, Ecuador, and Paraguay proposed a treaty drafted under the auspices of the World Blind Union, which the Copyright Office continues to analyze in collaboration with offices of the White House, the PTO, the Department of State, the USTR, and U.S. stakeholders.

During fiscal 2009, the Office joined U.S. delegations at other copyright-related meetings at WIPO, including the Fourteenth Session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore in June 2009 and the Informal Open-Ended Consultations on Protection of Audiovisual Performances in September 2009.

Working with the office of the USTR, the Copyright Office contributed to the United States' ongoing efforts to implement copyright-related obligations in the free trade agreements and trade promotion agreements with Chile, Oman, and Peru. The Office also assisted the USTR in the final stages of a WTO dispute settlement proceeding against China relating to intellectual property protection and enforcement in China and participated in discussions with the Chinese government in connection with that proceeding. In addition, the Office advised the USTR on multiple copyright issues under consideration by the Asia-Pacific Economic Cooperation forum, including signal piracy, prevention of unauthorized video-camera recording of copyrighted audiovisual works, and exceptions and limitations to copyright law. The Office continued to assist the USTR in connection with its preparation and negotiation of the Anti-Counterfeiting Trade Agreement under discussion with Australia, Canada, the European Union, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, and Switzerland.

Throughout the year, the Office actively participated in additional bilateral negotiations and consultations with the European Union and numerous countries around the world, including Canada, China, Japan, Korea, Mexico, Poland, Russia, Ukraine, the United Kingdom, and Vietnam, on issues ranging from enforcement of copyright law to copyright law revision. For the USTR, the Office assisted with regard to the World Trade Organization accession processes of a number of nations, including Bosnia, Iraq, Kazakhstan, Lebanon, Mozambique, and Yemen, and participated in numerous WTO trade policy reviews for countries around the world.

The Copyright Office contributed to the USTR's interagency Special 301 Committee, which evaluates the adequacy and effectiveness of intellectual property protection and enforcement throughout the world. This annual process, established under U.S. trade law, is one of the tools used by the U.S. government to improve global protection for U.S. authors, inventors, and other holders of intellectual property rights. In addition to the scheduled Special 301 process, the Office also assisted with out-of-cycle reviews of Saudi Arabia and Poland.

The Office also advised the Departments of State and Commerce on intellectual property matters raised in connection with the Group of Eight (G8) Heiligendamm Process, the G8 Intellectual Property Experts Group, the United Nations Convention on the Rights of Persons with Disabilities, and the draft "Legislative Guide on Secured Transactions" of the United Nations Commission on International Trade Law.

LITIGATION

The Copyright Office is not an enforcement agency for the provisions of the copyright law. The Office may, however, be involved in copyright litigation by (a) choosing to intervene under section 411(a) in a copyright infringement case where registration has been refused; (b) being sued under the Administrative Procedure Act; (c) assisting in the preparation of an amicus curiae brief in support of a particular position; (d) assisting the Department of Justice in defending the constitutionality of a provision of the Copyright Act; or (e) asking the Department of Justice to bring a suit under section 407 to compel the deposit of copies of the best edition of a copyrighted work published in the United States.

Reed Elsevier v. Muchnick

In 2001, in *New York Times v. Tasini*, the Supreme Court held that when periodical publishers authorize the reproduction and distribution in databases of articles written by freelance authors for publication in the periodicals, such reproduction and distribution constitutes copyright infringement when it is done without the authors' permission. In the wake of that decision, several class-action lawsuits were brought against serial publishers and databases by freelance authors. These actions were

consolidated and, after four years of negotiation, a settlement was reached among the parties and approved in 2005 by the U.S. District Court for the Southern District Court of New York. A group of freelance authors appealed the approval of the settlement, challenging its fairness with regard to authors who had not registered their works with the Copyright Office.

In 2007, the U.S. Court of Appeals for the Second Circuit ruled that the settlement had to be vacated because, under section 411(a) of the copyright law, federal courts have no jurisdiction over infringement claims unless the work or works in question have been registered. Because the majority of the works at issue in the class-action lawsuits (and the settlement) were unregistered, the Second Circuit found that the district court had no jurisdiction to certify the freelance-author class or to approve the settlement.

All the parties to the settlement sought review of the Second Circuit's decision in the Supreme Court, which in 2009 agreed to hear argument solely on the question whether section 411(a) restricts the subject-matter jurisdiction of the federal courts. Section 411(a) states that, with some exceptions, "no action for infringement of the copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made." In addition, section 411(a) allows plaintiffs who have attempted to register works but whose applications the Copyright Office rejected to institute infringement actions anyway, provided that they provide a copy of their complaints to the Register, who may decide to "become a party to the action with regard to the issue of registrability." Section 411(a) is unambiguous in its requirement that plaintiffs register their works (or have their applications rejected) before filing suit, but it is less than clear whether this requirement is "mandatory" (meaning it can be waived or forfeited by a party) or "jurisdictional" (meaning that the court must enforce it on its own and must dismiss a case if the requirement is not met).

The Office worked closely with the Office of the Solicitor General in drafting an amicus brief arguing that, while section 411(a) is, given Supreme Court precedent, nonjurisdictional, it should nevertheless be interpreted as being strictly mandatory and thus independently enforceable by federal district courts. The brief also argues that the freelance-author settlement is one of those rare cases where the failure of the district court to enforce the registration requirement was appropriate, given the enormous public benefit of the settlement. The brief also states that although some courts have construed section 411(a) as requiring merely that a plaintiff in a copyright

infringement suit must have delivered an application, deposit, and fee to the Copyright Office prior to the commencement of the lawsuit, those decisions are contrary to the plain text of section 411(a) and therefore incorrect. Rather, section 411(a) requires a plaintiff to possess a registration certificate, to have been refused registration, or to have preregistered at the time the suit is filed.

Golan v. Holder

Plaintiffs brought an action against the U.S. attorney general and the Register of Copyrights challenging the legality of the Copyright Term Extension Act and the Uruguay Round Agreements Act (URAA). Specifically, the plaintiffs claim that these acts unconstitutionally removed from, or stanching the flow of, literary and artistic works into the public domain. In two decisions in 2004 and 2005, the U.S. District Court for the District of Colorado decided, among other things, that the provision in the Copyright Term Extension Act extending the term of copyright to life of the author plus 70 years did not create a perpetual copyright in violation of the Copyright and Patent Clause of the U.S. Constitution. The court also found constitutional the provision in the URAA restoring the copyrights of foreign works that had fallen into the public domain because of the failure of copyright owners to comply with U.S. copyright formalities or because of a lack of copyright relations between a restored work's source country and the United States.

However, in 2007 the U.S. Court of Appeals for the 10th Circuit reversed the district court's ruling concerning the URAA. The 10th Circuit held that section 514 of the URAA altered the traditional contours of copyright by restoring copyright in a manner that implicates the plaintiffs' First Amendment right to free expression.

The 10th Circuit remanded the case to the district court for further consideration of the First Amendment claims at issue, instructing the district court to assess whether section 512 of the URAA is content based or content neutral. If the provision was found to be content based, the district court was to consider whether the government's interest in promulgating the legislation was compelling and whether the government could achieve the same goals through alternative means that have less of an effect on protected speech. If the provision was found to be content neutral, the test would be whether the provision is narrowly tailored to serve a significant governmental interest.

The Copyright Office assisted the Department of Justice in defending the constitutionality of the URAA restoration provision on remand in the district court. The district court ruled in favor of the plaintiffs on cross motions for summary judgment, finding that the restoration provision is content neutral and that compliance with international treaty obligations is a significant governmental interest.

However, the district court held that the restoration provision is broader than necessary in relation to “reliance parties”—parties that had used public-domain works before copyright restoration. The scope of the district court’s decision is unclear but seems to hold that, to the extent Congress restored copyright protection to foreign works that had been in the public domain, this provision violates the First Amendment in relation to parties that had obtained a “vested interest” in works while they were in the public domain. Even though Congress established accommodations in the statute for such reliance parties, the district court held that the restrictions imposed by Congress on reliance parties go beyond that required by U.S. accession to the Berne Convention for the Protection of Literary and Artistic Works.

The U.S. government has filed a notice of appeal to the U.S. Court of Appeals for the 10th Circuit.

Cable News Network, Inc. et al. v. CSC Holdings et al.

Cablevision is a cable television service that retransmits broadcast and cable programming to its subscribers. The authorization for the retransmission of copyrighted programming by the cable operators comes in the form of either statutory or negotiated licenses. In recent years, cable operators have enabled their subscribers to record retransmitted programming for later viewing by means of set-top boxes that function as digital video recorders (DVRs). This time-shifting viewing capability has generally been seen as consistent with the holding of the Supreme Court in *Universal City Studios, Inc. v. Sony, Inc.*, frequently referred to as the Betamax case. That litigation involved a contributory infringement action by copyright owners against Sony for the distribution of the Betamax video tape recorder that enabled purchasers to reproduce copyrighted programming. Sony was absolved of liability because the Court held that the Betamax recorder was capable of substantial noninfringing uses, particularly noninfringing time shifting of over-the-air broadcasts.

Cablevision introduced a new service for subscribers that allowed them to reproduce programming remotely on Cablevision's servers rather than in the set-top DVRs in the subscribers' homes. Copyright owners alleged that unlike the Betamax situation, Cablevision's remote DVR service involved three infringing acts: (1) the transmission stream of the programming was split to enable one stream for authorized simultaneous viewing and a second buffered stream that was temporarily reproduced on Cablevision's servers; (2) when a user chose to "save" a program, the buffered stream was sent to assigned hard-drive space for each subscriber on Cablevision's servers, and a full copy of the program was stored; and (3) when a subscriber chose to watch the saved programming, Cablevision would transmit the copied programming to the subscriber's set-top-box for contemporaneous viewing. The first two activities implicate the exclusive right of reproduction and the third activity implicates the public performance right.

The U.S. District Court for the Southern District of New York issued a summary judgment ruling that Cablevision's activities infringed the copyright owners' exclusive rights in (a) the making of buffer copies; (b) the making of complete reproductions of programs on Cablevision's servers; and (3) the public performance of these reproduced programs by retransmission from Cablevision's servers to the subscribers' set-top boxes.

The U.S. Court of Appeals for the Second Circuit reversed the district court's summary judgment, holding that the buffer copies were not of sufficient duration to constitute "copies." The Second Circuit also found that because the full copies made on Cablevision's servers were solely at the request of the subscriber, the subscriber, rather than Cablevision, was the maker of the copy. The court reasoned that if copyright owners wanted to prevent this practice, they must do so based on a theory of secondary liability against Cablevision arising from direct infringement by subscribers. The copyright owners had avoided making any claims of secondary liability. In addition, the Second Circuit held that the retransmission of the saved programming was not a public performance, because only one subscriber was capable of receiving the retransmission of that particular performance from that particular copy, and because each saved copy was available for viewing only by the subscriber who requested it.

On October 8, 2008, the copyright owners sought review of the Second Circuit's decision by the Supreme Court. On January 12, 2009, the Court requested

the government's views on whether certiorari should be granted. The Copyright Office, among other federal agencies, assisted the department in formulating the government's response to the Supreme Court. Representatives of the Office met with interested parties and government agencies, providing the Department of Justice with a detailed memorandum on the merits of the case. The Solicitor General ultimately argued that certiorari should not be granted. On June 29, 2009, the Supreme Court denied certiorari.

U.S. v. ASCAP

In 1941, the Department of Justice brought a civil antitrust action in the U.S. District Court for the Southern District of New York against the American Society of Composers, Authors, and Publishers (ASCAP), a performing rights society that licenses and collects royalties for the public performance of musical works. Pursuant to a consent decree, the court retained continuing jurisdiction so that, among other things, when licensees and ASCAP are unable to agree on licensing fees for activities licensed by ASCAP, the court can determine a reasonable fee. The court has, accordingly, been known colloquially as the "rate court." The Antitrust Division of the Department of Justice remains a party in the case and, depending on the issues involved in a given matter, sometimes participates in the proceedings of the rate court.

In recent years, a number of online services, including AOL, Yahoo, and RealNetworks, sought licenses from ASCAP for their activities in publicly performing musical works in the ASCAP repertoire over the applicants' Internet services. Because ASCAP and the applicants were unable to agree upon rates or even upon what activities were properly licensable by ASCAP, the applicants sought a determination of reasonable rates from the district court.

A key issue in the proceeding was whether the downloading of a digital music file embodying a particular song constitutes a "public performance" of that song within the meaning of the copyright law. The parties cross-moved for summary judgment and, on April 25, 2007, the rate court ruled on the motions, holding that while a download of a musical work is a reproduction, it is not a public performance. Subsequently, a trial was held to determine reasonable rates for other activities of the online services that do constitute public performances, and judgment was entered on January 23, 2009. Cross-appeals from that final judgment are now pending. Among the issues raised by

ASCAP is whether the district court erred in holding that downloads are not public performances.

The Office provided the Department of Justice with a detailed memorandum on the issue and assisted in preparing a brief for the United States that argued that the Second Circuit should affirm the district court's ruling that downloads of copyrighted musical works ordinarily do not constitute public performances within the meaning of the copyright law

Intercollegiate Broadcast System et al. v. Copyright Royalty Board

On May 1, 2007, the Copyright Royalty Judges announced the rates and terms for webcasting under the sections 112 and 114 statutory licenses (which permit certain digital performances of sound recordings and the making of ephemeral recordings) for the period beginning January 1, 2006, and ending on December 31, 2010. Six parties filed appeals with the U.S. District Court for the District of Columbia Circuit contesting the rates adopted by the judges.

On May 13, 2008, Royalty Logic, Inc., filed a motion for leave to file a supplemental brief concerning whether the appointment of the Copyright Royalty Judges by the Librarian of Congress violates the Appointments Clause of the U.S. Constitution. Royalty Logic argued that the Librarian is not a "head of a department" as that term is used in the Appointments Clause because, under relevant case law, only the heads of cabinet-level departments within the executive branch qualify. Royalty Logic maintained that the Library of Congress is within the legislative branch and, consequently, the Librarian cannot be a "head of a department." The court granted the motion to file the brief, and the government filed its response defending the constitutionality of the Librarian's appointment of the Copyright Royalty Judges.

The Office assisted the Department of Justice in drafting the responsive brief, which maintains that the Librarian of Congress is the head of a department subject to appointment and removal by the president with authority to appoint the Copyright Royalty Judges. The brief notes that the Library serves a number of executive functions.

Oral arguments were heard on March 19, 2009, and the court issued its decision on July 10, 2009. The court acknowledged that it had the authority to address the constitutional question but noted that doing so was a matter of discretion in light of

Royalty Logic’s delay in raising it. The court agreed with appellees that Royalty Logic had forfeited its argument by failing to raise it in its opening brief, stating that Royalty Logic had failed to provide the court with any reason to depart from its application of the forfeiture rule. Ultimately, the court declined “to resolve this ‘important question of far-reaching significance’...on the basis of hasty, inadequate, and untimely briefing.”

SoundExchange v. Library of Congress

On January 24, 2008, the Copyright Royalty Judges announced the rates and terms for the public performance of sound recordings by way of a transmission and for the making of ephemeral copies by preexisting satellite digital audio radio services (that is, XM Radio and Sirius) under the sections 112 and 114 statutory licenses for the license period January 1, 2007, through December 31, 2012. The new rates were set at 6 percent of gross revenues and incrementally increased annually to a final rate of 8 percent by 2012. The Copyright Royalty Judges concluded that the rates covered both the public performance right and the making of the ephemeral copies necessary to make the performances. The judges, however, declined to set a separate rate for the making of the ephemeral copies, because the parties failed to present any evidence on this point. Instead, they acknowledged that the section 112 license was an add-on needed to secure the performance rights granted by the section 114 license. For that reason, they accepted SoundExchange’s proposal to include the value for the section 112 license within the rates set for the Section 114 license.

In 2008, the Register of Copyrights reviewed this determination in accordance with section 802(f)(1)(D) of the copyright law and concluded that it was legal error for the judges to incorporate the rate for making ephemeral copies of sound recordings into the rates for the public performances of these works under the section 114 license, rather than set a separate distinct fee as required by law. The Register noted that the decision to combine the rates for both licenses in a single rate created serious problems, because the beneficiaries of the section 114 license fees are not identical to the beneficiaries of the section 112 license fees, making it impossible for SoundExchange to distribute the funds it collected among the various stakeholders. The Register’s opinion also concluded that it was legal error not to adhere to the statutory requirement to set a minimum fee for the making of the ephemeral copies.

SoundExchange, representing the interests of the copyright owners of the sound recordings, filed an appeal in the U.S. Court of Appeals for the District of Columbia Circuit on March 31, 2008, challenging both the rates established by the Copyright Royalty Judges and the decision not to set a separate rate for the section 112 license.

The Office worked closely with the Department of Justice in preparing the portion of the government's response that supported the Register's conclusions that the law requires the Copyright Royalty Judges to set a separate rate for the making of ephemeral copies of sound recordings under section 112 and the establishment of a minimum fee for use of this statutory license. The case was argued on March 24, 2009, and the court issued its decision on July 7, 2009. The court upheld the rate determination for the section 114 license but granted the petition of SoundExchange with respect to the section 112 rates for ephemeral copies and remanded the matter to the Copyright Royalty Judges to set the royalty rate.

Live365 v. Copyright Royalty Board

On August 31, 2009, Live365, Inc., filed a complaint with the U.S. District Court for the District of Columbia seeking a declaratory ruling that the appointments of the Copyright Royalty Judges by the Librarian of Congress violate the Appointments Clause of the U.S. Constitution and requesting a preliminary injunction to stay a Copyright Royalty Board proceeding to establish rates for the public performance of sound recordings by means of digital audio transmissions. Live365 is an aggregator of digital radio stations that operates under the sections 112 and 114 statutory licenses and is therefore subject to the rates set by the Copyright Royalty Judges.

Live365 made arguments similar to those previously made by Royalty Logic in *Intercollegiate Broadcast System et al. v. Copyright Royalty Board*, maintaining that the appointments of the Copyright Royalty Judges by the Librarian of Congress are unconstitutional because the appointments are not made by the executive branch, nor are the judges subject to oversight or removal by the executive branch, even as they function in all respects as principal officers who must be appointed by the president and confirmed by the Senate. Alternatively, should the court determine that the Copyright Royalty Judges are inferior officers, Live365 argued that the Librarian of Congress is not the head of an executive department and therefore lacks authority to appoint the judges as required under the Appointments Clause. Live365 asserted

that it would likely prevail on the merits under either theory because the Librarian is the head of a legislative agency who cannot appoint inferior officers or because the Copyright Royalty Judges are principal officers who must be appointed by the president of the United States and be confirmed by the Senate. It also contended that it would suffer irreparable harm unless granted a preliminary injunction on two grounds, the incurrence of sizable, unrecoverable litigation costs and the violation of a “structural” constitutional provision without an adequate remedy at law.

In response, the government argued that, as an initial matter, the U.S. District Court lacks subject matter jurisdiction to consider the constitutional question because the U.S. Court of Appeals for the District of Columbia has exclusive jurisdiction to hear appeals from the determinations of the Copyright Royalty Judges, including a constitutional challenge to an administrative proceeding. The government also argued that Live365 failed to show a likelihood of success on the merits or irreparable harm that could be avoided with a preliminary injunction.

The Department of Justice represented the Copyright Royalty Board and prepared its brief in consultation with the Copyright Office, the General Counsel’s Office of the Library of Congress, and the Copyright Royalty Judges.

The court heard oral arguments in the case on September 18, 2009, and issued its ruling denying the request for a preliminary injunction on September 28, 2009. The court announced that a separate memorandum opinion explaining the court’s reasoning would be issued shortly thereafter.

Yu Zhang v. Heineken N.V. et al.

On October 2, 2008, Yu Zhang commenced an action in the U.S. District Court for the Central District of California against the Register of Copyrights and other defendants. The claims against the Register of Copyrights sought an order directing the Register to issue copyright registration certificates for the plaintiff’s five visual designs, for which the Register had refused registration. The designs at issue were described as traditional Chinese paintings consisting of Kanji characters or symbols signifying “beautiful,” “good food,” “year,” “wine” and “alcoholic beverages.” The designs had been submitted to the Copyright Office along with individual applications for registration. The Register of Copyrights refused to issue copyright registration certificates for any of the designs. The plaintiff asked the court to determine, as a matter of law, that the designs are

copyrightable material; to determine that complete applications for registration of the designs were duly received by the Copyright Office; and to issue an order directing the Register of Copyrights to issue a certificate of copyright registration for each of the five works.

The Office worked closely with the Department of Justice in developing a response to the plaintiff's claims. It is anticipated that the Department of Justice, with the assistance of the Office, will prepare a motion for summary judgment arguing that, as a matter of law, plaintiff's designs do not contain the required amount of original pictorial or graphic authorship.

LEGAL OPINIONS

During fiscal 2009, the Register of Copyrights reviewed a decision of the Copyright Royalty Judges, acting pursuant to her statutory authority, and responded to an order from the U.S. District Court for Puerto Rico requesting her opinion in *Luis A. Velazquez-Gonzales v. Rafael Pina, d/b/a Pina Records, et al.*

Review of Decision of Copyright Royalty Judges

On November 24, 2008, the Copyright Royalty Judges transmitted to the Register of Copyrights a copy of their "Final Determination of Rates and Terms in the Matter of Mechanical and Digital Phonorecord Delivery Rate Determination Proceeding." The Register of Copyrights, pursuant to section 802(f)(1)(D) of the copyright law, reviewed the judges' final determination. In a decision dated January 16, 2009, she found that the resolution of certain material questions of substantive law under the copyright law that underlie or are contained in the final determination were in error, and she issued a decision correcting such errors.

The Register found that in the course of the Copyright Royalty Judges' proceeding to set the rates and terms for royalty payments for the making and distribution of phonorecords of musical works in accordance with section 115 of the copyright law, the judges addressed several material questions of substantive law that were properly referred to the Register under sections 802(f)(1)(A)(ii) and 802(f)(1)(B) of the law. However, the Register determined that the judges erred in not referring two additional

novel questions of law as required under the statute. The judges failed to refer the novel question of substantive law as to whether “interactive streaming” constitutes a digital phonorecord delivery under section 115. They also failed to refer the novel question of substantive law requesting a determination as to the scope of the license with respect to copies made to facilitate the delivery of digital music.

In addition, the Register found that the Copyright Royalty Judges erred in their conclusions regarding both their and the Register’s authority to review regulations submitted to them under an agreement by the participants. The judges’ conclusion that they could not review these regulations led to the inclusion of regulations that constituted erroneous resolutions of material questions of substantive law under the copyright law, which the Register corrected.

Request to Register by U.S. District Court for Puerto Rico

On October 13, 2008, the Prioritizing Resources and Organization for Intellectual Property Act (Pub. L. No. 110-403) was signed into law to strengthen intellectual property laws. The act amended section 411 of the copyright law by adding subsection (b) to create a new procedure for infringement actions that requires courts to seek the advice of the Copyright Office on issues that may involve fraud on the Copyright Office.

Section 411 is well known for its provision, now designated subsection (a), that requires copyright owners to register or preregister their copyright claims before instituting infringement actions. The new provision in subsection 411(b)(1) mandates that a certificate of registration satisfies the requirements of subsection (a) regardless of whether the certificate contains any inaccurate information unless two criteria are satisfied: first, the inaccurate information was known to be inaccurate when it was provided and, second, the inaccuracy, if known, would have caused the Register of Copyrights to refuse registration. Subpart 411(b)(2) requires courts to consult with the Register regarding the analysis of the second of those two criteria, specifically as to “whether the inaccuracy of information, if known, would have caused the Register of Copyrights to refuse registration.”

On June 1, 2009, the U.S. District Court for Puerto Rico used this provision for the first time, issuing an order to the Register of Copyrights pursuant section 411(b) (2) in the case of *Luis A. Velazquez-Gonzales v. Rafael Pina, d/b/a Pina Records, et al.*

Certificates of copyright registration and supplementary registration had been issued for the works at issue in the case. The court's request asked whether the Copyright Office would have refused registration if it had known that the individual indicated as the author on the application, Mr. Velazquez, was not the author of the subject work. The request also asked whether the Office would have refused the supplementary registration if it had known that Mr. Velazquez was involved in litigation disputing the validity of a signed transfer agreement giving him rights in the subject work.

The Register responded on July 9, 2009. As to the first question, the Register stated that while the Copyright Office would not knowingly register a copyright claim that erroneously identified the author or copyright owner, the Copyright Office is usually in no position to question an assertion of authorship or ownership made in an application for registration. The Register further stated that a review of Mr. Velazquez's application reveals that the Office would have had no reason to question whether Mr. Velazquez was the author or copyright owner of the subject work. Unless there was some reason, based on the face of the application and materials provided to the Office by Mr. Velazquez, for the Office to disbelieve the assertions contained therein, the Office would properly accept all such assertions. As to the second question, the Register stated that supplementary registration would have been accepted notwithstanding knowledge that the facts related in the application for supplementary registration were in dispute. On August 4, 2009, the Court denied cross-motions for summary judgment, finding that there were triable issues of fact.

COPYRIGHT OFFICE REGULATIONS

The Register of Copyrights is authorized to establish regulations for the administration of the copyright law. In addition to regulatory activities discussed elsewhere in this report, regulatory action during fiscal year 2009 included the following.

Triennial Anticircumvention Rulemaking

Section 1201(a)(1) of the copyright law prohibits the circumvention of technological measures that protect access to copyrighted works. The Digital Millennium Copyright Act of 1998 requires the Copyright Office to conduct a rulemaking every three years to

determine whether the prohibition on circumvention of technological measures that protect access to works has affected or is likely to affect users adversely in their ability to make noninfringing uses of copyrighted works. At the conclusion of the rulemaking, and in consultation with the Assistant Secretary for Communications and Information at the U.S. Department of Commerce, the Register is required to present the Librarian of Congress with a recommendation as to whether there are any particular classes of work with respect to which the prohibition on circumvention has adversely affected the ability of users to engage in noninfringing uses. Based on the Register's recommendation, the Library may designate such classes of works and, during the subsequent three years, persons engaging in noninfringing uses of such works will not be liable under section 1201(a)(1) when they circumvent access controls in order to engage in such noninfringing uses.

On October 6, 2008, the Copyright Office published a notice of inquiry in the *Federal Register* soliciting comments on proposed classes of works for which exemptions were sought. The Office of the General Counsel received 25 proposed classes for consideration, including, for example, exemptions to allow extraction of clips from DVDs for use in documentary films, for educational purposes, or for noncommercial, transformative purposes, such as remix parodies posted on YouTube. Other proposed exemptions relate to issues such as “jailbreaking”—circumvention of technical measures on smartphones that bar installation of applications not approved by the phone's manufacturer—circumvention for security testing of video games, and circumvention of measures on electronic books to facilitate accessibility by the blind and visually impaired.

On December 29, 2008, the Office published summaries of the classes of works proposed and solicited responses from both proponents and opponents of the proposed classes. The Copyright Office received 56 responses. Following the comment period, the Office held hearings in California and Washington, D.C. These hearings included a full day on May 1, 2009, in Palo Alto, California, and three additional days on May 6–8 at the Library of Congress in Washington, D.C. The Office of the General Counsel sent additional questions to panelists relating to particular issues to seek clarification on certain points for the record.

In consultation with the Assistant Secretary for Communications and Information at the U.S. Department of Commerce, the Register of Copyrights will make a recommendation to the Librarian of Congress based on the record in the rulemaking

proceeding. The entire record for this and past section 1201 rulemaking proceedings is available on the Copyright Office's website at www.copyright.gov/1201/.

Section 115 License

On November 7, 2008, the Copyright Office published an interim rule amending its regulations and clarifying the scope and application of the section 115 compulsory license to make and distribute phonorecords of a musical works by means of digital phonorecord deliveries. The rulemaking process began with a notice of proposed rulemaking amending the definition of "digital phonorecord delivery" to clarify that a digital phonorecord delivery under the compulsory license includes the following: (a) permanent digital downloads of phonorecords; (b) limited downloads that use technology that causes the downloaded file to be available for listening only during a limited time (for example, a time certain or a time tied to ongoing subscription payments) or for a limited number of performances; and (c) all buffer copies delivered to a transmission recipient. The notice also proposed that the section 115 license includes coverage for all reproductions made to facilitate the making and distribution of digital phonorecord deliveries.

The Office reviewed submitted comments and reply comments and considered testimony given during a public hearing. In light of the substance of this input, as well as recent case law concerning the fixation of buffer copies, the Office of the General Counsel modified the initially proposed regulation, and the Register issued an interim regulation that is more modest in scope. The interim regulation takes no position on whether or when a buffer copy independently qualifies as a digital phonorecord delivery, or whether and when it is necessary to obtain a license to cover the reproduction or distribution of a musical work in order to engage in activities such as streaming. Instead, the interim regulation clarifies that (a) whenever there is a transmission that results in a digital phonorecord delivery, all reproductions made for the purpose of making the digital phonorecord delivery are also included as part of the digital phonorecord delivery, and (b) limited downloads qualify as digital phonorecord deliveries.

Mandatory Deposit of Online-Only Works

On July 15, 2009, the Copyright Office issued a notice of proposed rulemaking seeking public comment on a proposal for demand-based deposit of published electronic works available only online. The notice proposes a series of regulatory amendments to establish that works published exclusively online, with no physical copies, are exempt from the mandatory deposit requirement of section 407 of the copyright law until the Copyright Office issues a demand for deposit of copies or phonorecords of such works. The proposal also sets forth the process for issuing and responding to a demand for deposit, amends the definition of a “complete copy” of a work for purposes of mandatory deposit of online-only works, and establishes new best-edition criteria for electronic serials available only online.

Notices of Termination

The Register published a notice of proposed rulemaking in the *Federal Register* on January 23, 2008, seeking public comment on five proposed amendments to its regulations governing the recordation of notices of termination as well as certain related provisions. The regulations address administration of the termination provisions in the copyright law, which allow an author, or certain heirs and successors, to terminate the grant of a transfer or license of the renewal copyright or any right under it, at anytime during a five-year period beginning at the end of 75 years from the date copyright was originally secured.

Section 203 of the copyright law governs works created on or after January 1, 1978. The author, or certain heirs and successors, can terminate any grant made on or after this date at any time during a period of five years beginning at the end of 35 years from the date of publication of the work under the grant or at the end of 40 years from the date of execution of the grant, whichever term ends earlier. In contrast to the provisions of section 304 of the copyright law, termination under section 203 is possible only if the author executed the grant.

On March 25, 2009, the Register issued a final rule including amendments that (a) communicate the Office’s practices regarding receipt of notices of termination that are untimely; (b) clarify that the Office’s recordation of a notice of termination does not necessarily mean that the document is legally sufficient; (c) update the legibility requirements for all recorded documents, including notices of termination; (d) make

minor explanatory edits to the fee schedule for multiple titles within a document; and (e) establish a new mailing address to which notices of termination must be sent.

Fee Adjustment

In 1997, Congress delegated to the Register of Copyrights authority to adjust fees in accordance with a new procedure, and the Office has periodically used the authority to provide for greater cost recovery. On October 14, 2008, the Copyright Office published a notice of proposed rulemaking setting out the proposed adjustments for both “statutory” fees (that is, those expressly mentioned in the copyright statute) and discretionary (or other) fees. After considering the comments submitted, on July 9, 2009, the Office published a final rule adjusting some of its fees to account for increased costs.

The newly adjusted fees will recover a significant part of the costs of registering copyright claims and provide full cost recovery for many other services provided by the Office that benefit only or primarily the user of that service. The new fees are based on reliable information regarding the costs of providing services and reflect cost savings associated with implementation in 2007 of electronic processing in the Copyright Office. Under the new fee structure, the fee for online registration of a basic claim remains \$35. The fee for registering a claim using Form CO was raised from \$45 to \$50, and the registration fee for paper filings on Forms PA, SE, SR, TX, VA, and incorrectly completed Form COs was raised from \$45 to \$65. In a few instances, fees were adjusted downward to reflect a lowering of costs resulting from automation.

Rate Adjustment to Section 119 License

On March 23, 2009, the Copyright Office published a notice in the *Federal Register* announcing satellite carrier royalty rates for the secondary transmission of the analog and digital transmissions of network and superstations to reflect changes in the Consumer Price Index for all urban consumers from January 2008 to January 2009. This year, the change in the Consumer Price Index for the relevant time period was 0.03 percent, a change so small that the rates remain unaffected for the 2009 licensing period.

Electronic Registration for Deposit Account Holders

The Copyright Office maintains a system of deposit accounts for those who frequently use its services. An individual or entity can establish a deposit account, make advance deposits into that account, and charge copyright fees against the balance instead of sending separate payments with applications and other requests for services. The Office has encountered significant problems with paper applications being filed without sufficient funds in the relevant deposit account to cover the fees. In these cases, the Office must suspend the applications and then reprocess them once the deposit account is replenished. In contrast, the electronic Copyright Office registration system (eService) does not allow registrations paid for with deposit account debits to be submitted unless the deposit account contains enough money.

On July 14, 2009, the Copyright Office issued a notice of proposed rulemaking seeking public comment on whether copyright registrants who pay the registration fee through a deposit account should be required to use eService, which would eliminate the insufficient funds problem. The Office also requested comment on whether deposit accounts offer efficiencies sufficient to warrant their continued availability. All comments have been received, and the Office anticipates issuing a final rule on the subject in 2010.

Special Handling Fees for Registrations

On August 10, 2009, the Copyright Office published an interim rule relating to fees for special handling of registration claims that have been pending for at least six months. Special handling is the expedited processing of an application and is granted in certain circumstances when compelling reasons are present. Because of current delays in the processing of applications for registration occurring in the course of the Office's implementation of its reengineered business processes and new information technology system, the Office recommended that the special handling fee, which is in addition to the regular fee for an application to register a copyright claim, not be assessed for conversion of a pending application to special handling status when (a) the application has been pending for more than six months without any action by the Copyright Office and (b) the applicant has satisfied the Office that expedited handling of the registration is needed because the applicant is about to file a suit for copyright

infringement. This interim rule implementing this change became effective on August 10, 2009, and will expire on July 1, 2011.

Agreements Under Webcaster Settlement Acts

In accordance with the requirements set forth in section 114(f)(5)(B) of the copyright law, as amended by the Webcaster Settlement Act of 2009 and the Webcaster Settlement Act of 2008, the Copyright Office published four agreements that set rates and terms for the reproduction and performance of sound recordings made by certain specified webcasters under two statutory licenses. Webcasters who meet the eligibility requirements can choose to operate under the statutory licenses in accordance with the rates and terms set forth in the agreements rather than the rates and terms of any determination by the Copyright Royalty Judges. The Copyright Office has no responsibility for administering the rates and terms of the agreements beyond the publication of this notice.

A full listing of Federal Register documents with their citations can be found in the appendix.

Public services



*Copyright Public
Information Office*

The Copyright Office administers the provisions of the copyright law for the benefit of owners and users of copyrighted works, mask works, and vessel hull designs. It promotes the appropriate protection and use of these works by providing timely easy-to-use public services. Copyright Office regulations governing copyright law administration are in chapter 37 of the *Code of Federal Regulations*.

REENGINEERING IMPLEMENTATION

The Copyright Office continually seeks to improve timeliness in the provision of services to the public. The Office's multiyear effort to reengineer its business processes and delivery of its principal public services was conceived with an eye toward staying ahead of expected changes in technology and user needs. In fiscal 2009—the second fiscal year completed entirely after implementation of reengineering—the Office focused on hiring additional staff and making improvements to the electronic Copyright Office (eCO) system. (See Copyright Office annual reports for fiscal 2000 through 2008 for additional background on reengineering.) Although the amount of work in process increased throughout most of the year, the Office halted the growth of work in process by the end of the fiscal year and had plans to begin a project to reduce the number of claims on hand.

INFORMATION TECHNOLOGY

The eCO system includes eCO Service, which provides online registration capability (eService) and support for processing both electronic and hard-copy registrations; eCO Search makes more than 20 million indexed and searchable copyright records available online.

Following the public release of eService in 2008, it quickly became the preferred method for submitting copyright applications. In fiscal 2009, the Office created 175,540 eService user accounts and received 296,780 eService claims for processing. By the end of fiscal 2009, almost 60 percent of all claims received each week were filed through eService, and there were 242,911 registered users of eService.

In fiscal 2009, the Office continued its efforts to optimize and streamline the eCO system's performance. As currently configured, the eCO system accepts basic claims to copyright in literary works; works of the performing arts, including sound recordings and motion pictures; works of the visual arts; and serial publications.

An eCO performance improvement project began in late fiscal 2008 and continued into early fiscal 2009. System modifications resulted in a 50 percent improvement of system performance. Additional major eCO performance enhancements are planned for early fiscal 2010.

The performance improvement project involved implementation of numerous system releases that provided new functionality, improved existing functionality, or improved system responsiveness for both internal and external users. In all, more than 200 improvements were made to the eCO system, including

- Implementation of an electronic “opinion card” that allows visitors to the Copyright Office website, including eService users, to provide feedback;
- Posting of updates on the eCO web page to inform users of widespread system issues, planned or unplanned outages, and the like;
- An automated email feature for confirmation of electronic deposit uploads;
- Improvements to generation of the two-dimensional barcode in the Form CO copyright application, resulting in reduced error rates for scanning and data migration;
- An eCO receipts interface available on publicly accessible computer kiosks at the Copyright Office, enabling users to search pending and completed eService claims and check the status of claims;
- A user-friendly metasearch interface, providing search capability across five discrete databases for Copyright Office staff and Library of Congress officials who select items for the Library's collections, resulting in significantly improved searching efficiency; and

- Installation of a more robust eService production server, resulting in a 100 percent capacity increase for hosting concurrent eService users.

Additional improvements slated for implementation in early fiscal 2010 include

- A reengineered file-store architecture to address recurring connectivity issues and improve response time; and
- Installation of a new server designed to help meet increased demand for eService reporting functions.

The new server will enable generation of critical reports and multiple shipping slips for users who mail in hard-copy deposits and enable those who submitted e-deposits to view copies of their deposits.

RECORDS PROJECT

Initiated on July 24, 2008, the Copyright Records Digitization Project encompasses planning, analysis, management, and documentation of the resources required to digitize, index, and integrate the Office's entire catalog of physical records of copyright registrations and assignments of copyrights, with other records pertaining to copyright. A comprehensive online catalog of copyright records has existed since 1978, and image files have been available since the 1990s for applications and recorded documents. However, 70 million pre-1978 copyright records exist only on paper and microfilm. For owners and users of intellectual property, these records are valuable, because they document works that are or were under copyright protection. Many works published as early as 1923 may still be under copyright protection, while others published as recently as 1963 may be in the public domain. The goal of the Copyright Records Digitization Project is to preserve the records and make them accessible to the public on the Copyright Office's website.

The records involved in the project date from 1870 to 1977 and are held variously in 27,000 bound volumes containing early hand-written records of copyright ownership as well as more recent applications; the Copyright Card Catalog of the Copyright Office, which comprises some 49 million index cards; the 660-volume *Catalog*

of *Copyright Entries*; and copies of recorded documents pertaining to copyright ownership.

Copyright records not only document valuable information about the copyright status of works, but they also serve as an irreplaceable piece of Americana: they provide an evolutionary creative timeline of our nation from its founding to the present day.

During fiscal 2009, the digitization project team focused on defining the quantity, characteristics, and idiosyncrasies of the various types of records and began test scanning of representative samples. The team

- Researched technology options and best practices for digitizing and indexing records;
- Documented the variety of content and formats across the entire catalog of copyright records;
- Solicited feedback from potential partners who are experienced in digitizing information and who have expressed interest in copyright-related information;
- Performed market research on digitization service providers;
- Developed a project plan, a procurement strategy, and an approach for performing quality assurance;
- Pilot-tested alternatives for digitizing copyright records;
- Test-scanned microfilm records and assessed results;
- Consulted experts in records digitization and archiving; and
- Created cost projections and established priorities for scanning and indexing records.

TRAINING

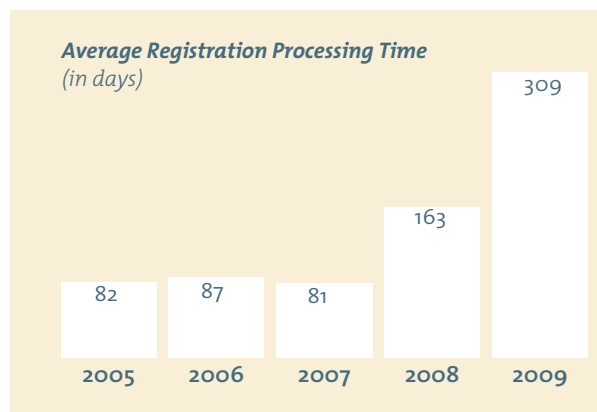
In 2009, the Office completed a major program to train staff to use eCO and the new registration process, which combines the formerly separate functions of copyright examination and creation of registration records. The Office also introduced a new, accelerated training program combining classroom instruction with actual processing of claims for the 17 registration specialists hired in early 2009. This approach enabled the new staff to become fully productive and independent quickly while helping to

reduce the volume of work on hand. A second group of 16 registration specialists hired in early 2010 are currently engaged in the accelerated training program.

PROCESSING TIME

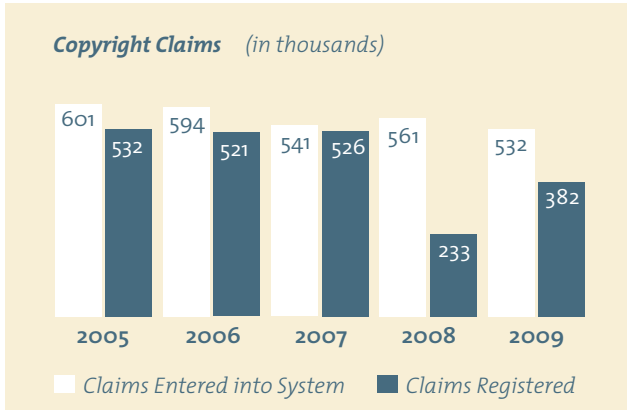
The Copyright Office seeks to provide its services in a timely way. The Office experienced a steep learning curve following implementation of reengineered processes and new information technology systems. The average processing time for all claims had grown by the end of fiscal 2009 to 309 days, mostly because of a buildup in paper claims submitted between August 2007 and July 2008,

when eService was available only under a limited-access beta test. The Office began to address this unacceptable processing time in fiscal 2009 by launching an aggressive staffing plan designed to achieve appropriate staffing levels for the workload on hand and by engaging in a continuous improvement program resulting in modifications of and improvements in workflow and information technology systems. Also, in late fiscal 2009, the Office began planning for a backlog-reduction project expected to complete tens of thousands of quickly processable claims in early fiscal 2010. Ultimately, the continued increase in eService submissions, which can be processed much more efficiently and quickly than claims filed on paper applications, will result in an improved processing time. The percentage of claims filed electronically reached almost 60 percent by the end of the year, and the Office expects the use of eService to continue to grow in fiscal 2010.



REGISTRATION

The Copyright Office registers copyright claims and claims for protection of mask works and vessel hull designs.



Copyrighted Works

The Office examines claims to copyright to determine that the deposited work contains copyrightable content and that the claimant has complied with copyright law and regulations. During fiscal 2009, the Copyright Office received and processed into its systems 532,370 copyright claims covering well over 1 million works. By the end of fiscal 2009, 382,086 of the claims had been registered.

The number of works registered in fiscal 2009 increased significantly compared with fiscal 2008, although they fell short of registrations made in previous years. The relatively low level of production was expected given the accumulation of labor-intensive paper claims following an 11-month delay between implementation of the Office's new systems and the release of eService to the public. The percentage of claims filed electronically is increasing significantly and is expected to result in more electronic claims being registered in 2010 and beyond.

Reconsiderations of Denial of Registration

The Register of Copyrights may determine that a claim to copyright is not registrable because the material submitted does not constitute copyrightable subject matter or for other legal or procedural reasons. When such a determination is made, the Register refuses registration and notifies the applicant in writing of the reasons. Applicants whose claims for registration are rejected can seek reconsideration in a two-stage process. The claimant first requests reconsideration by the appropriate division in the Registration and Recordation Program. If the Division upholds the refusal, the claimant can make a second request to the Copyright Office Review Board, composed of the Register of Copyrights, the General Counsel, and the Associate Register for Registration and Recordation or their designees.

During fiscal 2009, the Copyright Office Review Board met nine times and considered second requests for reconsideration involving 30 works. The board issued ten decisional letters involving 46 works, refusing 45 of the works and approving 1.

The Office is continuing a practice with respect to works of the visual arts of including images of the works whenever possible in the decisional letters to help those who request reconsideration to understand the board’s rulings.

Mask Works

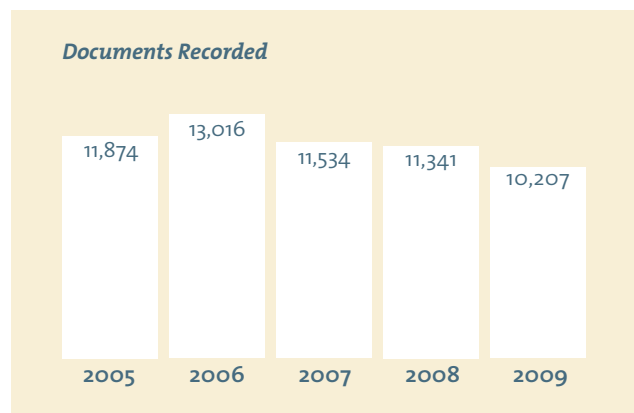
The Semiconductor Chip Protection Act of 1984 created a new type of intellectual property protection for mask works, a series of related three-dimensional images or patterns formed on or in the layers of metallic, insulating, or semiconductor material and fixed in a semiconductor chip product, that is, the “topography” of the chip. In fiscal 2009, the Office received applications for 281 mask works and registered 270.

Vessel Hull Designs

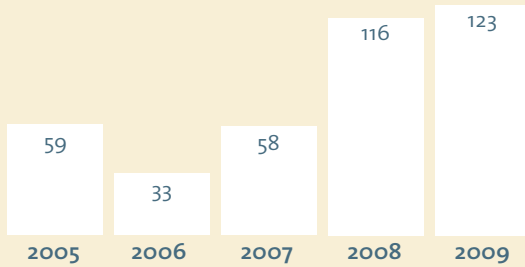
The copyright law grants the owner of an original vessel hull design certain exclusive rights, provided that application for registration of the design is made in the Copyright Office within two years of the design being made public. The Office received 33 applications for registration of vessel hull designs this fiscal year and registered 32.

RECORDATION

The Copyright Office records documents relating to a copyrighted work, a mask work, or a vessel hull design. Documents may include, for example, transfers of rights from one copyright owner to another, recordation of security interests, contracts between authors and publishers, and notices of termination of grants of rights. These documents frequently reflect popular and economically valuable intellectual property.



Average Document Recordation Processing Time
(in days)



During fiscal 2009, the Office recorded 11,959 documents covering more than 350,000 titles of works. At the end of the fiscal year, the average processing time for documents had increased to 123 days.

ONLINE SERVICE PROVIDERS

Congress amended the copyright law in 1998 to limit potential liability of service providers for monetary and injunctive relief for copyright infringement for certain activities carried out on their systems or networks. To take advantage of this limitation on liability, certain kinds of service providers must file a designation of agent statement identifying the agent to receive notification of claims of infringement. The service provider must also post such information on its publicly accessible website. The Office processes these online service provider designations of agents and makes them available to the public through a directory on its website, one of the website's most-visited areas. During the year, the Office posted an additional 1,753 designations of agents on the directory. The total available at the end of the fiscal year was more than 11,000.

STATUTORY LICENSES AND OBLIGATIONS

Congress created statutory copyright licenses to remove from certain users and owners the burden of negotiating individual licenses. The Copyright Office receives royalty fee payments related to licenses that deal with secondary transmissions of radio and television programs by cable television systems; secondary transmissions of superstations and network stations by satellite carriers; and the importation, manufacture, and distribution of digital audio recording devices and media. In addition, the Office receives filing fees related to these and other licenses, such as the making of ephemeral recordings; the noninteractive digital transmission of performances of sound recordings; the making and distributing of phonorecords of

nondramatic musical works, which includes digital phonorecord deliveries; and the use of published nondramatic musical, pictorial, graphic, and sculptural works and nondramatic literary works in connection with noncommercial broadcasting.

Statutory Licenses

Some statutory licenses require the users of protected works to deposit royalty funds with the Copyright Office. Statutory licenses were included in the Copyright Act of 1976 and later laws amending it.

The Licensing Division dates from 1978, when the Copyright Act of 1976 became effective. The division is responsible for collecting royalty fees from cable operators, satellite carriers, and importers and manufacturers of digital audio recording devices and media; investing the royalty fees, minus operating costs, in interest-bearing securities with the U.S. Treasury for later distribution to copyright owners; recording voluntary licensing agreements between copyright owners and specified users of their works; and examining licensing documents submitted for these statutory licenses to determine whether they meet the requirements of the law and the Office's regulations.

Since 2005, royalty rates, terms, and conditions of statutory licenses as well as distribution determinations have been set by the Copyright Royalty Judges, an independent and separate unit of the Library of Congress under the aegis of the Librarian of Congress.

The Licensing Division collected more than \$262 million in royalty payments in fiscal 2009.

Royalty Fee Distributions

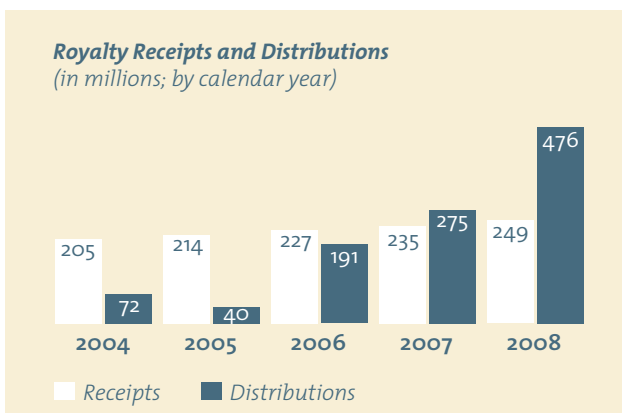
The Copyright Office distributes royalties collected under sections 111 and 119 and chapter 10 of the copyright law, as determined by agreements among claimants or by proceedings of the Copyright Royalty Board.

In fiscal 2009, the Office distributed royalties totaling nearly \$273 million in the following distributions:

- On December 18, 2008, a distribution totaling \$73,431,602.38 from the 2006 Cable Fund to the Program Suppliers, Joint Sports Claimants, National Association of

Broadcasters, Music Claimants, Canadian Claimants, Devotional Claimants, and National Public Radio and Public Television;

- On November 7, 2008, a distribution totaling \$1,024,940.23 from the 2007 Digital Audio Recording Technology (DART) Fund to the Copyright Owners and Featured Artists Subfunds;
- On December 18, 2008, a distribution totaling \$197,121,078.78 from the 1999–2003 Satellite Funds;
- On March 26, 2009, a distribution totaling \$33,329.02 from the 2008 DART Fund to the Nonfeatured Musicians Subfund and Nonfeatured Vocalists Subfund;
- On March 26, 2009, a distribution totaling \$161,100.58 from the 2002–04 DART Fund to the Musical Works Fund;
- On March 26, 2009, a distribution totaling \$161,100.58 from the 2003–04 DART Fund to the Musical Works Fund and from the 2002 DART Fund to the Music Publisher Subfund;
- On June 11, 2009, a distribution totaling \$267,949.50 from the 2004–05 Cable Fund to National Public Radio;
- On July 2, 2009, a distribution totaling \$320,060.93 from the 2008 DART Fund to the Featured Artists Subfund;
- On August 20, 2009, a distribution totaling \$37,021.15 from the 2002–04 DART Fund to the Writers Subfund; and
- On September 17, 2009, a distribution totaling \$474,255.11 from the 2008 DART Fund to the Copyright Owners Subfund.



Financial statements for royalty fees are compiled and audited on a calendar year basis as required by law. The total royalty receipts and distributions shown in calendar year statements are therefore not the same as the fiscal year total. Calendar year 2008 financial statements

are included in the appendices to this report. Calendar year 2009 financial statements will appear in the fiscal 2010 report.

Regulations related to statutory licenses are reported under “Copyright Office Regulations” on page 35 of this report.

BUDGET

The Copyright Office annually receives two appropriations from Congress: a basic and a licensing appropriation. Total fiscal 2009 Copyright Office budget authority was \$50,178,000 with a full-time equivalent staff ceiling of 469. The basic appropriation derives its funding from two revenue sources: net appropriations from the U.S. Treasury (\$17,258,000 in fiscal 2009) and authority to spend user fees and prior year reserves (\$28,751,000). The licensing budget activities (\$4,169,000) were fully funded from user fees withdrawn from royalty pools.

Acquisition of copyrighted works



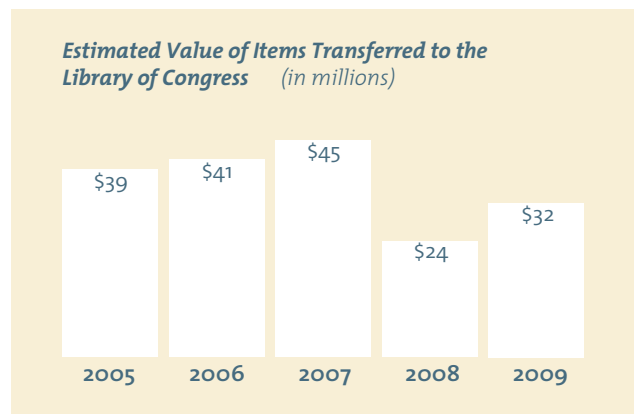
Copyright deposits

The Copyright Office supports Library of Congress service to Congress and the American people by providing timely acquisition of copyrighted works required by the Library.

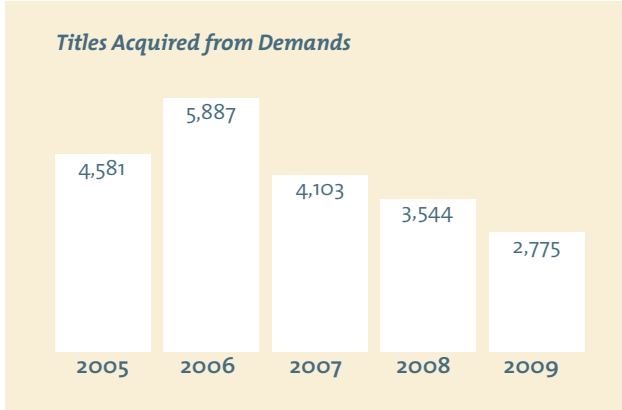
CONTRIBUTIONS TO LIBRARY COLLECTIONS

Copies of works submitted for registration or to fulfill the mandatory deposit provision of the law are made available for the Library of Congress to select for its collections. Copyright deposits form the core of the Library’s “Americana” collections and serve as the primary record of American creativity.

During the fiscal year, the Office transferred 739,364 copies of registered and nonregistered works valued at close to \$32 million to the Library of Congress for its collections. The volume of works transferred remains slightly below historical figures because of the number of claims in process and a longer processing time, leading to significant numbers of deposit copies being in process but not yet sent to the Library. As these in-process deposit copies are forwarded to the Library for its collections, their value will be included in the report for the fiscal year during which they were transferred.



MANDATORY DEPOSIT



The mandatory deposit provision in section 407 of the copyright law requires, with certain exceptions, that the owner of copyright or of the exclusive right of publication deposit two copies of works published in the United States within three months of publication. The Library may add these works to its collections, or it may use them in its exchange program with other libraries.

The Copyright Acquisitions Division (CAD) encourages copyright owners to deposit or register works regularly and voluntarily immediately after publication; however, the copyright law authorizes the Register to issue demands for mandatory deposit copies any time after publication.

The Office made demands for 2,969 titles based on recommendations by Library of Congress librarians and recommending officers and on congressional requests. CAD received 2,775 titles from publishers in response to these demands. CAD also completed 16 reviews of publishers for compliance with the mandatory deposit provision of the law. The Office referred no publishers to the Department of Justice for possible legal action in fiscal 2009. The Office also conducted specific outreach to two other publishers.

The Office continued to test and implement the acquire-deposit functions of the electronic Copyright Office (eCO) system and to train staff in their use. The Office addressed development issues related to demands and to the creation of records for deposits received under section 407. As a result of these efforts, the Technical Processing Unit of CAD was able to start using eCO to create all their 407 records of receipt.

Somewhat over 40 percent of the works the Office transferred to the Library of Congress in fiscal 2009 for use in the Library's collections arrived under the mandatory deposit provisions of the copyright law (314,927 out of 739,324 copies). The value of these mandatory deposit copies was \$8.1 million or more than one-quarter of the estimated \$32 million value of all materials transferred to the Library.

Information and education



*Madison Building,
Library of Congress*

The Copyright Office, as the administering agency for the copyright law, is experienced in disseminating information on the copyright law and copyright services, providing copyright education to the public, and responding to information requests.

In fiscal 2009, the Register and her staff spoke at many symposia, conferences, and workshops on various aspects of copyright law and the intellectual property world's current challenges. (See "International Activities" on page 21 for details about international appearances.) These included three successful programs: "The Copyright Office Comes to California" (Los Angeles and San Francisco), "The Copyright Office Comes to New York," and "The Copyright Office Comes to Music City" (Nashville). The Register of Copyrights attended the World Copyright Summit of the International Confederation of Societies of Authors and Composers, held in Washington, D.C., where she was on a panel titled "Taking Copyright Issues Global." In addition, she served on a panel titled "Exhaustion in Digital Products: Impact on Economic Rights" at the Association Littéraire Artistique Congress in London.

The Register also spoke at the American Intellectual Property Law Association's Mid-Winter Institute on the Legislative Agenda for the 111th Congress; the John Marshall Law School Annual Conference on Developments in Intellectual Property Law; the Southwestern Law School Copyright Reform Conference; a Columbia Law School conference titled "Google Books Settlement: What Will It Mean for the Long Term?;" a conference of Santa Clara University's High Tech Law Institute honoring the 100th anniversary of the 1909 Copyright Act; the Copyright Society of the USA's annual meeting; and the National Digital Information Infrastructure and Preservation Program's annual meeting, titled "Changing Copyright Landscape."

The Office's General Counsel presented the Twenty-Second Horace S. Manges Lecture, sponsored by the Kernochan Center of Columbia University Law School. His presentation, titled "Making the Making Available Right Available," focused on the controversy surrounding peer-to-peer file sharing. Policy and legal staff also delivered numerous other presentations in the United States and abroad.

COPYRIGHT OFFICE WEBSITE

The Copyright Office's website, *www.copyright.gov*, is the primary public face of the Office. It plays an integral role in fulfilling the Office's strategic goal to improve public understanding of copyright law and to support the Library of Congress' strategy to "create and deliver timely content, products, services, and experiences." Through the website, members of the public can learn about copyright law and registration of copyright claims and search records of copyright registrations and recorded documents. The website also serves as the portal to eService, through which users can register claims and upload electronic copies of their works. Portions of the website and popular informational circulars are available in Spanish. Use of the website increased at a steady rate with 5,704,880 visits and 23,737,782 page views throughout the year. "Visits" reflect one user looking at one or more pages over a short time; "page views" indicate the number of times a web page has been viewed by one visitor.

JUNIOR FELLOWS SUMMER INTERN PROGRAM

Works of American creativity are widely represented in the Library's vast treasure of copyright deposits. Once again in fiscal 2009, the Library gave college student interns a chance to delve into these collections in search of hidden treasures. The ten-week Junior Fellows Summer Intern Program, made possible through the generosity of the late Mrs. Jefferson Patterson and the Madison Council, furthers the Library's mission to provide access to the universal record of human knowledge and creativity in its collections. The program is a project of the U.S. Copyright Office, Library Services, the Office of Workforce Diversity, Human Resources Services, and the Office of the Chief Financial Officer.

Forty-seven junior fellows were selected for this program, and two were assigned to work with Copyright Office deposits and records. They reviewed thousands of prints and labels deposited from 1893 to 1925, created a database to serve as a finding aid, and rehoused the items in preservation-grade containers for transfer to the collections of the Library's Prints and Photographs Division. The fellows also reviewed registration applications from the year 1899 contained in boxes that

were retrieved from offsite storage. Deposit copies accompanying the registrations included photographs, prints, maps, manuscripts, musical scores, and other ephemeral materials. The fellows identified, itemized, inventoried, and prepared the materials for transfer to custodial units within the Library, where they will be made available to researchers and scholars. The fellows stabilized many of these treasures by placing them in Mylar and acid-free folders.

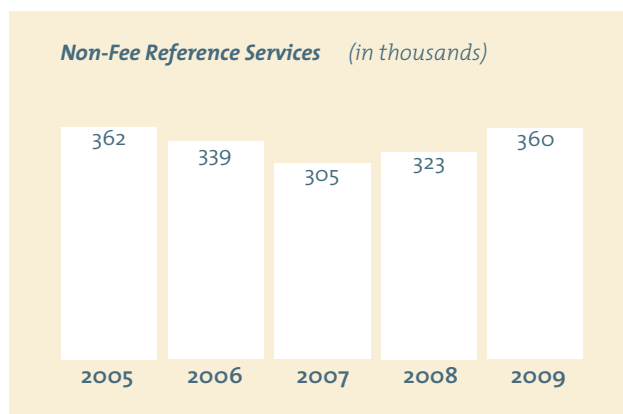
In August, the fellows hosted a special discussion and display of some of their discoveries in the Jefferson Building of the Library of Congress. Among the items on display were a Canfield Dress Shields print ad from 1898, an Electrified Extract of Beef label from 1902, and a KK Hog Cholera Preventive print ad from 1904. In addition, they displayed a Calumet Kid Calculator print ad from 1924 and other items. The exhibition was well attended by Library staff, senior managers, some congressional staff, and members of the press, who ran features on local news programs and affiliates.

PUBLIC INFORMATION

In fiscal 2009, the Office responded to a total of 359,882 requests from the public for direct reference services within all areas of the Office. The Office as a whole also assisted more than 16,000 public visitors.

The Information and Records Division answered 285,919 of these public requests for information, taking in 6,301 registration applications and 2,787 documents for recordation from members of the public. In response to public requests, the Office searched 14,003 titles, prepared 326 search reports, fulfilled more than 22,000 requests for forms and publications, and conducted many other transactions to retrieve deposits, perform certifications, and provide additional certificates.

The Office distributed issues of *NewsNet*, an electronic news service about Copyright Office services and copyright-related activities, to more than 14,000



subscribers during the fiscal year. Users can subscribe to three topics within *NewsNet*: Legislative Developments, Licensing, and What's New at the Copyright Office? The Office also supported the electronic publication of twelve issues of the Copyright Royalty Board's *CRB News*.

During the fiscal year, the Office processed 192,373 deposit copies, constituting 3,518 cubic feet of boxed materials, for storage at the Deposit Copies Storage Unit in Landover, Maryland. The unit transferred 2,996 cubic feet of unpublished and published deposit copies to other off-site long-term storage facilities.

FREEDOM OF INFORMATION ACT

The Office received and responded to 28 requests under the Freedom of Information Act during the fiscal year.

Respectfully submitted to the Librarian of Congress by

MARYBETH PETERS

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

Appendices & tables



*Jefferson Building,
Library of Congress*

Testimony to Congress

- Before the House Committee on the Judiciary, “Copyright Licensing in a Digital Age: Competition, Compensation, and the Need to Update the Cable and Satellite TV Licenses,” February 25, 2009
- Before the Subcommittee on the Legislative Branch, House Appropriations Committee, “Fiscal 2010 Budget Request,” April 29, 2009
- Before the Subcommittee on the Legislative Branch, Senate Appropriations Committee, “Fiscal 2010 Budget Request,” June 4, 2009
- Before the Senate Committee on the Judiciary, “The Performance Rights Act and Parity among Music Delivery Platforms,” August 4, 2009
- Before the House Committee on the Judiciary, “Commerce and Competition in Digital Books: The Proposed Google Book Settlement,” September 10, 2009

Federal Register Documents

- “Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies: Notice of Inquiry” (73 FR 58073, October 6, 2008)
- “Fees: Notice of Proposed Rulemaking” (73 FR 60658, October 14, 2008)
- “Fees: Correction” (73 FR 63111, October 23, 2008)
- “Fees: Extension of Time to File Comments” (73 FR 64905, October 31, 2008)
- “Compulsory License for Making and Distributing Phonorecords, Including Digital Phonorecord Deliveries: Interim Rule and Request for Comments” (73 FR 66173, November 7, 2008)
- “Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies: Notice of Proposed Rulemaking” (73 FR 79425, December 29, 2008)

- “Review of Copyright Royalty Judges Determination: Notice; Correction” (74 FR 4537, January 26, 2009)
- “Notification of Agreements Under the Webcaster Settlement Act of 2008: Notice of Agreement” (74 FR 9293, March 3, 2009)
- “Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies: Notice of Public Hearings” (74 FR 10096, March 9, 2009)
- “Section 119 and Changes in the Consumer Price Index: Final Rule” (74 FR 12092, March 23, 2009)
- “Recordation of Notices of Termination of Transfers and Licenses: Final Rule” (74 FR 12544, March 25, 2009)
- “Notice of Inquiry and Request for Comments on the Topic of Facilitating Access to Copyrighted Works for the Blind or Persons with Other Disabilities: Notice of Public Meeting” (74 FR 13268, March 26, 2009)
- “Notice of Inquiry and Request for Comments on the Topic of Facilitating Access to Copyrighted Works for the Blind or Other Persons with Disabilities: Notice” (74 FR 17884, April 17, 2009)
- “Notice of Inquiry and Request for Comments on the Topic of Facilitating Access to Copyrighted Works for the Blind or Persons with Other Disabilities: Notice of Public Meeting” (74 FR 19108, April 27, 2009)
- “Fees: Final Rule” (74 FR 32805, July 9, 2009)
- “Electronic Registration for Deposit Account Holders: Notice of Proposed Rulemaking” (74 FR 33930, July 14, 2009)
- “Mandatory Deposit of Published Electronic Works Available Only Online: Notice of Proposed Rulemaking” (74 FR 34286, July 15, 2009)
- “Notification of Agreements under the Webcaster Settlement Act of 2009: Notice of Agreement” (74 FR 34796, July 17, 2009)
- “Fees for Special Handling of Registration Claims: Temporary Rule” (74 FR 39900, August 10, 2009)

- “Notification of Agreements under the Webcaster Settlement Act of 2009: Notice of Agreements” (74 FR 40614, August 12, 2009)
- “Mandatory Deposit of Published Electronic Works Available Only Online: Proposed Rule, Extension of Time to File Reply Comments” (74 FR 48191, September 22, 2009)

Registrations, 1790–2009

<i>Date</i>	<i>Total</i>	<i>Date</i>	<i>Total</i>	<i>Date</i>	<i>Total</i>	<i>Date</i>	<i>Total</i>
1790–1869	150,000 ¹	1905	114,747	1941	180,647	1976	108,762 ²
1870	5,600	1906	118,799	1942	182,232	1977	452,702
1871	12,688	1907	124,814	1943	160,789	1978	331,942
1872	14,164	1908	120,657	1944	169,269	1979	429,004
1873	15,352	1909	121,141	1945	178,848	1980	464,743
1874	16,283	1910	109,309	1946	202,144	1981	471,178
1875	16,194	1911	115,955	1947	230,215	1982	468,149
1876	15,392	1912	121,824	1948	238,121	1983	488,256
1877	16,082	1913	120,413	1949	201,190	1984	502,628
1878	16,290	1914	124,213	1950	210,564	1985	540,081 ³
1879	18,528	1915	116,276	1951	200,354	1986	561,208 ³
1880	20,993	1916	117,202	1952	203,705	1987	582,239 ³
1881	21,256	1917	112,561	1953	218,506	1988	565,801
1882	23,141	1918	107,436	1954	222,665	1989	619,543 ⁴
1883	25,892	1919	113,771	1955	224,732	1990	643,602
1884	27,727	1920	127,342	1956	224,908	1991	663,684
1885	28,748	1921	136,765	1957	225,807	1992	606,253
1886	31,638	1922	140,734	1958	238,935	1993	604,894
1887	35,467	1923	151,087	1959	241,735	1994	530,332
1888	38,907	1924	164,710	1960	243,926	1995	609,195
1889	41,297	1925	167,863	1961	247,014	1996	550,422
1890	43,098	1926	180,179	1962	254,776	1997	569,226
1891	49,197	1927	186,856	1963	264,845	1998	558,645
1892	54,741	1928	196,715	1964	278,987	1999	594,501
1893	58,957	1929	164,666	1965	293,617	2000	515,612
1894	62,764	1930	175,125	1966	286,866	2001	601,659
1895	67,578	1931	167,107	1967	294,406	2002	521,041
1896	72,482	1932	153,710	1968	303,451	2003	534,122
1897	75,035	1933	139,361	1969	301,258	2004	661,469
1898	75,634	1934	141,217	1970	316,466	2005	531,720
1899	81,416	1935	144,439	1971	329,696	2006	520,906
1900	95,573	1936	159,268	1972	344,574	2007	526,378
1901	93,299	1937	156,930	1973	353,648	2008	232,907 ⁵
1902	93,891	1938	168,663	1974	372,832	2009	382,086
1903	99,122	1939	175,450	1975	401,274		
1904	104,431	1940	179,467	1976	410,969 ²	Total	33,654,490

¹ Estimated registrations made in the offices of the clerks of the district courts (Source: Pamphlet entitled *Records in the Copyright Office Deposited by the United States District Courts Covering the Period 1790–1870*, by Martin A. Roberts, Chief Assistant Librarian, Library of Congress, 1939).

² Registrations made July 1, 1976, through September 30, 1976, reported separately owing to the statutory change making the fiscal years run from October 1 through September 30 instead of July 1 through June 30.

³ The totals for 1985–87 were corrected as of the fiscal 2004 annual report to include mask works registrations.

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

⁵ Implementation of reengineering resulted in a larger than normal number of claims in process, temporarily reducing the total claims completed and registered.

Number of Registrations by Subject Matter, Fiscal 2009

<i>Category of Material</i>	<i>Published</i>	<i>Unpublished</i>	<i>Total</i>
Nondramatic literary works:			
<i>Monographs and computer-related works</i>	102,430	30,911	133,341
<i>Serials:</i>			
Serials (nongroup)	23,593	–	23,593
Group daily newspapers	3,503	–	3,503
Group serials	10,364	–	10,364
Total Literary Works	139,890	30,911	170,801
<hr/>			
Works of the performing arts, including musical works, dramatic works, choreography and pantomimes, and motion pictures and filmstrips	39,132	54,122	93,254
Works of the visual arts, including two-dimensional works of fine and graphic art, sculptural works, technical drawings and models, photographs, cartographic works commercial prints and labels, and works of applied arts	43,622	31,553	75,175
Sound recordings	13,108	28,945	42,053
Total Basic Registrations	235,752	145,531	381,283
<hr/>			
Renewals			501
Mask work registrations			270
Vessel hull design registrations			32
<hr/>			
Grand Total All Registrations			382,086
Preregistrations			1,067
Documents Recorded			11,959

Financial information published in this table is unaudited.

Fee Receipts and Interest, Fiscal 2009

Fees Receipts Recorded¹

Copyright registration	\$22,843,566
Mask works registration	\$26,475
Vessel hull design registration	\$6,340
Renewal registration	\$38,355
Subtotal	\$22,914,736

Recordation of documents	\$2,293,875
Certifications	\$291,624
Searches	\$91,775
Special handling/expedited services	\$11,571
Preregistrations	\$106,490
Other services	\$264,400
Subtotal	\$3,059,735

Total Receipts Recorded **\$26,326,515**

Fee Receipts Applied to the Appropriation	\$27,098,541
Interest Earned on Deposit Accounts	\$12,152
Fee Receipts and Interest Applied to the Appropriation²	\$27,110,693

¹ "Receipts Recorded" are fee receipts entered into the Copyright Office's in-process system.

² "Fee Receipts and Interest Applied to the Appropriation" are income from fees and deposit account interest that were fully cleared for deposit to the Copyright Office appropriation account within the fiscal year. The amount of Fee Receipts Applied to the Appropriation during the fiscal year does not equal the Total Receipts Recorded, because some receipts recorded at the end of a year are applied in the next fiscal year.

Estimated Value of Materials Transferred to the Library of Congress, Fiscal 2009

	<i>Registered works transferred to other Library departments</i>	<i>Non-registered works transferred to other Library departments</i>	<i>Total works transferred to other Library departments</i>	<i>Average Unit Price</i>	<i>Total value of works transferred to other Library departments</i>
Books¹	166,365	85,877	252,242		\$11,112,000
Ink print	57,232	49,138	106,370	\$61.01	\$6,489,634
Ink print	143,771	31,249	175,020	\$59.72	\$10,452,194
Electronic works (ProQuest)	20,099	54,628	74,727	\$4.44	\$331,788
Microfilm	2,495	0	2,495	\$131.47	\$328,018
Serials²	195,828	226,600	422,428		\$10,276,149
Periodicals ³	173,721	215,205	388,926	\$40.44	\$9,436,900
Ink print newspapers	18,604	8,640	27,244	\$1.01	\$16,510
Microfilm newspapers	3,503	2,755	6,258	\$131.47	\$822,739
Computer-related works	5,986	0	5,986		\$969,473
Software	2,095	0	2,095	\$30.23	\$63,332
CD-ROMs	1,197	0	1,197	\$757.01	\$906,141
Printouts	2,694	0	2,694	indeterminate value	
Motion pictures	13,069	36	13,105		\$8,679,202
Videotapes	12,415	3	12,418	\$95.68	\$1,188,154
Feature films	654	33	687	\$10,904.00	\$7,491,048
Music	10,041	843	10,884	\$51.50	\$560,526
Dramatic works, choreography and pantomimes	545	0	545	\$59.72	\$32,547
Sound recordings	27,719	1,486	29,205	\$17.00	\$496,485
Maps	1,090	85	1,175	\$40.38	\$47,447
Prints, pictures, and works of art	3,794	0	3,794	\$32.74	\$124,216
Total	424,437	314,927	739,364		\$32,298,045

1 60 percent of "Books" are selected for the collections; 40 percent are used for the Library's exchange program.

2 60 percent of "Serials" are selected for the collections, except in the case of Microfilm Newspapers (100 percent of which are selected).

3 The figure for nonregistered "Periodicals" includes (1) an estimate based on average loads in hampers delivered to Library processing and custodial divisions and (2) a count of serials issues checked in through the Copyright Acquisitions Division. For the estimated portion, there was an earlier change in physical method of delivery, which decreased the average amount per hamper. The figures above reflect a reasonable estimate of current receipts per hamper and will be reviewed on a regular basis.

Nonfee Information Services to Public, Fiscal 2009

Information and Records Division Direct Reference Services	
In person	16,691
By correspondence	55,119
By email	69,426
By telephone	144,683
Total	285,919
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Office of the General Counsel Direct Reference Services	
By correspondence	1,885
By telephone	2,015
Total	3,900
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Receipt Analysis and Control Division Services	
By correspondence	7,230
By email	16,440
By telephone	16,401
Total	23,631
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Licensing Division Direct Reference Services¹	
By correspondence or email	467
By telephone	2,601
Total	3,068
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Acquisition Division Direct Reference Services	
By correspondence or email	4
By telephone	58
Total	62
<hr/>	
eCO Service Help Desk	
By email	21,987
By telephone	24,383
Total	46,370
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Grand Total Direct Reference Services	359,882

¹ As of fiscal 2005, the Licensing Division figures do not include correspondence and telephone contacts initiated by licensing examiners.

Financial information published in this table is unaudited.

Financial Statement of Royalty Fees for Compulsory Licenses for Secondary Transmission by Cable Systems for Calendar Year 2008

Royalty fees deposited	\$160,156,268.70
Interest income	\$5,320,201.71
Gain on matured securities	\$40,710.79
Copyright Royalty Judges' filing fees	\$1,800.00
Total	\$165,518,981.20

Less:	
Licensing operating costs	\$3,849,045.44
Refunds issued	\$203,132.32
Cost of investments	157,540,181.52
Cost of initial investments	\$3,610,548.68
Copyright Royalty Judges' operating costs	\$142,457.39
Transfers out	\$150,857.36
Total	\$165,496,222.71

Balance as of September 30, 2009	\$22,758.49
Plus: Face amount of securities due	\$157,568,023.55
Pending Transfer In	\$68,836.51
Less: Pending refunds	\$462,184.65

Cable Royalty Fees for Calendar Year 2008 Available for Distribution by the Library of Congress	\$157,197,433.90
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Financial information published in this table is unaudited.

Financial Statement of Royalty Fees for Statutory Obligations for Distribution of Digital Audio Recording Equipment and Media for Calendar Year 2008

Royalty fees deposited	\$1,356,720.68
Interest income	\$29,189.70
Gain on matured securities	\$773.16
Transfers in	\$640.80
Total	\$1,387,324.34
<hr/>	
Less:	
Licensing operating costs	\$106,254.16
Refunds	—
Cost of investments	\$432,484.68
Cost of initial investments	\$20,383.80
CRJ operating costs	\$546.63
Distribution of fees	\$827,645.07
Transfers out	—
Total	\$1,387,314.34
<hr/>	
Balance as of September 30, 2009	\$10.00
Plus: Face amount of securities due	\$432,503.60
<hr/>	
Audio Home Recording Act Royalty Fees for Calendar Year 2008 Available for Distribution by the Library of Congress	\$432,503.60

Financial information published in this table is unaudited.

Financial Statement of Royalty Fees for Statutory Licenses for Secondary Transmission by Satellite Carriers for Calendar Year 2008

Royalty fees deposited	\$93,334,108.31
Interest income	\$4,487,375.91
Gain on matured securities	\$5,771.23
Total	\$97,827,255.45

Less:	
Licensing operating costs	\$164,675.40
Refunds	—
Cost of investments	\$94,260,521.14
Cost of initial investments	\$3,301,022.93
Copyright Royalty Judges' operating costs	\$101,025.98
Total	\$97,827,245.45

Balance as of September 30, 2009	\$10.00
Plus: Face amount of securities due	\$94,286,921.48

Satellite Carrier Royalty Fees for Calendar Year 2008 Available for Distribution by the Library of Congress	\$94,286,931.48
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COPYRIGHT OFFICE CONTACT INFORMATION

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Library of Congress
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101 Independence Avenue, SE
Washington, D.C. 20559-6304

Website · www.copyright.gov

Public Information Office · (202) 707-3000 or 1-877-476-0778 (toll free)

Staff members are on duty to answer questions by phone from 8:30 AM to 5:00 PM, eastern time, Monday through Friday, except federal holidays. Recorded information is available 24 hours a day.

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INTERNATIONAL COPYRIGHT TREATIES AND CONVENTIONS

Protection against unauthorized use of a copyrighted work in a country depends primarily on the national laws of that country. Most countries offer protection to foreign works under the aegis of international copyright treaties and conventions.

Treaties and Conventions

- *Berne Convention*—the leading international agreement that sets standards for protecting literary and artistic works
- *Bilateral*—a unique agreement on copyright protection between the United States and another country
- *Phonograms Convention*—known as the Geneva Convention, sets standards for protection of sound recordings against piracy
- *Universal Copyright Convention (UCC)*—an international agreement that sets standards for protecting literary and artistic works, largely superseded by Berne
- *WIPO Copyright Treaty (WCT)*—an international treaty setting standards for protection of works in digital format
- *WIPO Performances and Phonograms Treaty (WPPT)*—an international agreement setting standards for protection of sound recordings
- *World Trade Organization (WTO)*—the World Trade Organization's obligations regarding Trade-Related Aspects of Intellectual Property Rights, incorporating and expanding on Berne and adding enforcement obligations

International Copyright Treaties and Conventions

RELATIONS AS OF SEPTEMBER 2009



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



Library of Congress
United States Copyright Office
101 Independence Avenue SE
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