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**ANNUAL REPORT OF THE  
LIBRARIAN OF CONGRESS**

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**FOR THE FISCAL YEAR ENDING  
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## **COPYRIGHT ISSUES**

Several bills were introduced during the 104th Congress providing for major changes in the copyright statute. One legislative measure, H.R. 989, S. 483, would have added twenty years to the basic copyright term. In testimonies before the House and Senate Committees during fiscal 1995, the Register of Copyrights proposed a limited exemption during this additional period for certain nonprofit educational activities sponsored by the Library of Congress. Similarly, library and educational groups proposed expanding this exemption to allow noncommercial use of copyrighted works during the last twenty years of the copyright term. The Register was asked to facilitate an agreement between copyright owners and libraries and educational institutions that could be added to the bill.

The Copyright Office hosted a series of meetings between December 1995 and May 1996 to negotiate a limited exemption. The parties, however, could not agree on specific language. As a result, the Register of Copyrights forwarded independent proposals to the House and Senate Judiciary Committees. In the end, neither a House nor a Senate version of an extension measure was passed owing, in part, to linkage of the legislation to issues regarding music licensing.

Major copyright legislation, affecting both copyright owners and users, was introduced in both the House (H.R. 2441) and Senate (S. 1284) with the intention of adapting the copyright law to the digital, networked environment. The Register testified at a joint Senate/House hearing on the legislation in November 1995. The 104th Congress adjourned without enacting either bill.

At the request of the Copyright Office, H.R. 1861 was introduced by Representative Carlos Moorhead (R-Calif.), chairman of the Subcommittee on Courts and Intellectual Property, on June 15, 1995; the proposed bill made a number of technical corrections to the copyright law, and included a provision on the Copyright Office's authority to raise its fees. The bill, as passed by a voice vote

in the House on June 4, 1996, would allow the office to raise its fees up to full cost recovery, subject to congressional veto. However, the Senate failed to act on the bill before adjournment.

Several bills were introduced to restructure the U.S. Patent and Trademark Office (PTO) as a government corporation. These bills would give the proposed U.S. Intellectual Property Organization a copyright policy function, thereby eroding the Copyright Office's historical policy-making role. One such bill, the Omnibus Patent Act of 1996 (S. 1961), would have removed the Copyright Office from the Library. The Librarian and the Register strongly opposed this bill in statements to the Senate Committee on the Judiciary; the Register testified to that effect on September 16, 1996. During a Senate Judiciary Committee hearing held that day, Chairman Orrin G. Hatch (R-Utah) indicated that copyright provisions would not be included in any PTO legislation passed during the 104th Congress. At the end of the 104th Congress, no restructuring legislation had been enacted.

## **COPYRIGHT SERVICES**

The Copyright Office faced many challenges during fiscal 1996, including a proposed Senate bill which would have transferred the Copyright Office out of the Library of Congress (see also *The Library and the Congress*).

During the year, the Copyright Office undertook a major regulatory initiative involving registration of photographs, successfully defended several law suits, registered and recorded documents concerning old works restored under the Uruguay Round Agreements Act (URAA), and oversaw the efforts of the first Copyright Arbitration Royalty Panel (CARP), which handled more than \$550 million in cable royalties covering the years 1990-92.

The office delivered to Congress on March 1, 1996 a major report regarding the impact of the waiver of moral rights provisions in the Visual Artists Rights Act of 1990 (VARA).

During fiscal 1996, the office received more than 620,000 claims representing over 700,000 works. Some 550,000 claims were registered and more than 16,600 documents, containing over 100,000 titles, were recorded. Receipts from licensing fees totaled \$187,455,015. The number of requests from the public for information increased to 432,397.

On November 16, 1995, the Copyright Acquisitions Division, which had been transferred to Collections Services in 1990, was returned to the Copyright Office. This division administered section 407 of the law, the mandatory deposit provisions, and monitored publishers's deposits and issued demands as necessary.

### **COPYRIGHT OFFICE ELECTRONIC REGISTRATION, RECORDATION, AND DEPOSIT SYSTEM (CORDS)**

Development continued on the Copyright Office Electronic Registration, Recordation, and Deposit System (CORDS), which permits electronic registration and deposit via the Internet.

The Corporation for National Research Initiatives (CNRI), working with the Copyright Office and the Library's Information Technology Services (ITS), ran a live test at Carnegie Mellon University on February 27, 1996. Four applications and accompanying copyright works (unpublished computer science technical reports) were successfully transmitted over the Internet and processed by the Copyright Office; certificates were issued to the copyright holders. Additional development work was done on CORDS prior to full production delivery late in September.

Meanwhile, the office, through its own home page, continued to use the Internet and other new technologies to disseminate public information and to provide electronic access to the office's registration and recordation databases. Application forms, regulations and new procedures were all made available through the Internet. A new service called fax-on-demand was introduced.

#### **INTERNATIONAL ACTIVITIES**

On October 1, 1995, the newly appointed associate register for policy and international affairs joined the staff. During fiscal 1996, she was joined by two policy planning advisers and an attorney adviser. As a result, the Copyright Office substantially increased its support to the United States Trade Representative in negotiating and monitoring bilateral and multilateral intellectual property agreements with other countries.

During the year, the Copyright Office sponsored two International Copyright Institute programs. The first, for eight former Soviet republics, was cosponsored by the World Intellectual Property Organization on June 24-26. The program was held in both Washington and Geneva. The second program was for the Commissioner of the National Copyright Administration of China and his top staff and included meetings in Washington and New York City on June 27 and 28.

The Copyright Office was active as a technical adviser to the Clinton Administration in all of the preparatory work for the World Intellectual Property Organization (WIPO) Committee of Experts meetings. The meetings were held on three possible new treaties—one which would update the Berne Convention, one which would provide increased protection for performers and producers of sound recordings, and one which would provide intellectual

property protection to databases that do not meet the originality test required by copyright law.

The office served as the primary source of U.S. expertise in the World Trade Organization review in Geneva of the copyright laws of all developed countries, as well as on 301 (Omnibus Trade and Competitiveness Act of 1988).

The office met with more than one hundred foreign visitors from developing countries to provide a greater understanding of U.S. copyright law. Members of governmental and private sector delegations included Chinese officials responsible for copyright enforcement, judges from Thailand, government officials from the Middle East, and publishers from Egypt and Hungary.

The office worked extensively with the U.S. Trade Representative's Office on reviewing other countries' copyright laws for a special 301 review to determine whether trade sanctions were appropriate. It continued to help foreign countries revise their copyright laws to be compatible with the Agreement on Trade-Related Aspects of Intellectual Property and the Berne Convention.

An office attorney served on the U.S. delegation to the first meeting of the Free Trade Agreement of the Americas (FTAA) Working Group. The group is responsible for identifying and making recommendations on trade-related measures involving intellectual property rights, and for making specific recommendations on the FTAA.

With respect to implementation of the Uruguay Round Agreements Act, the office started receiving both notices of intent to enforce restored copyrights and applications representing claims to copyright in such works.

## **DOMESTIC ACTIVITIES**

Following the 125th anniversary of the Copyright Office's placement in the Library of Congress, Senator Orrin G. Hatch introduced legislation that would move the Copyright Office out of the Library and into a new government corporation called the U.S. Intellectual Property Organization. The bill, S. 1961, introduced on July 16, 1996, would have joined the Copyright Office with the Patent and Trademark Office in a corporation associated with the Department of Commerce.

On September 18, 1996, the Register testified against S. 1961 before the Senate Committee on the Judiciary. The Librarian submitted a statement expressing concern about the proposal's effect on the Library of Congress, especially the Library's ability to meet its acquisition needs through the registration and deposit mechanisms of the present copyright law. He said: "The strength of the Library of Congress and its ability to serve the Congress and the nation depend on the presence of the Copyright Office in this institution. The effective administration and protection of our copyright laws depend on the retention of both copyright practices and policy within the Copyright Office, within the Library of Congress, and within the legislative branch."

The Register cautioned against abandoning the existing structure in favor of one that was untested and inherently flawed. She stated that her office was unaware of any request for change from any segment of the copyright community.

Moreover, the Register expressed concern about the potential impact on copyright fees and the resulting damage that would be done to the existing system of registration and deposit. A substantial fee increase would render the benefits of registration unavailable to many authors and proprietors, and would result in a diminished public database of information about copyrighted works. The bill would also deprive Congress of the nonpartisan advice of the Copyright Office, whose views as part of the proposed new corporation would be driven by executive branch politics and economic concerns.

The copyright provisions were removed from the bill, which died in the 104th Congress.

On March 1, 1996, the Register delivered a report to Congress based on the results of a five-year study to assess the impact of the waiver of moral rights provisions in the Visual Artists Rights Act of 1990 (VARA). The act grants the moral rights of attribution and integrity to authors of certain "works of visual art" as defined in the Copyright Act. The authors of these works of fine art and exhibition photography have the right to claim or disclaim authorship and, in some cases, to prevent distortion, mutilation, or modification of a work. The office studied the effect of an artist's ability under VARA to waive his or her moral rights in a signed, written agreement specifying the work and uses of the work to which the waiver applies.

The Register concluded that because VARA is in its infancy, because many artists are still unaware of moral rights, and because federal courts have offered little guidance on application of VARA to date, no legislative action is currently warranted to modify VARA.

The Register also testified on several other important bills. On November 15, 1995, she supported the general approach of the NII legislation (the National Information Protection Act of 1995, S.1284 and H.R. 2441) before a joint hearing of the Senate Committee on the Judiciary and the House Subcommittee on Courts and Intellectual Property. The major provisions dealt with clarifying the law concerning transmissions of works over global networks and improving enforcement mechanisms by providing safeguards for the technology on which copyright owners will rely in disseminating works on the NII. The bill would have provided protection for technological solutions to copying and for protecting the integrity of information provided to facilitate identification and licensing of copyrighted works (that is, copyright management information). Although supporting the concept of outlawing devices or services that defeat copyright protection systems and promoting the integrity of copyright management information, the Register raised both drafting issues and concerns about the scope of the conduct deemed unlawful.

The bills resulted in controversy; much debate was centered on issues not addressed in the legislation. These included the applicability of "fair use," and specifically the legal status of what is known as "browsing," the status of the "first sale" doctrine when copies of works are distributed by transmission, and liability for on-line service providers and Internet access providers when infringing works are transmitted over their services. However, the bills died in the 104th Congress.

The Register also testified on November 9, 1995, on a House bill addressing important copyright "housekeeping" issues. H.R. 1861, introduced by Chairman Carlos Moorhead of the Subcommittee on Courts and Intellectual Property, would have amended the Satellite Home Viewer Act of 1994 to correct a number of errors, clarified the royalty rates, restored the definitions of a jukebox and a jukebox operator to section 116, and clarified that jukebox negotiated licenses that require arbitration and rate proceedings under the public broadcasting compulsory licenses are CARP proceedings.



The bill also addressed certain fee issues. It would have authorized the Copyright Office, under section 708(b), to raise its fees in any year to cumulate the Consumer Price Index from the last fee increase. The Register suggested that the office also be allowed to invest fees from "deposit accounts" (prepaid fees that are not needed to meet current demands or services) in interest-bearing securities in the United States Treasury, and to use any interest earned.

Following the November 9 hearing, a number of amendments were made to the bill, including many proposed by the Copyright Office. They included: (1) allowing the office to raise all fees up to full cost recovery, with Congress retaining veto power; (2) allowing the office to invest prepaid fees in interest-bearing securities; (3) clarifying that distribution of phonorecords of music distributed before 1978 did not put the music in the public domain—in other words to restore the law to what it was before the decision of the Ninth Circuit Court of Appeals in *La Cienega Music Co. v. ZZ Tops*, 44 F.3d 813 (9th Cir.) *cert. denied* 64 U.S.L.W. 3262 (Oct. 10, 1995); (4) clarifying certain provisions of the Uruguay Round Agreements Act, including the date foreign copyrights were restored and including U.S. copyright owners as reliance parties who are entitled to take advantage of the derivative works provisions, and (5) amending section 117 to ensure that independent service organizations do not inadvertently become liable for copyright infringement merely because they have turned on a machine in order to service its hardware components. The bill passed the House in June and was referred to the Senate Judiciary Committee in July. However, no further action was taken during the 104th Congress.

**27 February** Copyright Office receives first digital copyright application and deposit (from Carnegie-Mellon University) using Copyright Office Electronic Registration, Recordation, and Deposit System (CORDS).

**1 March** Register of Copyrights Marybeth Peters delivers a report to Congress on a five-year study of impact of provisions of Visual Artists Rights Act of 1990 that allows waiver of moral rights by certain types of artists.

**14. COPYRIGHT REGISTRATIONS**

(number of registrations by subject matter, fiscal 1996)

<i>Category of Material</i>	<i>Published</i>	<i>Unpublished</i>	<i>Total</i>
Nondramatic literary works			
Monographs and computer-related works	139,248	47,967	187,215
Serials			
Serials (non-group)	74,455	—	74,455
Group daily newspapers	2,509	—	2,509
Group serials	6,472	—	6,472
TOTAL, literary works	222,684	47,967	270,651
Works of the performing arts, including musical works, dramatic works, choreography and pantomimes, and motion pictures and filmstrips	46,892	86,738	133,549
Works of the visual arts, including two- dimensional works of fine and graphic art, sculptural works, technical drawings and models, photographs, cartographic works, commercial prints and labels, and works of the applied arts	65,109	26,531	91,640
Sound recordings	12,689	17,260	29,949
TOTAL	347,374	178,496	525,870
Renewals	—	—	23,723
Mask work registrations	—	—	829
GRAND TOTAL, all registrations	—	—	550,422
Documents recorded	—	—	16,644

**15. COPYRIGHT BUSINESS SUMMARY**  
(fees received, fiscal 1996)

<i>Receipts</i>	<i>Fees</i>
Applications for registration	\$11,905,449
Fees for mask works	22,340
Renewals	577,032
TOTAL	<u>12,504,821</u>
Fees for recordation of documents	668,292
Fees for certifications	135,727
Fees for searches	195,112
Fees for expedited services	1,007,901
Fees for other services	148,723
TOTAL	<u>2,155,755</u>
GRAND TOTAL	<u><b>\$14,660,576</b></u>