

**Statement of Karyn A. Temple
United States Register of Copyrights**

**Before the
Committee on the Judiciary
United States House of Representatives
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Chairman Nadler, Ranking Member Collins, and Members of the Committee,

Thank you for the opportunity to appear before you today to provide important updates on the operational and policy activities of the United States Copyright Office.

For nearly 150 years, the Copyright Office has been at the very center of the nation’s thriving copyright ecosystem, serving as the primary federal agency administering the U.S. copyright law.¹ During that time, the Copyright Office has registered over thirty-eight million claims to copyright representing an even greater number of individual copyrighted works,² and now has the largest compilation of registered works and copyright ownership information in the world. The Copyright Office has provided crucial advice on copyright law to executive agencies and the courts; engaged in a wide variety of educational and outreach programs, answering almost 200,000 public inquiries just last year, including more than 2,000 walk-in requests; and managed over \$1.3 billion dollars annually in statutory license fiduciary assets.

Importantly, through its traditional role as the leading advisor to Congress on copyright policy matters, the Copyright Office has participated in every major update to U.S. copyright law, from the development of the comprehensive 1909 and 1976 Acts to the recent Music Modernization Act (“MMA”).³ As part of its role, the Copyright Office provided assistance with the Committee’s multi-year review of title 17, including by testifying at the first and last

¹ 17 U.S.C. § 101 *et seq.*

² The Copyright Office’s group registration option allows registration of multiple works in one “claim.” *See generally* 37 C.F.R. §§ 202.3(b)(5)–(6), (9), 202.4 (2018).

³ Beginning with studies in the 1950s, the Copyright Office worked extensively to support Congress during the major revision of copyright law resulting in the 1976 Copyright Act. *See* H.R. REP. NO. 94-1476, 47–48 (1976) (chronicling the Copyright Office’s work for Congress on that revision process). The Copyright Office also assisted the U.S. House Committee on the Judiciary in its consideration of the landmark Orrin G. Hatch-Bob Goodlatte Music Modernization Act (“MMA”), as well as its 2013–2015 comprehensive copyright law review. *See Congressional Hearings and Statements to Congress: Copyright Review Hearings, 2013–2015*, U.S. COPYRIGHT OFFICE, <https://www.copyright.gov/laws/hearings/>.

review hearings: *The Register's Call for Updates to U.S. Copyright Law*⁴ and *The Register's Perspective on Copyright Review*.⁵

The Copyright Office's legal, policy, and regulatory activities support a copyright ecosystem that is critical to our cultural and economic well-being. As recognized by the U.S. Supreme Court, copyright is intended itself to be the "engine of free expression,"⁶ and the United States copyright law ably fulfills that intent. Congress developed a thoughtful balance of rights, exceptions, and limitations, which promotes the progress of our nation's culture, from traditional creative industries to the flourishing tech landscape. With its robust framework of rights and limitations, it is not surprising then that the United States leads the world in *both* entertainment and technology. Indeed, according to recent estimates, core copyright industries represent nearly seven percent of the total U.S. economy and add more than a trillion dollars to the U.S. annual gross domestic product.⁷

The Copyright Office is honored to be a critical part of this copyright ecosystem. Since the Copyright Office last appeared before this Committee for an oversight hearing,⁸ the Office has made tremendous progress on a variety of initiatives, including in operations, law and policy, outreach, financial management, and modernization efforts. For example, the Copyright Office began a comprehensive modernization effort targeting technology and operations, including the launch of the Copyright Modernization Office ("CMO") in January 2018. The Copyright Office also worked diligently on modernizing registration procedures and updating business practices and regulations,⁹ resulting in a forty percent improvement in overall average processing times within the past two years as well as the complete elimination of the Office's

⁴ See *The Register's Call for Updates to U.S. Copyright Law: Hearing Before the Subcomm. on Courts, Intellectual Prop., & the Internet of the H. Comm. on the Judiciary*, 113th Cong. (2013).

⁵ See *The Register's Perspective on Copyright Review: Hearing Before the H. Comm. on the Judiciary*, 114th Cong. (2015).

⁶ *Harper & Row, Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 558 (1985).

⁷ In 2017, core copyright industries added more than \$1.3 trillion to the U.S. gross domestic product, or 6.85 percent of the U.S. economy. STEPHEN E. SIWEK, *prepared for INT'L INTELLECTUAL PROP. ALL., COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY: THE 2018 REPORT* 3 (2018). Core copyright industries also employed almost 5.7 million workers, who were paid an average of thirty-nine percent more than the average U.S. annual wage. *Id.* According to statistics released by the Bureau of Economic Analysis, the digital economy is estimated to have accounted for 6.9 percent of the U.S. gross domestic product, or \$1.35 trillion, in 2017. NAT'L TELECOMMS. AND INFO. ADMIN. ("NTIA"), *Digital Economy Accounted for 6.9 Percent of GDP in 2017*, NTIA BLOG (Apr. 5, 2019), <https://www.ntia.doc.gov/blog/2019/digital-economy-accounted-69-percent-gdp-2017>.

⁸ See *U.S. Copyright Office: Hearing Before the Subcomm. on Courts, Intellectual Prop., & the Internet of the H. Comm. on the Judiciary*, 113th Cong. (2014).

⁹ Including issuing almost thirty final rules since 2014 and publishing updates to the *Compendium of U.S. Copyright Office Practices (Third Edition)*, which is the administrative manual of the Office that serves as a guidebook for authors, copyright owners, practitioners, the courts, and others.

“backlog” of workable claims.¹⁰ In fiscal year 2018, the Copyright Office transferred to the Library’s collections more than 736,000 published works worth over \$47.5 million.¹¹

The Copyright Office also leveraged its expertise in copyright law and policy to advise Congress on legislation such as the MMA and small claims, and to provide a number of comprehensive policy reports and discussion documents on a variety of subjects such as moral rights, software-enabled consumer devices, and visual works.¹² The Copyright Office responded immediately when the MMA was enacted, creating a webpage dedicated to the bill literally overnight and promptly initiating the public notices and regulations needed to implement various aspects of the landmark law.¹³

Additionally, since 2015, the Copyright Office has participated in the preparation of seven briefs on behalf of the U.S. government for Supreme Court cases such as *Rimini Street v. Oracle* and *Star Athletica, LLC v. Varsity Brands, Inc.* Throughout this time, the Copyright Office maintained its focus on its other core administrative services for the public, registering more than 560,000 claims to copyright, recording more than 21,000 documents containing the titles of more than 757,000 works, and distributing over \$102 million in royalty fees to copyright owners in fiscal year 2018 alone.¹⁴

¹⁰ Letter from Karyn A. Temple, Register of Copyrights and Dir., U.S. Copyright Office, to Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, and Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives (May 31, 2019), available at <https://www.copyright.gov/laws/hearings/response-to-april-3-2019-house-letter.pdf>.

¹¹ See U.S. COPYRIGHT OFFICE, ANNUAL REPORT FOR FISCAL 2018, at 14 (2019). The Copyright Acquisitions Division (“CAD”) is responsible for administering the Copyright Act’s mandatory deposit requirements, as well as encouraging publishers to consider registering their works under 17 U.S.C. § 408 in order to fulfill mandatory deposit requirements. In conjunction with the Office of Registration Policy and Practice, CAD extends grants of special relief where mandatory deposit is not possible in part or full. Special relief has been used to permit publishers to deposit electronic copies of works instead of print (primarily serial and book content); in return, these publishers have provided access to the materials for Congress and Library patrons via their own online services.

¹² Since this Committee’s last oversight hearing in 2014, the Copyright Office has completed eleven policy studies. See Appendix 2. Copyright Office policy studies and reports from 1961 to present are available at <https://www.copyright.gov/policy/>, and the thirty-four Copyright Law Revision Studies, completed between 1955 and 1960 in preparation for drafting the 1976 Act, are available at <https://www.copyright.gov/history/studies/>. The Copyright Office serves as a primary copyright advisor to Congress, with a longstanding history of providing expert analysis on all copyright policy matters since its creation. See, e.g., H.R. REP. NO. 105-796, at 77–78 (1998) (Conf. Rep.) (directing the Office to continue its “longstanding role as advisor to Congress” by, among other things, providing “testimony [on] pending legislation,” conducting “studies [that] have often included specific policy recommendations,” and responding to “specific requests by Committees for studies and recommendations on subjects within the Copyright Office’s area of competence.”).

¹³ See *Orrin G. Hatch-Bob Goodlatte Music Modernization Act*, U.S. COPYRIGHT OFFICE, <https://www.copyright.gov/music-modernization/>.

¹⁴ U.S. COPYRIGHT OFFICE, ANNUAL REPORT FOR FISCAL 2018, at 13, 26 (2019).

None of this work would be possible without the dedicated staff of the U.S. Copyright Office. During my tenure heading the Copyright Office over the past two and a half years, I have been amazed and inspired by the continued resilience, flexibility, and support of the Office's talented employees during a time of tremendous growth and change. Copyright Office staff routinely work late hours with limited resources to support the Office's mission. I would like to take the opportunity to thank the exceptional Copyright Office staff for their significant contributions to the U.S. copyright system and the American people.

Looking Forward

The coming years will bring with them even more complex work for the Copyright Office. To guide these activities, the Copyright Office issued a Strategic Plan this spring identifying the Office's strategic framework for the five years covering 2019–2023. The Plan's six focus areas are: (i) Information Technology Modernization; (ii) Optimizing Business Processes; (iii) Organizational Change Management; (iv) Education and Engagement; (v) Impartial Expertise on Copyright Law and Policy; and (vi) Measuring Success.

Along with developing the Strategic Plan focus areas, the Copyright Office updated both its mission statement and its vision statement. The new mission statement clearly reflects the Office's role in "promot[ing] creativity and free expression by administering the nation's copyright laws and by providing impartial, expert advice on copyright law and policy, for the benefit of all."¹⁵ Similarly, the Copyright Office adopted a newly articulated vision statement of "enriching the nation's culture by empowering and connecting the global copyright community."¹⁶ The vision statement recognizes the increasingly global nature of the copyright ecosystem, the need to ensure a continued robust framework that supports and sustains all of those relying on the system, and the importance of that system to our cultural heritage.

While the Copyright Office is engaging in a wide variety of initiatives, I would like to take an opportunity to provide more detail about several key areas.

Office Modernization

Perhaps the most significant undertaking the Copyright Office faces in the near term is modernizing its antiquated IT systems and improving its complementary work processes. Modernization is a sweeping, multi-year, Copyright Office-wide initiative, the end result of which will be to re-imagine and reengineer how the public interacts with the Office, from submitting registration applications, to recording ownership and licensing information, to accessing Office data and records. The goal is to provide the copyright ecosystem with

¹⁵ U.S. COPYRIGHT OFFICE, COPYRIGHT: THE ENGINE OF FREE EXPRESSION, UNITED STATES COPYRIGHT OFFICE STRATEGIC PLAN 2019–2023 (2019) ("STRATEGIC PLAN"), available at <https://www.copyright.gov/reports/strategic-plan/USCO-strategic2019-2023.pdf>.

¹⁶ *Id.*

improved services that are more efficient and responsive to user needs. As currently envisioned, modernization will have the Copyright Office undertaking activity on several different fronts, all of which will dramatically reshape the Office and how we serve the public.

1. *Developing an Enterprise Copyright System.*

The Copyright Office requires a robust and modern enterprise copyright system (“ECS”) to carry out its duties and to serve the copyright ecosystem as a whole. The new ECS will integrate and improve currently disparate Office systems and functions by: (i) replacing the aging eCO registration system with a new, state-of-the-art registration system; (ii) developing a new, integrated electronic recordation system; (iii) improving access to historical records through digitization; and (iv) developing a robust, stable system for filing, processing, and searching data related to statutory licensing royalties that the Copyright Office manages on behalf of copyright owners.

As directed by Congress, the Copyright Office has extensively engaged with the Library’s Office of the Chief Information Officer (“OCIO”) “to achieve efficiencies in shared services, while allowing for mission-specific modernization to be the responsibility of the Copyright Office.”¹⁷ In January 2018 the Office created the CMO, which is tasked with analyzing and documenting the Copyright Office’s modernization needs and serving as the Office liaison to inform OCIO’s development activities.¹⁸ As part of the Library’s IT centralization initiative, the Copyright Office has transferred the bulk of the fiscal year 2019 IT modernization funding it received to OCIO through an intra-agency agreement, to enable OCIO to administer related development activities and contracts.

The Copyright Office and OCIO are poised to make progress on several IT development activities related to modernization, including development work on the new registration, recordation, and public records catalog systems. Based on extensive third-party user research, the Copyright Office designed wireframes for an early version of the new registration public user-interface. To assist with the process, the Copyright Office issued a Notice of Inquiry soliciting public input on a broad range of topics related to registration modernization, to which it received fifty-four comments; conducted sixty-eight in-depth interviews with copyright registration stakeholders and the public in four cities; and launched an extensive online survey. Likewise, the Copyright Office and OCIO continue development of a new, electronic recordation system to replace the Copyright Office’s current paper-based system. OCIO projects that it will be able to launch a limited pilot of the new recordation system by spring 2020. In support of its work, the Copyright Office conducted in-depth interviews with

¹⁷ S. REP. NO. 115-274, at 43 (2018). See also H.R. REP. NO. 115-696, at 18 (2018).

¹⁸ This follows the Library’s centralization of all IT services, and is in accordance with the *Modified IT Plan* issued by the Office in 2017. See U.S. COPYRIGHT OFFICE, MODIFIED U.S. COPYRIGHT OFFICE PROVISIONAL IT MODERNIZATION PLAN: ANALYSIS OF SHARED SERVICES, SUPPORT REQUIREMENTS, AND MODERNIZATION EFFORTS 4-5 (2017), available at <https://www.copyright.gov/reports/itplan/modified-modernization-plan.pdf>.

copyright recordation stakeholders and the public during the four-city tour, conducted twelve usability sessions with users of varying experience levels, and reviewed 207 survey responses from frequent users. Public feedback is contributing to the design of an intuitive and easy-to-use interface as well as dashboards for both Recordation Section staff examiners and supervisors. Further development work is also scheduled for the public records catalog, as discussed in more detail below.

The Copyright Office takes seriously the request by the House Committee on Appropriations to investigate innovative contracting methods, including possible no-cost contracting solutions, for modernization and development of the ECS. The Copyright Office, in coordination with OCIO, issued a public Request for Information (“RFI”) in May 2018 that asked for comments on creative solutions, including possible no-cost options, for the development of a next-generation ECS. The Copyright Office also engaged General Services Administration’s (“GSA”) 18F for guidance on best practices in contracting for agile projects. As a follow-on to the RFI and the 18F engagement, the Copyright Office and OCIO are planning to work with GSA to leverage its IT contracting experts for future modernization contracting activities, and to have GSA coordinate new public requests for proposals for the development of the ECS.

The Copyright Office is committed to engaging with the entire copyright community, whether individual artists and creators, major corporations, or general users of the system to ensure that its modernization efforts accurately reflect the needs of the digital age. The Copyright Office has created a dedicated modernization webpage that is kept up-to-date with the current status of modernization efforts, and at the beginning of the year launched a new bimonthly webinar series to inform the public and highlight progress related to modernization. The Copyright Office has so far held three webinars, with the first webinar attracting more than 200 participants. The next modernization webinar is scheduled for July. The Copyright Office will also continue to meet regularly with stakeholders and conduct presentations for both internal Office audiences and external audiences to provide updates on modernization activities.

While still at the nascent stages of IT modernization, the Copyright Office is excited to continue this essential work.

2. Improving Access to Public Records.

The Copyright Office is continuing its efforts to digitize and provide public access to all of our registration and recordation data, including data housed within legacy systems and historical records that are not currently online. Earlier this year, the Copyright Office released version 3 of its Virtual Card Catalog (“VCC”). The release marks the completion of a multi-year digitization process for *all* Copyright Card Catalog entries, beginning with the time copyright registration was centralized at the Library of Congress. Forty-one million images of these records from 1870 to 1977 are now accessible on the Copyright Office’s website, and additional development work on enhanced browsing and filtering capabilities for these records is ongoing. In addition, the Copyright Office has contracted with a third party to convert the extensive,

paper-based pre-1978 entries from the Copyright Office Record Books into digital format, including the capture of related metadata and data perfection to facilitate online searching. Ultimately, a single, publicly accessible interface will include all of these historical records.

3. Data Management Initiative.

Modernization also includes data management, and the Copyright Office will continue work on its data management plan, which started in fiscal year 2018. The plan will serve all in the copyright community—from creators to users to the public at large—allowing them to reap additional benefits from Copyright Office data and information that will be authoritative, easily found, well described, high quality, secure, and managed across the entire enterprise. Ultimately, this project will provide for a federated search and Business Intelligence reporting technology to allow users to search across registration, recordation, and licensing databases, and to facilitate improved chain-of-title sequencing that can connect registrations to records of assignments and transfers or other documents.

4. Organization, Business Processes, and Culture.

As the Copyright Office overhauls its technological systems, it is important that we also evaluate and optimize the organizational structures and human resources that utilize these systems. Full modernization requires a multi-pronged approach to review and evaluate not only current processes and workflows in each division, but also the current organizational structure and culture of the Copyright Office itself. The Copyright Office has brought in outside experts to assist with these activities, and will continue to do so as modernization progresses.

In fiscal year 2018, the Copyright Office engaged the Office of Personnel Management’s (“OPM”) Human Resources Solutions division to conduct an organizational analysis and redesign. This process, which should be completed in early fiscal year 2020, will provide detailed findings and recommendations on how to achieve more effective operations, including recommendations for staffing levels, position management improvements, and organization restructuring options. The Copyright Office intends to use the resulting analysis to better align the Office with newly automated processes resulting from modernization. Going forward, this work will be helpful in building annual staffing plans, in justifying budget requests for staffing, and with succession planning.¹⁹

The Copyright Office will also contract with outside consultants to: (i) document current processes and workflows in each division, working with managers and staff to think creatively about how processes can be improved and shifted from the “as is” to the “to be”; and (ii) assist with developing and replicating an organizational change management process to help

¹⁹ The latter is especially important in light of the fact that nearly one-third of Copyright Office employees have at least twenty years of federal service, and are thus eligible for retirement over the next several years.

communication and staff buy-in for major modernization initiatives. The end goal is an engaged, results-oriented professional workforce that has the tools it needs and is organizationally empowered to provide efficient, high-quality services to stakeholders and the public.

Other Operational Initiatives

1. *Registration.*

The Copyright Office recently provided the Committee with a comprehensive analysis and discussion of the Registration program and the steps that the Office has taken to improve registration processing times.²⁰ Registration processing times have always been important for the copyright community, and are even more so now because of the Supreme Court's recent decision in *Fourth Estate Public Benefit Corp. v. Wall-Street.com*. *Fourth Estate* confirmed that Copyright Office action on an application for registration must be complete before the owner of a U.S. work can seek redress for infringement of their rights in court.²¹ It is important to note, however, that efforts to improve registration processing times must balance efficiency with the need to maintain the accuracy and quality of the examination process. The Copyright Office's examination process has a number of beneficial externalities, including facilitating predictability for private transactions and promoting efficiency in our judicial system.

As discussed in our letter to the Committee, long before *Fourth Estate*, the Copyright Office took extensive steps to address the registration backlog that developed as a result of legal and logistical changes over the previous several decades. These efforts include, with Congress' support, increasing the number of registration examiners by approximately thirty percent since 2014. The Copyright Office also engaged the services of the Smithsonian Organization and Audience Research ("SOAR") group to review registration workflows and processes and to provide recommendations for improvements, many of which have been implemented. These efforts, combined with the extensive review and overhaul of registration regulations and processes that the Copyright Office has undertaken in the past several years, have shown tremendous results. Since October 2017, we have reduced our overall average processing time for reviewing copyright claims from eight months to five—a decrease of almost forty percent within two years.²² From January 2018 to May 2019, the Copyright Office reduced the number of applications pending for more than one year by ninety-six percent. And since the beginning

²⁰ See Letter from Karyn A. Temple, Register of Copyrights and Dir., U.S. Copyright Office, to Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, and Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives (May 31, 2019), *available at* <https://www.copyright.gov/laws/hearings/response-to-april-3-2019-house-letter.pdf>.

²¹ *Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881, 892 (2019).

²² The average processing time for the seventy-three percent of claims that are received through the electronic registration system and do not require correspondence is even lower—four months, down from seven. And the average processing time for literary works has been reduced to three months.

of fiscal year 2018, the Copyright Office reduced the number of workable claims by fifty-nine percent.²³ Of note, these numbers represent nearly 120,000 more claims closed by the Copyright Office in fiscal year 2018 than in fiscal year 2017.²⁴

The Copyright Office will continue its focus on improving the Registration Program. By the end of fiscal year 2019, we anticipate a return to 2010 pre-sequestration staffing levels of about 125 examiners. These talented individuals come from a wide variety of backgrounds, including lawyers, writers, teachers, musicians, journalists, and librarians. The musical talent in the group of recently-hired examiners includes a former professional viola player, a trombone player who taught music history and theory, a classical guitarist singer-songwriter, and an oboe player who received a Bachelor's of Music degree in music history. The Copyright Office is extremely proud of the multi-faceted talents of its registration workforce and is committed to developing their long-term professional growth to quickly evolve with the ever-changing copyright landscape.

2. *Recordation.*

As mentioned above, the Copyright Office and OCIO are developing a new recordation system to digitize the currently paper-based process. Concurrently, the Copyright Office is evaluating and updating its related business processes and workflows to ensure that the Office of Public Records and Recordation ("PRR") is well-positioned to take advantage of the capabilities of the new system. As with the Registration Program, the Copyright Office has contracted with SOAR to review current recordation workflows and processes and provide recommendations for improvements.

In addition to recording documents related to use and chain of title for copyrighted works, PRR also manages the database of registered agents for receipt of DMCA notices and the schedules of pre-1972 sound recordings under title II of the Music Modernization Act. Since the launch of the new directory in December 2016, over 20,500 service providers have designated a DMCA agent with the Copyright Office, which includes over 303,000 alternative names uses by these providers. As of today, the Copyright Office has received schedules listing more than 15,000 individual pre-1972 sound recordings.

²³ The current number of workable claims is currently well under 150,000, which historically has been the threshold for determining the existence of a backlog.

²⁴ The number is particularly noteworthy because the Office examined the 520,086 claims it received in fiscal year 2018 with 118 registration examiners. In contrast, in fiscal year 2018 the U.S. Patent and Trademark Office had 579 trademark examining attorneys to examine the 468,926 trademark applications it received, and the average time between filing of a trademark application and the "examiner's first action" was 3.4 months, with 9.6 months as the average time for registration. See U.S. PATENT AND TRADEMARK OFFICE, FY 2018 PERFORMANCE AND ACCOUNTABILITY REPORT 193, 205 (2019), available at <https://www.uspto.gov/sites/default/files/documents/USPTOFY18PAR.pdf>.

3. *Outreach and Education.*

In addition to its outreach activities related to Copyright Office modernization and the MMA, the Office has committed additional resources to improve its overall public outreach and education activities. The Copyright Office recently appointed a new Associate Register and Director of Public Information and Education (“PIE”), restructured the department to add a new section for Outreach and Education, and added a number of staff, including public affairs specialists and a manager of Office communications. The Copyright Office plans to hire three additional staff members for PIE in fiscal year 2019, including a graphic design specialist, a writer/editor, and an attorney. PIE is currently revamping many of the Copyright Office’s communication functions, including by increasing the resources devoted to the Office’s social media channels, as well as creating new videos for the general public on topics such as *What is Copyright?*, *Copyright and the Internet*, and *Searching the Public Record*.

Legal and Policy

1. *Music Modernization Act Implementation.*

In 2018, the Copyright Office provided extensive assistance on copyright legislation, including the landmark Orrin G. Hatch-Bob Goodlatte Music Modernization Act (“MMA”).²⁵ Congress recognized the Copyright Office’s extensive preparatory work on music licensing issues by delegating to the Office the responsibility to implement key features of the legislation and noting that the Office “has the knowledge and expertise regarding music licensing through its past rulemakings and recent assistance to the Committee during the drafting of this legislation.”²⁶

The Copyright Office takes seriously its extensive responsibilities under the MMA. On October 11, 2018, the same day the President signed the MMA, the Copyright Office posted detailed information and FAQs about the historic legislation to educate and inform the general public and those directly affected by the new law. Less than a week later, the Copyright Office issued interim regulations establishing new filing mechanisms to onboard the protection and use of pre-1972 sound recordings into the federal scheme.²⁷ The Copyright Office also published a final rule regarding a new exception for the noncommercial-use of pre-1972 sound recordings by the statutory deadline of April 9, 2019.²⁸ Following multiple rounds of public comment, as of

²⁵ Pub. L. No. 115-264, 132 Stat. 3676 (2018).

²⁶ S. REP. NO. 115-339, at 15 (2018).

²⁷ 83 Fed. Reg. 52,150 (Oct. 16, 2018).

²⁸ 84 Fed. Reg. 14,242 (Apr. 9, 2019) (establishing a final rule in connection with the exception for certain noncommercial uses of pre-1972 sound recordings that are not being commercially exploited).

June 2019 all pre-1972 sound recording regulations and filing procedures required by title II of the MMA have been fully implemented.²⁹

In December 2018, the Copyright Office issued interim regulation for the compulsory “mechanical” license under section 115 for making and distributing phonorecords of musical works to address changes related to title I of the MMA. These regulations set out requirements for digital music providers to limit their liability during the transition period before the blanket license is available and clarified that the song-by-song licensing system remains available for physical uses.³⁰

The Copyright Office continues to implement provisions of title I, including ongoing work on designating the mechanical licensing collective (“MLC”) and the digital licensee coordinator (“DLC”) by July 8, 2019 as required by statute. The Copyright Office has committed to a fair, open, and transparent process leading up to the designations of the MLC and DLC. These entities are crucial to the overall success of the new licensing regime created by the MMA. Congress recognized that, to successfully manage its extensive duties, including locating artists throughout the world to ensure that they receive the royalties rightly due to them under the law, the MLC would need to be “endorsed by, and enjoy[] substantial support from, musical work copyright owners that together represent the greatest percentage of the licensor market for uses of such works” and that it would need to demonstrate that it will have the administrative and technological capabilities to perform its required functions prior to the license availability date.³¹ On December 21, 2018, the Copyright Office released a Notice of Inquiry to solicit information to identify the appropriate entities to be designated as the MLC and DLC. As part of that process, two entities sought to be designated as the MLC, and the Copyright Office received more than 600 public comments in response to these proposals. The Copyright Office is carefully reviewing these submissions pursuant to the statutory criteria provided by Congress and is confident that an appropriate MLC can be designated by the July 8 statutory deadline.

After the designations of the MLC and DLC are complete, the Copyright Office will continue its MMA implementation activities. These activities include updating relevant publications to reflect changes to the law, such as publishing an updated circular 92 containing the entire federal copyright law as amended by the MMA; conducting further rulemakings by soliciting public comments on operation of the revamped blanket mechanical license and operation of the MLC,³² among other issues; engaging in extensive outreach and educational activities to inform

²⁹ See 84 Fed. Reg. 10,679 (Mar. 22, 2019) (establishing as final a rule regarding the filing of schedules by rights owners listing their sound recordings fixed before February 15, 1972, and the filing of contact information by entities publicly performing these sound recordings by means of digital audio transmission).

³⁰ 84 Fed. Reg. 10,685 (Mar. 22, 2019).

³¹ 17 U.S.C. § 115(d)(3)(A)(ii).

³² Pursuant to the statute, the Register of Copyrights must promulgate regulations regarding *inter alia*, the form of the notices of license and notice of nonblanket activity, usage reports and adjustments, information to be included in the

songwriters about the process by which a copyright owner may claim ownership of musical works before the mechanical licensing collective; and undertaking a policy study regarding best practices that the mechanical licensing collective may implement in order to identify, locate, and pay out royalties to musical work copyright owners with unclaimed accrued royalties held by the collective.

2. Additional Legal and Policy Work.

In addition to the significant activities outlined above, the Copyright Office is working on a number of other important legal and policy matters. For example, the Copyright Office is working towards the completion of its study of the notice-and-takedown provisions in section 512 of title 17, a study for which the Office has received over 90,000 public comments and hosted three roundtables. The Copyright Office also continues to provide advice and assistance to the executive branch agencies about copyright developments around the world, and participates each year in the United States Trade Representative's Special 301 process. The Copyright Office also has a busy litigation docket, participating in the formulation and articulation of the U.S. government's position in a number of Supreme Court cases, as well as participating in the defense of several district court cases brought against the Office and the U.S. government.

On the regulatory side, the Copyright Office continues to work on additional rulemakings on a number of topics, including group registration of albums and short online literary works; registration of secure tests; a new fee schedule; reporting practices for the cable license; mandatory deposit of electronic-only books; and document recordation modernization. Overall, the Copyright Office has adopted fourteen final rules since the beginning of fiscal year 2018, and has nine open rulemakings and two open notices of inquiry. Next year, the Copyright Office will begin work on the eighth triennial section 1201 proceeding.³³ The proceeding will use the same streamlined process debuted during last year's section 1201 rulemaking, during which the Copyright Office recommended, and the Librarian of Congress adopted, the renewal of exemptions for all twenty-two types of uses covered by the 2015 rulemaking. The Copyright Office also supported the expansion of seven of those earlier exemptions and the adoption of two new exemptions.

The Copyright Office also remains ready to assist Congress with implementation of any of its prior policy recommendations, including updating the exceptions for libraries, archives, and

musical works database, requirements for the usability, interoperability, and usage restrictions of that database, and the disclosure and use of confidential information.

³³ Section 1201 of title 17 directs the Librarian of Congress, upon the recommendation of the Register of Copyrights following a rulemaking proceeding, to determine whether any prohibitions on the circumvention of technological measures used to prevent unauthorized access to copyrighted works are having, or are likely to have, an adverse effect on users' ability to make noninfringing uses of particular classes of copyrighted works. Through the section 1201 rulemaking process, the Register can recommend, for adoption by the Librarian, certain limited temporary exemptions waiving the general prohibition against circumvention for such users for the ensuing three-year period.

museums in section 108; adopting a public performance right for sound recordings; improvements to copyright enforcement mechanisms; legislative changes to section 1201 or its rulemaking process; expiration of the section 119 license; and consideration of a resale royalty right for visual artists.

Small Claims

I would also like to take the opportunity to discuss one policy issue for which the Copyright Office has provided legislative support to several Members over the past few years: the possibility of a small claims tribunal within the Copyright Office. The Copyright Office identified the creation of such a small claims tribunal as a topic worthy of further study as far back as 2006, during its participation in Congress' review of the orphan works problem.³⁴ As we discussed in our 2013 report, *Copyright Small Claims*, the costs and burdens of federal copyright litigation effectively prevent those who do not have extensive resources and the high-dollar cases from bringing suit to enforce their rights or to obtain a declaratory judgment of non-infringement.

In 2017, the median cost to litigate a copyright infringement suit with less than \$1 million at stake was estimated at \$200,000.³⁵ Given the complexity of complying with the Federal Rules of Civil Procedure and Federal Rules of Evidence, as well as the vigorous motion practice typical of infringement cases in district court, few parties would be capable of proceeding without an attorney. However, according to a survey conducted by the American Bar Association's section on intellectual property law, only thirty-two percent of the lawyers surveyed indicated that they would be willing to accept a case with less than \$30,000 at stake, which would exclude many individual artists and creators from representation.³⁶ Federal litigation is also a very time-consuming business, with the median time to trial in the Southern District of New York at 720 days.³⁷

³⁴ See, e.g., *Orphan Works: Proposals for a Legislative Solution: Hearing Before the Subcomm. on Intellectual Prop. of the S. Comm. on the Judiciary*, 109th Cong. 122 (2006) (written statement of Jule Sigall, Associate Register for Policy & International Affairs, U.S. Copyright Office) ("We are sympathetic to the concerns of individual authors about the high cost of litigation and how, in many cases, the individual creator may have little practical recourse in obtaining relief through the court system. We believe that consideration of new procedures to address this situation, such as establishment of a 'small claims' or other inexpensive dispute resolution procedure, would be an important issue for further study by Congress."); *Remedies for Small Copyright Claims: Hearing Before the Subcomm. on Courts, the Internet & Intellectual Prop. of the H. Comm. on the Judiciary*, 109th Cong. 46 (2006) (written statement of Marybeth Peters, Register of Copyrights) ("If the Subcommittee believes it would be helpful, the Office would be pleased to study the [small copyright claims] issue in a way similar to the way in which the Office studied the orphan works problem itself.").

³⁵ AIPLA, 2017 REPORT OF THE ECONOMIC SURVEY 44 (2017).

³⁶ See American Bar Association Section of Intellectual Property Law, Comments Submitted in Response to U.S. Copyright Office's Aug. 23, 2012 Notice of Inquiry at 6–7 (Oct. 19, 2012).

³⁷ See United States Courts, U.S. District Courts – Combined Civil and Federal Court Management Statistics (Mar. 31 2019), available at <https://www.uscourts.gov/statistics/table/na/federal-court-management-statistics/2019/03/31-1>.

Overall, this situation means that low-dollar but still valuable copyrighted works often may be infringed with impunity, with individual creators and small businesses often lacking an effective remedy. Similarly, these hurdles may be insurmountable for the majority of users who believe that they have a strong fair use defense or are otherwise using a copyrighted work pursuant to an exception or limitation that allows their use; such users would need to not only pay out of pocket for any but *pro bono* legal representation, but also could be opening themselves up to a judgement for statutory damages of up to \$30,000 per work at issue.

For this reason, the Copyright Office strongly supports a small claims tribunal structured along the lines of the proposal detailed in the Copyright Office's 2013 report. Specifically, such a tribunal should be situated in the Copyright Office, with officers recommended by the Register and appointed by the Librarian of Congress. Participation in the tribunal should be voluntary, and there should be a streamlined discovery process as well as a limit on the kind of evidence admitted. Hearing a claim in a small claims tribunal should be done remotely when possible, relying on written statements and participation through phone or internet by the parties. While a party may choose to use an attorney, *pro se* litigants should be not only allowed but encouraged and supported by the tribunal's staff attorneys. Damages, both actual and statutory, should be strictly capped at \$30,000 per claim, with a sub-limit of \$15,000 per work. A final determination should be reviewable by the Register and able to be challenged in district court for certain reasons. A final determination should not, however, serve as precedent. Many, if not most of the procedural rules of a small claims tribunal should be subject to regulation by the Register of Copyrights. I note that the CASE Act as introduced this Congress reflects many of these important priorities.³⁸

Update on Budget Matters and Fees

The Copyright Office performs its important work on a relatively modest budget. As the Supreme Court noted earlier this year, changes in funding have real-world effects on the copyright community, and resulting processing delays can be "attributable, in large measure, to staffing and budgetary shortages that Congress can alleviate, but courts cannot cure."³⁹

The Copyright Office greatly appreciates congressional support in fiscal year 2019, including support for its priority initiatives such as working towards fulfilling the *Modified IT Plan* goals, providing the public with online access to historical copyright records, and reducing registration and recordation processing times. As a result of Congress' support, the Copyright Office's staff levels have remained relatively steady between 416 and 433 full-time employees from fiscal year 2017 through the beginning of fiscal year 2019.⁴⁰

³⁸ Copyright Alternative in Small-Claims Enforcement Act of 2019 ("CASE Act"), H.R. 2426, 116th Cong. (2019); Copyright Alternative in Small-Claims Enforcement Act of 2019 ("CASE Act"), S. 1272, 116th Cong. (2019).

³⁹ *Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC*. 139 S. Ct. 881, 892 (2019).

⁴⁰ Fluctuations during the period can largely be attributed to attrition and hiring associated with the budget requests for additional positions ("NEPRs").

As the fiscal year 2019 enacted budgets included recurring annual funding for several of the Copyright Office's most important ongoing initiatives, the Copyright Office's fiscal year 2020 request included only the mandatory pay-related and price level adjustments necessary to maintain the same level of funding support to continue the progress underway. With the loss of certain fees resulting from passage of the MMA, combined with the new statutory responsibilities for the Copyright Office pursuant to that legislation,⁴¹ the Copyright Office will need to undertake greater responsibilities with fewer resources and will likely require additional funding resources from Congress in the coming years.

More Flexible Fee Authority.

As the Copyright Office continues to maximize its limited resources, it would benefit significantly from greater flexibility in the use of its prior-year unobligated fee balances. Such a change would allow the Copyright Office to continue providing services to the public in the event of a lapse in appropriations. Flexibility in management of prior-year balances across budget cycles also could provide for more efficient and cost-effective administration of large, non-recurring projects related to modernization and other capital expenditures. To that end, once authorized, the Copyright Office anticipates including in a future budget request a change in appropriations language to allow for twenty percent of the balance available in prior-year fees to be available each year, in addition to appropriated amounts, for obligation without fiscal year limitation, and to allow the Office to access prior-year balances to continue operations during a lapse in appropriations.

Fee Study.

The Copyright Office is nearing completion of its latest fee study. Fees for services outlined under section 708(a) are set forth in a proposed schedule that is sent to Congress 120 days before the adjusted fees can take effect. Before proposing new fees via the first mechanism, the Register must conduct a study of the Copyright Office's costs for registering claims, recording documents, and providing other services, and must consider the timing of any fee adjustments and the Office's authority to use the fees consistent with the Office's budget. When proposing a balance of user fees and taxpayer-funded monies to support its operations, the Copyright Office gives careful consideration not only to the public benefits of the national copyright system, but also to the impact of user fees on a copyright system that is dependent on voluntary copyright registration and recordation. To ensure that the Copyright Office's fees are "fair and equitable and give due consideration to the objectives of the copyright system,"⁴² the Office conducts regular studies of its operating costs and fee structure. For its current fee proposal, the Copyright Office engaged a consulting firm for the first time in decades to formally and

⁴¹ See H.R. 1551, 115th Cong. § 102(e) (2018) (as engrossed by the House of Representatives and Senate) (mandating that the "Register of Copyrights shall engage in public outreach and educational activities").

⁴² 17 U.S.C. § 708(b)(4).

comprehensively assess the internal drivers of the Office's costs, as well as external factors such as an assessment of economic trends that affect stakeholder value, statutory restrictions, and policy goals. The Copyright Office issued a Notice of Proposed Rulemaking in May 2018, providing public notice of the Office's proposed fee schedule changes. The Copyright Office received a significant number of public comments regarding the Notice, and is currently reviewing those comments in anticipation of issuing a proposed fee structure to Congress in fiscal year 2019, intending that it will enter into force in fiscal year 2020.

* * *

In closing, I wish to once again thank the dedicated employees of the Copyright Office for all that they do on behalf of the nation's copyright creators, owners, and users. The Copyright Office likewise appreciates the Committee's continued support as we continue to modernize both Office technology and services, and work to improve operation of the copyright system overall.

Appendix 1

Copyright Office by the Numbers

Fiscal Year 2018 at a Glance	
520,086	Claims to copyright received
643,518	Claims to copyright closed
560,013	Claims to copyright registered
252,235	Literary works
136,399	Performing arts
93,651	Visual arts
77,216	Sound recordings
512	Other
661	Number of preregistration applications received
21,668	Documents recorded containing titles of more than 757,400 works
195,750	Phone, email, and mail inquiries answered
2,100	In-person visitors assisted
\$221 million	Royalty fees collected for statutory licenses
\$2 million	Filing fees collected for statutory licenses
\$102 million	Fiduciary assets distributed to copyright owners for statutory licenses
\$1.3 billion	Statutory license fiduciary assets managed by the Office
17.5 million*	Number of records from 1955–77 made available through the VCC
	<small>* 24 million additional card images, covering 1870–1954, were added to the VCC in March 2019, bringing the total of all images to over 41 million.</small>
>736,800	Copies of works added to the Library’s collections
\$47.5 million	Value of works added to the Library’s collections
9	Number of rulemakings initiated
2	Number of interim rules issued
4	Number of final rules issued

Appendix 2

Law, Policy, and Regulatory Accomplishments Fall 2014 through June 2019

(Activity in all lists appears in reverse chronological order)

Policy Studies and Discussion Documents

Date	Title
April 2019	Authors, Attribution, and Integrity: Examining Moral Rights in the United States
Jan. 2019	Copyright and Visual Works: The Legal Landscape of Opportunities and Challenges
Sept. 2017	Mass Digitization Pilot Program
Sept. 2017	Section 108 Discussion Document
Aug. 2017	Fee Study
June 2017	Section 1201 Study
Dec. 2016	Software-Enabled Consumer Products Study
Feb. 2016	The Making Available Right in the United States
June 2015	Orphan Works and Mass Digitization
Feb. 2015	Copyright and the Music Marketplace
Jan. 2015	Transforming Document Recordation

Other Documents Shared With Congress

Date	Title
June 2019	View of the Copyright Office Concerning Section 119 Compulsory License
May 2019	Response to April 3, 2019 Letter from Chairman Nadler and Ranking Member Collins of the House Judiciary Committee Regarding Registration Processing Times
May 2019	Response to March 14, 2019 Letter from Chairman Tillis and Ranking Member Coons of the Senate IP Subcommittee Regarding Registration Processing Times
Aug. 2016	View of the Copyright Office Concerning FCC Set-Top Box Proposal
Jan. 2016	View of the Copyright Office Concerning Performing Rights Organizations (PRO) Licensing of Jointly Owned Works

Closed Rulemakings

(as of June 2019)

Docket	Final Rule
2018-13	Simplifying Copyright Registration for Architectural Works
2018-8	Noncommercial Use Exception to Unauthorized Uses of Pre-1972 Sound Recordings
2018-10	Technical Amendments to Section 115 Compulsory License Regulations
2018-7	Rules Regarding Schedules of Pre-1972 Sound Recordings and Notices of Contact Information by Transmitting Entities
2017-16	Final Rule Relating to Group Registration of Newspapers
2017-1	Freedom of Information Act Practices and Procedures
2017-15	Group Registration of Unpublished Works
2018-1	Final Rule Regarding the Single Application
2018-2, 2018-3	Group Registration of Newsletters and Serials
2017-10	Section 1201 Exemptions to Prohibition against Circumvention of Technological Measures Protecting Copyrighted Works
2018-6	Streamlining the Administration of DART Royalty Accounts and Electronic Royalty Payment Processes
2016-10	Group Registration of Photographs
2017-9	Simplifying Deposit Requirements for Certain Literary Works and Musical Compositions
2017-17	Fee for Recording Documents with Electronic Title Lists
2017-13	Affixation and Position of Copyright Notice
2016-8	Group Registration of Contributions to Periodicals
2016-9	Supplementary Registration
2013-5	Authentication of Electronic Signatures on Electronically Filed Statements of Accounting
2017-4	Regulations to Address the Disruption of Copyright Office Electronic Systems
2017-6	Technical Amendment to DMCA Designated Agent Rule
2016-5	Copyright Office Technical Amendments
2016-7	2017 Removal of Personally Identifiable Information from Registration Records
2011-6	Designation of Agent to Receive Notification of Claimed Infringement
2016-6	Copyright Office Adopts “Mailbox” Rule for Appeals to Refusals to Register

Docket	Final Rule
2014-7	Section 1201 Exemptions to Prohibition against Circumvention of Technological Measures Protecting Copyrighted Works
2012-5	Verification of Cable and Satellite Statements of Account
2014-8	Fees for Submitting Corrected Electronic Title Appendices
2012-7	Section 115 License Statements of Account
2014-4	Changes to Recordation Practices

Open Rulemakings and Notices of Inquiry

(as of June 2019)

Docket	Title
2019-4	Group Registration of Works on an Album of Music NPRM
2018-12	Group Registration for Short Online Literary Works NPRM
2018-11	Designation of Mechanical Licensing Collective NPRM
2018-9	Registration Modernization Notice of Inquiry
2018-4	Copyright Office Proposes New Fee Schedule NPRM
2016-3	Mandatory Deposit of Electronic-Only Books NPRM
2005-6	Proposed Amendments to Regulations Governing Cable, Satellite, and DART License Reporting Practices NPRM
2017-8	Secure Tests NPRM
2017-7	Modernizing Document Recordation NPRM
2017-5	Pilot Program for Bulk Submission of Claims to Copyright Notice of Inquiry
2012-3	Registration of Copyright: Definition of Claimant NPRM