

**Statement of
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**Before the
Committee on Rules and Administration
U.S. Senate
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Chairwoman Klobuchar, Ranking Member Blunt, and Members of the Committee:

Thank you for the opportunity to report on the recent accomplishments of the United States Copyright Office.

I will begin by summarizing our operations as they have continued during the pandemic, and then outline our current initiatives on information technology modernization and on setting up a new copyright small claims tribunal.

I. OVERVIEW OF OPERATIONS AND KEY SERVICES

Even during the unprecedented circumstances of the past year and a half, the Copyright Office has been able to adapt and provide high-quality services to the American public with minimal disruption. In fiscal 2020, we registered almost half a million copyright claims, recorded ownership information for titles of over 230,000 works, published comprehensive studies on several important policy issues, implemented key parts of the Music Modernization Act (MMA)¹ and the Copyright Alternatives in Small Claims (CASE) Act,² made progress in modernizing our services, managed over \$1 billion in royalties, and responded to questions from almost 200,000 members of the public. This important work continued in fiscal 2021.

A. Copyright Office Staff

As of mid-September 2021, the Office had 443 staff on-board. This year, we have completed a total of 35 hiring actions, including backfills of vacant positions and hiring for the new Copyright Claims Board (CCB) established by the CASE Act.

¹ Orrin G. Hatch–Bob Goodlatte Music Modernization Act, Pub. L. No. 115-264, 132 Stat. 3676 (2018).

² Copyright Alternatives in Small Claims Act of 2020, Pub. L. No. 116-260 (2020).

B. Pandemic Operations

Over these past eighteen months, the Office successfully addressed significant operational challenges, primarily those posed by limits on on-site operations as a result of the global pandemic.³ When the Library shut down the Madison Building on March 13, 2020, we transitioned 98% of the staff to full or partial telework within just a few weeks. Some of our work, however, involves physical materials (such as paper-based recordings of documents and paper-based registration claims, and physical deposits). Office staff was unable to process these materials until June 2020, when limited on-site work resumed.

In accordance with the Library's phased plan for restored on-site operations, the Office has steadily increased the number of staff working on-site at least part-time since last June. Currently, the Library is in Phase 3.2 of its restoration of operations plan; about 43% of Copyright Office staff is performing some level of on-site work, while others continue in full-time telework status.

The bulk of the Office's operations has been largely unaffected by this transition, including all legal and policy work, processing of fully electronic claims for registration, and ongoing modernization activities. Although processing of physical materials was suspended for several months after the Madison Building was closed, the Office has since restarted all physical materials processing workflows. To reduce the impact to the public, the Office issued a new rule that offers an electronic option for some services that previously required paper submission. The Office also adjusted practices to receive certain additional applications and submissions via email during pandemic operations.

To further relieve the impact of constraints imposed by the pandemic on users of Office services, the Acting Register had exercised, and I am currently exercising, the authority granted by Congress in the 2020 Coronavirus Aid, Relief, and Economic Security Act (CARES Act). We have temporarily adjusted certain timing provisions, and I continue to review conditions to determine whether further extensions are needed.

Finally, I am happy to report that we reopened our Copyright Public Information Office in early July of this year and are currently providing in-person services by appointment.

³ See U.S. COPYRIGHT OFFICE, ANNUAL REPORT FISCAL 2020 (2021), <https://copyright.gov/reports/annual/2020/ar2020.pdf>.

C. Registration, Recordation, and Acquisitions

The Office has made significant strides in improving registration processing times. Most registration applications – approximately 98% – come into the Office in electronic form.⁴ During the pandemic, the Office has shortened processing times for fully-electronic applications (those electronic claims with uploaded digital deposits) to an average of 1.9 months.⁵ The average overall processing time for examining all copyright claims was 3.1 months in the first half of fiscal 2021 – a substantial decrease from 4.0 months in the second half of fiscal 2019. Despite this overall reduction, the pandemic did negatively impact processing times for those few electronic applications that required the submission of physical deposits and for the small number of paper applications. More registration examiners are starting to come back on-site to handle these kinds of claims.

With respect to recordation, it is important to remember that the recordation system has historically been paper-based. Due to the pandemic slow down, recordation staff are currently processing basic recordation filings received on paper in March 2020 and Notice of Terminations (NOTs) received in June 2021.⁶ Concurrently, the Office is continuing development of the new online recordation system. The positive impact of the pilot on processing times is impressive: the average time from submission to generation of the public record for electronic submissions is within weeks of receipt. To date, over 3,700 recordation filings have been processed through the pilot, from eight waves of pilot users. We are currently well ahead of our internal fiscal 2021 target to process 20% of these recordations electronically; for fiscal 2022, our target is 60%.

Limits on on-site operations impacted the Office's acquisition of physical materials for Library collections in the third and fourth quarters of fiscal 2020. The Office was able, however, to maintain an effective e-deposit program throughout the fiscal year. E-serial and e-book acquisitions made up a significant portion of our contributions to the Library's collections. For fiscal 2020, the estimated value of deposits, \$40.03 million, was just shy of the previous year's total. The estimated value of the access that special relief relationships with major e-serial and e-book publishers provided for Library staff and patrons increased from \$69.87 million in fiscal 2019 to \$75.26 million in fiscal 2020.

⁴ In fiscal 2020, the Office registered 443,911 claims to copyright involving millions of works. Ninety-eight percent of registration applications closed were received electronically and two percent by mail. Fiscal 2021 data is not yet available.

⁵ Registration processing times are posted at <https://copyright.gov/registration/docs/processing-times-faqs.pdf>.

⁶ Recordation processing information is posted at <https://copyright.gov/recordation/>.

C. Legal and Policy Work

The Office has maintained our longstanding role in the area of copyright law and policy. In the past year and a half, this included promulgating regulations to implement the CASE Act and the MMA, as well as updating rules to establish new practices for group registrations, facilitate the deposit of electronic books for the Library's collections, and improve administration for recording notices of termination. The Office has issued several major policy reports during the pandemic and continued to provide expert assistance to Congress and across the government regarding complex and emerging copyright issues, including multiple legislative proposals and requests, Supreme Court and appellate litigation, and international matters.

D. Budgetary Matters

The Copyright Office performs all of this work on a relatively modest budget.⁷ Separately, we are responsible for the effective stewardship of over \$1.4 billion in statutory licensing revenues; for the fourth consecutive year, we received an unmodified or "clean" audit opinion of the statutory licensing fiduciary asset financial statements.

Budget Status: The Office appreciates Congress's support for our fiscal 2021 budget.⁸ This included recurring support for the Office's modernization efforts, initially funded as part of the fiscal 2019 budget and continuing for five years through fiscal 2023. Congress also provided an additional \$1.6 million in the fiscal 2021 budget, primarily for Office and Copyright Royalty Judges (CRJ) staffing to handle the MMA and other increasing workloads. To support implementation of the CASE Act, the Office is requesting \$3.2 million in additional funding for fiscal 2022. In total, we request \$98.0 million in funding and 472 FTEs, of which \$45.0 million would be funded through offsetting collections of fees collected in fiscal 2022 and prior years. This would ensure the resources needed to continue progress

⁷ The Copyright Office's overall budget is composed of three separate budgets or program areas: (1) the Basic Budget, which funds most of the Office's core operations, including the majority of payroll-related expenses; (2) the Licensing Budget, which is derived completely from licensing royalty collections otherwise payable to copyright owners and filing fees paid by cable and satellite licensees pursuant to statutory licenses administered by the Office; and (3) the Copyright Royalty Judges (CRJ) Budget, for which we provide budget formulation and execution support on behalf of the Library (although the CRJ program is not itself a part of the Office).

⁸ The fiscal 2021 enacted budget totals \$93.416 million, and consists of the following three elements: \$84.317 million for Copyright Basic; \$6.232 million for Licensing; and \$2.867 million for the Copyright Royalty Judges.

towards accomplishing our strategic goals, which include providing legal and policy advice and modernizing our information technology.

More Flexible Fee Authority: As we have noted previously, the Office's operations would benefit significantly from greater flexibility in the use of fee collections, in particular the authority to use existing fee balances to provide services to the public in the event of a lapse in appropriations. Flexibility in management of fee balances across budget cycles also would provide for more efficient and cost-effective administration of large, non-recurring projects related to modernization and other capital expenditures. To that end, the Office has requested two changes in appropriations language: (1) to allow the Office to access existing fee balances to continue operations during a lapse in appropriations, and (2) to make 20% of the balance of fees collected in prior years available each year, in addition to appropriated amounts, for obligation without fiscal year limitation.

E. Outreach and Education

The Office remains dedicated to a robust outreach and education program. Our outreach work in fiscal 2021 continued to be very active. With virtual engagement having taken on increased importance, the Office is committed to a vibrant social media presence and both virtual and in-person outreach in a post-pandemic world. For example, the Office celebrated our 150th anniversary with several public events, including an examination of advancing inclusion in copyright, paired with a celebration of the first woman Register of Copyrights, Barbara Ringer. We also hosted a reflection on the copyright legacy of Ruth Bader Ginsburg, and, to conclude our 150th year, produced a new exhibit called "Finding Yourself in Copyright," which can be viewed both online and in-person at the Copyright Office. We have provided public webinars on modernization and new registration options. In fiscal 2020 alone, we fielded almost 200,000 public inquiries and increased our social media presence through 54 educational YouTube videos, 31 blog posts, and 633 tweets.

II. MODERNIZATION ACTIVITIES

The Office has made significant progress on the initiative to modernize our services, all of which is detailed on our modernization webpage. On IT matters, the Office works closely with the Library of Congress's Office of the Chief Information Officer (OCIO) to provide the business information needed for OCIO to undertake system and software development.⁹

⁹ See <https://www.copyright.gov/copyright-modernization/>. As the Library of Congress uses a centralized IT model, the Office relies on OCIO for technical services, including system and software

A. Enterprise Copyright System

The planned Enterprise Copyright System (ECS) currently includes work-streams on recordation, public records, registration, and licensing. In addition, OCIO is leading work on user experience design and platform services—the design and architecture capabilities underpinning the ECS. In fiscal 2020, the Office achieved major milestones on three of the work-streams: the launch of an electronic recordation pilot, the release of a new interface for the Copyright Public Records System (CPRS), and the release of a clickable prototype of the planned new basic registration application.

Recordation: The Office met its spring 2020 target to launch the public pilot of the new electronic recordation system. The pilot initially was made available to a limited number of public users on April 27, 2020, enabling them to record documents related to copyright ownership under section 205 of title 17. We have already incorporated user feedback into four point releases and are making iterative improvements. In this continuous development phase, we are adding more functionality to the system as well as more waves of users.

Public Records: In late 2020, the Office released the pilot for the new CPRS, which will eventually replace the existing Copyright Office Online Public Catalog. The CPRS will provide an improved interface for public records, with advanced search functionality that far exceeds the current system. The Office has already incorporated bug fixes and user feedback in the first point release, and the process of point releases is expected to continue into the coming year.

Registration: The Office began moderated user testing on a limited clickable prototype for the registration standard application, from which we have gathered public feedback and incorporated improvements following the second round of user testing. We are also developing the internal side of the registration system.

Licensing: The Office is beginning development of user experience design and initial automated workflows for licensing processes, which currently utilize outdated systems. The Office anticipates that licensing modernization expenses can be accommodated within the licensing base budget, and development is being limited to minimize the costs for copyright owners. Development will focus on migrating the statement of account examination

development. This past year the Library has been building on its agile software foundation and has implemented the Scaled Agile Framework (SAFe) to improve collaboration across projects, as well as a program-level view of the modernization work as a whole.

processes to ECS and migrating all royalty accounting processes onto the Library's financial system to eliminate duplicate processes.

Additional Developments: The Library of Congress has convened a Copyright Public Modernization Committee (CPMC) to enhance communication with external stakeholders about the technology-related aspects of the Office's modernization initiative.¹⁰ The CPMC's thirteen members include stakeholders from the publishing, music, and photography sectors, libraries and archives, and other fields.¹¹ The first public meeting of the CPMC took place virtually on July 22, and the committee will continue to meet twice a year through 2024.

B. Modernizing Supporting IT Systems

The Copyright Office has made strides in the planned consolidation of physical materials from several geographically dispersed storage facilities into a single, modern facility. This collaborative construction project between the Library, the Office, and the Architect of the Capitol was completed ahead of schedule, and the Office moved into the new facility at Cabin Branch, Maryland, in November 2020. We are now working to bring all copyright materials stored in other locations to Cabin Branch to fully consolidate them. This facility will allow the Office to provide faster location services, better tracking, and improved security of the significant inventory of copyright deposits. We plan to procure a software management system to optimize warehouse operations and functionality, promoting timely and reliable services.

The Office has also engaged experts to conduct a gap analysis and facilitate roadmap planning for a new contact center for our Public Information Office. We have now received recommendations to improve analytics, with the goal of implementing a high-performing, multi-channel contact center to support the copyright community and improve communications with the public.

C. Historical Public Records

As part of the Copyright Office's commitment to the preservation of and access to its historical records, a comprehensive effort is underway to digitize print and microfilm records and make them available online. This includes the card catalog, record books, and the Catalog of Copyright Entries (CCEs). Digitization is the critical first step, to be followed by

¹⁰ Library of Congress, Announcement of Copyright Public Modernization Committee, 86 Fed. Reg. 8044 (Feb. 3, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-02-03/pdf/2021-02194.pdf>.

¹¹ See NewsNet, U.S. Copyright Office, Library of Congress Announces Copyright Public Modernization Committee (Jun. 22, 2021), <https://www.copyright.gov/newsnet/2021/898.html>.

the perfection of metadata to enhance searchability; a long-term goal is to have all of these items digitized and made available through the Copyright Public Records System. The Office has already digitized our card catalog; the Virtual Card Catalog (VCC) is available online.¹² As for the record books, the Office has awarded a contract for their digitization and is working with the Library's experts in digital collections management to ensure that it will incorporate best practices, with the resulting records made available for public, online viewing. The CCEs are already available online.¹³

III. IMPLEMENTING THE CASE ACT

When Congress passed the CASE Act last December, it required the Office to establish the Copyright Claims Board (CCB) to resolve disputes regarding copyright claims that have relatively low economic damages.¹⁴ Located within the Office, the CCB will be a voluntary, alternative forum to federal court staffed by copyright experts, which will use streamlined, affordable procedures. When operational, the CCB will be the first intellectual property small claims tribunal in the United States.

The Office is working intensively to set up this groundbreaking system. First, we have begun regulatory activity to address the CASE Act's requirements. Following informal and formal consultations with a broad range of stakeholders, the Office issued a final rule on August 18 enabling expedited registration for claims pending before the CCB and updating the Office's Freedom of Information Act (FOIA) regulations as they apply to CCB proceedings. The Office has also proposed procedures for libraries and archives to preemptively opt out of CCB proceedings, as well as rules related to federal class action proceedings. Comments on these two proposals were due on October 4. In addition, on September 29, the Office issued a proposed rule to establish procedures governing the initial stages of a proceeding before the CCB; initial comments are due on October 29.

Second, the Office has nearly completed all hiring for the CCB. All three Copyright Claims Officers¹⁵ have now begun work, as well as the Board's supervisory attorney, and we

¹² See <https://copyright.gov/vcc/>.

¹³ Over a decade ago, the CCEs were digitized by a third party using optical character recognition. Another party is embarking on a project to build on the OCR data to improve the data set quality.

¹⁴ Copyright Alternatives in Small Claims Act, 17 U.S.C. § 1502 (2020). The CASE Act was adopted following the Copyright Office's 2013 study on small copyright claims and includes much of the Office's suggested statutory language. U.S. COPYRIGHT OFFICE, COPYRIGHT SMALL CLAIMS (2013), <https://www.copyright.gov/docs/smallclaims/usco-smallcopyrightclaims.pdf>.

¹⁵ See NewsNet, U.S. Copyright Office, Copyright Office Announces Appointments of Copyright Claims Board Officers (Jul. 20, 2021), <https://www.copyright.gov/newsnet/2021/906.html>.

are in the process of hiring the rest of the support staff.¹⁶ In parallel, we are collaborating with other Library units to put in place a case management system, virtual hearing capabilities, office space, and other needs so that the CCB can begin to operate within the statutorily required timeframe.

Finally, and equally importantly, the Office appreciates the need to produce and make accessible to members of the public information about the CCB's operations. To that end, the Office has launched an educational webpage that provides key facts about the tribunal, including dozens of FAQs and links to additional resources such as legislative history and rulemaking activity. The Office will regularly update this site to keep the public informed of the CCB's progress.

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In conclusion, I appreciate this Committee's continued support of the Office and the Library's operations, including our IT modernization initiative. I also want to thank the Office's dedicated staff for their service to the copyright community and the public, especially during the pandemic.

¹⁶ In support of these stand-up activities, the Office's fiscal 2022 budget includes a program increase request of \$3.2 million and 8 full time employees (FTEs). This amount is made up of \$1.0 million in one-time costs for office construction and furniture, audiovisual system acquisition, and development of an online case management system, as well as \$2.2 million in recurring costs for the 8 FTEs (\$1.7 million for salary, benefits, and related costs and \$500,000 for systems operation and maintenance, printing, and other services). *Library of Congress FY 2022 Budget Hearing Before the Subcomm. on the Legislative Branch of the H. Comm. on Appropriations*, 117th Cong. 5–7 (Mar. 3, 2021) (written statement of Shira Perlmutter, Register of Copyrights and Director, U.S. Copyright Office), <https://www.copyright.gov/about/budget/2022/house-budget-testimony-fy22.pdf>.