

# Annual Report of the Register of Copyrights

FISCAL YEAR ENDING SEPTEMBER 30, 2005



United States Copyright Office







# A Message from the Registrar

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# This annual report

for Fiscal Year 2005 highlights the Copyright Office's many contributions and accomplishments. The year will be remembered for an amount of activity that was significantly higher than most years. Two areas deserve special mention here.

First is our seven-year Reengineering Program initiative. When implemented, it will result in fundamental changes and will provide better service to authors, copyright owners, cable systems, satellite carriers and others who use statutory licenses, and the general public. This massive, complex effort involves redesigning our processes, organizational structure, IT systems, and facilities. Change is always difficult, and change of this magnitude can be disruptive. This has been a particularly challenging year. We began the implementation phase, testing various concepts and technologies, designing new registration forms, drafting new practices, and preparing for our temporary move to off-site space while our permanent space and facilities in the Library's Madison Building are being reconfigured and constructed. Management and staff worked hard gaining new expertise in digital systems and in conducting business online. There were three pilot programs—one dealing with registration of motion pictures, one dealing with selection of materials for the Library's collections, and one focusing on deposit through the Internet of digital copies of works published only online.



Second is our policy and legal activities. With respect to legislative activities, we spent considerable time searching for a legislative solution to create a workable licensing scheme for legitimate online music services. We met numerous times with the various interested parties (music publishers, record companies, online music services, songwriters, and performing rights organizations), drafted a discussion bill that was the subject of a House hearing at which I was the only witness, and testified in a Senate hearing on this issue. Following this activity, the Office continued to work with the Congress and the interested parties on the issues, and I hope that I will be able to report on concrete results in the next annual report.

In response to the Family Entertainment and Copyright Act, enacted in April 2005, the Office implemented a new preregistration system within the six-month statutory period. Preregistration is for unpublished works being prepared for commercial delivery, which are likely to be pirated before publication and distributed on the Internet. We created a new, totally online system that became operational on November 15, 2005.

There was considerable litigation activity. The Supreme Court handed down its decision in *Metro-Goldwyn Mayer Studios, Inc. v. Grokster, Ltd.*, the most significant copyright case in years. As described in more detail later in this report, the court found that those who induce users of their products and services to infringe copyrighted works can be held liable for secondary copyright infringement. A few months after this decision, I testified before the Senate Judiciary Committee in its hearing on “protecting copyright and innovation in a post-*Grokster* world.”

Additionally, the Office played an active role in a number of important cases before various courts on such issues as our registration practices concerning catalogs of sculptures, the copyrightability of settlement prices for futures contracts, the copyrightability of individual part numbers, and many cases challenging the constitutionality of various copyright statutes.

Once again the staff of the Office performed well. The accomplishments reflected here speak for themselves. Next year even greater challenges face us, and I am confident that the talented and dedicated staff of the Office will meet them.



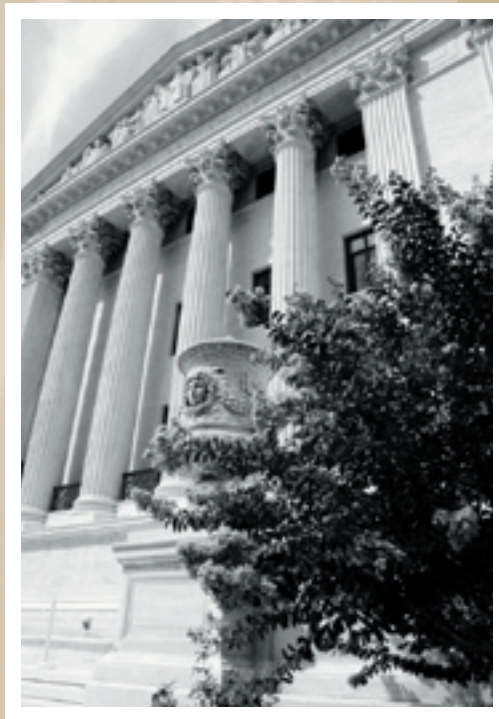
Marybeth Peters  
Register of Copyrights



# Copyright in the public eye

The

*The east face  
of the United States  
Supreme Court*





# Supreme Court's ruling

The Supreme Court's ruling in *Metro-Goldwyn-Mayer Studios v. Grokster* was one of the most significant developments in copyright law in the past twenty years. The emergence of online music distribution demonstrated that technological progress can bring societal advances and also create legal difficulties. In its ruling in *Grokster*, the Court clarified that those who offer products and services in a way that induces others to engage in copyright infringement can be held secondarily liable for that infringement.

The *Grokster* decision offered hope to the world of legitimate online music distribution. However, one area that poses hurdles to efficient and affordable distribution is the process of licensing the underlying musical works. Because this process is constrained by practical difficulties and statutes out of step with rapid technological change, it creates an incentive and opportunity for piracy to flourish. Congress is considering the necessity of legislation in the wake of *Grokster*, one element of which is the reform of the process for licensing online distribution of musical works.

*Grokster* coincided with, and in some cases preceded, a surge in negotiations, agreements, and launchings of new legitimate online music services or supporting technologies. Ironically, it appears that some parties who used to be at cross-purposes are now becoming partners.

While a U.S. Supreme Court decision has no binding precedential value outside of this country's borders, since the *Grokster* decision three courts spanning the globe have reached results consistent with the result in *Grokster*. In fact, the *Grokster*

*The Metro-Goldwyn-Mayer Studios v. Grokster decision clarified that those who offer products and services in a way that induces others to engage in copyright infringement can be held secondarily liable for that infringement.*

decision should be very helpful to the United States as it continues its discussions with other countries about updating their copyright laws to meet the challenges of the digital networked environment that connects people around the world. Peer-to-peer infringement is a major problem abroad as well.

A beneficial side effect of the publicity given to the *Grokster* decision is that it has helped to bring the issue of illegal file sharing to public consciousness and made it more difficult for defenders of the practice to claim that it is lawful. Before *Grokster*, members of the public could be excused for being unclear about the legal status of unauthorized file sharing. While *Grokster* did not directly address first-party liability of the person actually engaging in the file sharing, the Court's decision and the media attention it has garnered mean that no member of the public can reasonably make the argument that he or she is unaware that unauthorized file sharing is illegal.

The majority of consumers who have engaged in illegal peer-to-peer file-sharing of music would choose to use a legal service if it could offer a comparable product and if they knew which services were legal. This Supreme Court decision affords legitimate music services an opportunity to make great strides in further educating the public and developing successful business models for marketing their products. Such developments will assist the copyright owners to obtain the benefits of their exclusive rights and help users to engage in lawful use of these copyrighted works.



# Copyright law administration

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*The dome of the United States  
Capitol rises behind the Library's  
Madison Building kiosk dome.*

## TIMELINESS OF SERVICES

Service is central to an effective national copyright system. Effective delivery of copyright services requires that they be timely. Through focused effort and the energy created by the Office's Reengineering Program, the Office has achieved significantly better delivery times for its services and products.

The Office on the whole met its improved timeliness targets despite some delayed mail shipments to the Office and an increased number of pieces of mail damaged during security irradiation and screening processes.

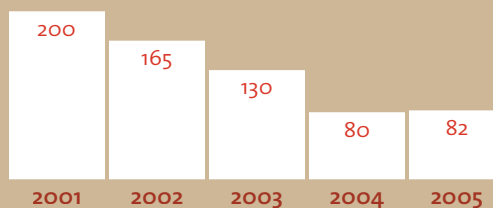
This achievement took place during a period marked by a significant investment of staff resources to reengineer Copyright Office processes and move online copyright records from legacy systems to a database in Endeavor Information Systems' Voyager integrated library management system. These are described more fully in the Management section of this report.

## REGISTRATION

### Copyrighted Works

During Fiscal Year 2005, the Copyright Office received 600,535 claims to copyright covering more than a million works and registered 531,720 claims. The Office examines the materials received to determine whether the deposited work contains copyrightable content, whether the claimant is entitled to claim copyright, and whether there has been compliance with U.S. copyright law and Office regulations. The Office continued to complete registrations in half the time that it took in 2001. At the end of Fiscal Year

*Year-End Average Registration Processing Time  
(in days; 2001–2003 estimated)*





2005, the average time to issue a certificate was just over 80 days, and the average time to complete registration records was 55 days after issuance of the registration certificate.

### Preregistration

The President signed the Family Entertainment and Copyright Act (FECA), Pub. L. No. 109-9, on April 27, 2005. This legislation amended the U.S. copyright law by the addition of a new §408(f) establishing preregistration; it is discussed more fully in the Reports and Legislation section. Preregistration, as distinct from registration, is available only for unpublished copyrighted works in categories that the Register of Copyrights finds to have a history of infringement prior to commercial distribution. Unlike registration, preregistration requires only an application with a description of the work and fee.

The Office determined that preregistration would be offered as an online service only, as part of its new information technology system called eCO (Electronic Copyright Office), with no paper application forms. From April 2005 through the end of the fiscal year, the Office completed intensive work to prepare the electronic preregistration application form and help text, and to do the related IT development, process analysis, and training preparation required to implement preregistration on November 15, 2005. Much of the technical work done on preregistration will be applied directly to the upcoming electronic registration pilot.

### Creation of the Registration Record

The copyright law requires the Register of Copyrights to create, maintain, and index records of all deposits, registrations, recordations, and other copyright-related matters and to make these records available to the public. The Cataloging Division records essential information about the deposited copies for all works registered in the Copyright Office. The Division also creates a record for recorded documents.

Records of copyright registrations provide important information about ownership of copyrighted works, helping users to make lawful use of such works and providing information for researchers about the history of American creativity. The Cataloging Division created records for 643,735 registrations in Fiscal Year 2005, including 19,245 registrations submitted electronically.

## Reconsiderations of Denial of Registration

During Fiscal Year 2005, the Examining Division handled 241 first requests for reconsideration (formerly called “appeals”) covering 589 claims. Of the initial refusals to register, 193 claims (33 percent) were reversed upon first request.

During Fiscal Year 2005, the Copyright Office Review Board continued to review and make final administrative determinations on the Examining Division’s refusals to register works. The Board met ten times and considered 28 requests for second reconsideration involving 63 works. By increasing the frequency with which the Board met, it was able to review most of the older requests. The Board issued 22 decisional letters involving 63 works. Some of these letters related to requests which the Board had considered in Fiscal Year 2004 but responded to in Fiscal Year 2005. The Board agreed to register two of the contested works, and upheld the Examining Division’s refusal to register the other 61 works. The Office also began a practice, with respect to works of the visual arts, of including images of the works whenever possible in the decisional letters in order to assist the claimant’s understanding of the Board’s rulings.

## Copies of Deposits and Certifications

Upon request, the Copyright Office makes certified copies of its records, including registration certificates and deposited works, usually when the owner is engaged in infringement-related litigation.

The requesting party must meet one of three conditions to obtain a certified copy:

- (1) the Office receives a written authorization from the copyright claimant of record or his or her designated agent, or from the owner of any of the exclusive rights in the copyright, as long as this ownership can be demonstrated by written documentation of the transfer of ownership;
- (2) an attorney or authorized representative completes and

## Reconsideration Process

*Under title 17, the Register of Copyrights may determine that the material deposited for copyright registration does not constitute copyrightable subject matter or that the claim is invalid for other reasons. In such cases, the Register refuses registration and notifies the applicant in writing of the reason(s) for such refusal. Applicants whose claims for registration are rejected can seek reconsideration of such decisions in a two-stage process. The claimant first requests reconsideration by the Examining Division. If the Division upholds the refusal, the claimant may make a second request to the Copyright Office Review Board (formerly known as the Appeals Board). The Register of Copyrights, the General Counsel, and the Chief of the Examining Division, or their designees, constitute the Review Board.*



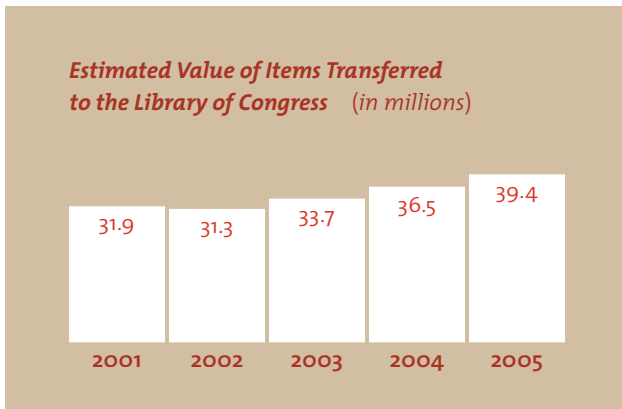
submits the Copyright Office Litigation Statement Form in connection with litigation involving the copyrighted work; or (3) the Office receives a court-issued order for a reproduction of a deposited article, facsimile, or identifying portion of a work that is the subject of litigation in its jurisdiction.

The Information and Reference Division's Certifications and Documents Section produced 5,054 copies of certificates of registration, a 10 percent increase over the previous year. During the fiscal year, the section made 2,453 copies of copyright deposits and 1,199 certifications of deposits or records.

### Contributions to Library of Congress Collections

The Library of Congress may select for its collections copies of works submitted for registration or to fulfill the mandatory deposit provision of the law. Copyright deposits form the core of the Library's "Americana" collections and serve as the primary record of American creativity.

During the fiscal year, the Office transferred 1,098,420 copies of registered and nonregistered works valued at \$39,649,813 to the Library of Congress for its collections.



### Mask Works

The Semiconductor Chip Protection Act of 1984 created protection for mask works. Mask works are a series of related images having or representing the predetermined three-dimensional pattern on the layers of a semiconductor chip product. In Fiscal Year 2005, the Office received 548 mask works and registered 506.

## Vessel Hull Designs

The Vessel Hull Design Protection Act was signed into law on October 28, 1998, as part of the Digital Millennium Copyright Act (DMCA). The vessel hull law grants an owner of an original vessel hull design certain exclusive rights, provided that application for registration of the design with the Copyright Office is made within two years of the design being made public.

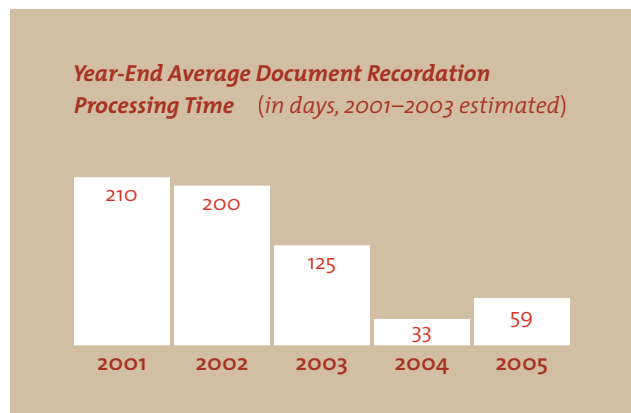
The Office received 74 applications for registration of vessel hull designs this fiscal year. The Office registered 52 and either rejected or corresponded on the others.

## RECORDATION

The Copyright Office creates records of documents relating to a copyrighted work, a mask work, or a vessel hull design that have been recorded in the Office. These documents frequently reflect popular and economically significant works.

Documents may involve transfers of rights from one copyright owner to another, security interests, contracts between authors and publishers, and notices of termination of grants of rights.

During Fiscal Year 2005, the Documents Recordation Section recorded 11,874 documents covering more than 350,000 titles of works. During Fiscal Year 2005, the average year-end processing time rose from 33 days to 59 days, primarily due to major staffing and hiring considerations. Nevertheless, the processing time is almost four times faster than the average of 200 days three years earlier.



## Policy Decisions Regarding Recordation

In a notice of policy decision (70 FR 44049, August 1, 2005), the Copyright Office announced a policy clarifying practices regarding recordation of documents pertaining to copyrights. First, the notice clarified that a document will be indexed

only under the titles appearing in the executed document and that the informal practice that allowed a party to attach a list of titles to documents lacking titles for the purpose of indexing has been discontinued. Second, the notice established an interim practice governing the redaction of documents. The interim practice continues to permit some redaction of documents, but the notice cautioned against use of excessive redaction since constructive notice is limited to that which appears in the document as recorded. Moreover, the Copyright Office indicated its intent to seek public comment on its current regulations and practices regarding redactions and the possibility that, after a formal notice of inquiry, it may decide to eliminate entirely the possibility of redaction, or limit its application. Third, the notice announced the issuance of a revised Document Cover Sheet which, by design, eliminated requests for certain information that proved unreliable for indexing purposes.

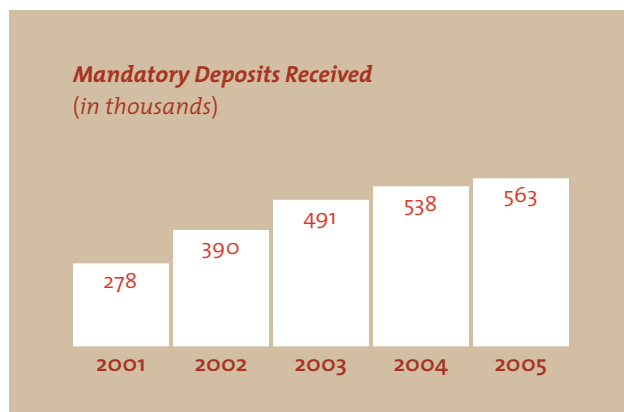
## ONLINE SERVICE PROVIDER DESIGNATIONS OF AGENT

The Office also processed online service providers' designations of agent. The Digital Millennium Copyright Act amended the law in 1998 to limit potential liability for monetary and injunctive relief for infringing uses of online service provider services. To take advantage of this limitation on liability, the service provider must designate an agent for notification of claims of infringement and provide contact information to the Copyright Office. These designations of agent are then made available to the public. The Office maintains a directory of agents on its website, one of the website's most-visited areas with more than 3.5 million hits in Fiscal Year 2005. During the year, the Office posted an additional 655 designations of agent to the website, for a total of 5,945.

## MANDATORY DEPOSIT

The mandatory deposit provision in §407 of the copyright law requires, with certain exceptions, that publishers deposit two copies of every copyrightable work published in the United States within three months of publication.

These copies are deposited with the Copyright Office for the use of the Library of Congress in its collections or for exchange or transfer to other libraries. The Copyright Acquisitions Division (CAD) acquires from publishers works needed for Library of Congress collections when those works have not been obtained as registration deposits or voluntary deposits sent in compliance with the mandatory deposit requirement. The Copyright Acquisitions Division encourages copyright owners to deposit or register works regularly and voluntarily immediately after publication; however, the copyright law authorizes the Register to issue demands for the required copies any time after publication.



CAD completed twenty-one publisher reviews and fifteen followup reviews, and made demands for 6,470 titles based on recommendations by CAD librarians and Library of Congress recommending officers and in response to Congressional requests. The Office referred two noncompliant publishers to the Department of Justice for legal action.

More than half of the copies of works the Office transferred to the Library of Congress for its use arrived under the mandatory deposit provisions of the copyright law. The value of these mandatory deposits was \$13,585,101 or 34 percent of the estimated value of all materials transferred to the Library.

## STATUTORY LICENSES AND OBLIGATIONS AND THE CARP SYSTEM

The Copyright Office oversees the statutory licenses and obligations in the copyright law. Congress created statutory copyright licenses to remove the burden of negotiating individual licenses from certain users and owners of copyrighted works.

Some of these statutory licenses require the users of the works to deposit royalty funds with the Copyright Office. Statutory licenses were included in the Copyright Act of 1976, Pub. L. No. 94-553, 90 Stat. 2541 (title 17 *USC*) and later laws amending it. The Licensing Division dates from 1978 when the Copyright Act of 1976 was implemented.

### **Licensing Division Responsibilities**

*To collect royalty fees from cable operators, satellite carriers, and importers and manufacturers of digital audio recording devices and media (DART);*

*To invest the royalty fees, minus operating costs, in interest-bearing securities with the U.S. Treasury for later distribution to copyright owners;*

*To record voluntary licensing agreements between copyright owners and specified users of their works; and*

*To examine licensing documents submitted for these statutory licenses to determine whether they meet the requirements of the law.*

Royalty rates and distribution determinations have been made by three different bodies that Congress created at different times: first, by the Copyright Royalty Tribunal, 1978–1993, an independent agency outside the Library of Congress; second, by Copyright Arbitration Royalty Panels (CARPs), 1993–2005, under the aegis of the Librarian of Congress; and third, by Copyright Royalty Judges, beginning in 2005, also under the aegis of the Librarian of Congress. A description of the Copyright Royalty Distribution and Reform Act of 2004 appears in the Reports and Legislation section of this report.

These licenses deal with secondary transmissions of radio and television programs by cable television systems; the making of ephemeral recordings; the noninteractive digital transmission of performances of sound recordings; the making and distributing of phonorecords of nondramatic musical works; the use of published nondramatic

musical, pictorial, graphic, and sculptural works and nondramatic literary works in connection with noncommercial broadcasting; secondary transmissions of superstations and network stations by satellite carriers for private home viewing; secondary transmissions by satellite carriers for local retransmissions; and the importation, manufacture, and distribution of digital audio recording devices and media.

The Licensing Division collected more than \$214 million in royalty payments during the fiscal year, almost entirely via electronic funds transfer (EFT). The division worked on developing options for electronic filing for cable Statements of Account (SA) to be tested in a pilot e-filing program, scheduled for Fiscal Year 2007. The

division also pursued several internal measures to create processing efficiencies in workflow and quicker public availability of completed SA documents.

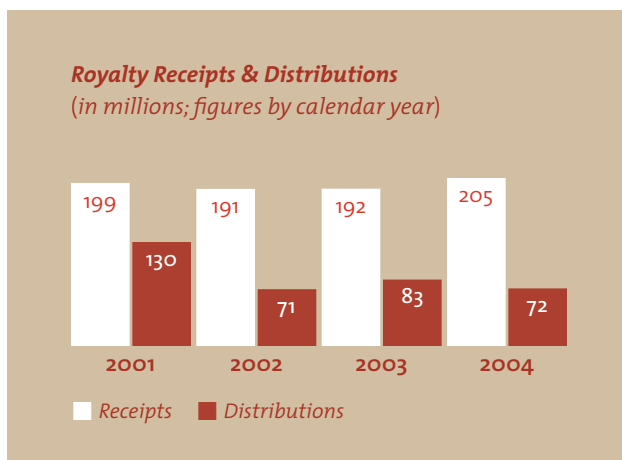
### Royalty Fee Distributions

The Copyright Office distributes royalties collected under §111, §119, and chapter 10 of the copyright law. These distributions are made as determined by agreements among claimants or by proceedings of the Copyright Arbitration Royalty Panels or the Copyright Royalty Judges.

In Fiscal Year 2005, the Office distributed royalties totaling \$39,843,260.50 in the following distributions:

- On June 23, 2005: a distribution totaling \$38,842,452.98 comprising distribution of the 2000 satellite royalties and the 2003 DART Copyright Owners Subfund.
- On August 4, 2005: a distribution totaling \$64,821.29 from the 2004 DART Nonfeatured Musicians and Nonfeatured Vocalists Subfunds.
- On September 1, 2005: a distribution of \$935,986.23 from the 2004 DART Copyright Owners Subfund.

Financial statements for royalty fees available for distribution in the cable and satellite statutory licenses and in the digital audio recording technology statutory obligation are compiled and audited on a calendar year basis as required by law. The total royalty receipts and disbursements shown in calendar year statements are therefore not the same as the fiscal year total. Calendar year 2004 financial statements are included in the appendices.



## Compulsory License Administration

Up to 2005, when the Copyright Royalty Distribution and Reform Act took effect, CARPs determined distribution of royalties collected by the Licensing Division for the cable and satellite licenses and for DART when copyright owners could not resolve controversies among themselves. CARPs also set and adjust royalty rates and set terms and conditions of payment. A CARP panel consists of three arbitrators.

During fiscal year 2005, the Copyright Office administered five CARP proceedings: three rate adjustment proceedings and two distribution proceedings. Of the three rate adjustment proceedings, two involved adjusting the rates paid by satellite carriers for the retransmission of over-the-air television broadcast stations under the §119 license, and the other involved the adjustment of rates paid by cable television systems for the retransmission of over-the-air broadcast stations under the §111 license. The two distribution proceedings dealt with the distribution of royalty fees paid by importers and manufacturers of digital audio recording devices and media who distributed those products in the United States during the period beginning January 1, 2002, and ending on December 31, 2003, in accordance with chapter 10 of the Copyright Act.

A summary of the proceedings conducted this fiscal year and updates on prior year distribution proceedings not yet concluded appears below.

## Rate Adjustments

### *Adjustment of Cable Statutory License Royalty Rates: Docket No. 2005-2 CARP*

The 2005 fiscal year was a window year for adjustment of the rates cable systems pay for the retransmission to their subscribers of over-the-air broadcast signals under §111. These rates are calculated as percentages of a cable system's individual gross receipts received from subscribers for receipt of broadcast signals. A cable system's individual gross receipts determine the applicable percentages.

The proceeding was initiated by the Copyright Office's receipt of two petitions from parties with a significant interest in the royalty rates. The copyright owners of sports programming (the Joint Sports Claimants) and the copyright owners of motion pictures and syndicated television series (the Program Suppliers) filed one petition, and the National Cable & Telecommunications Association (NCTA) filed the second. In response to the Joint Sports Claimants/Program Suppliers' petition and before receipt of the NCTA petition, the Library of Congress published a *Federal Register*



notice seeking comment on the former petition and directing interested parties to file a Notice of Intent to Participate in a Copyright Arbitration Royalty Panel (CARP) rate adjustment proceeding. The notice also designated a thirty-day period to enable the parties to negotiate a new rate schedule. At the end of the negotiation period, the Office received one agreement submitted jointly by representatives of all of the parties who filed notices of intent to participate in this proceeding. The agreement proposed amending the basic royalty rates and the gross receipt limitations, reflecting these changes in the regulations governing the filing of the statements of account, and making the changes effective beginning with the second semiannual accounting period of 2005. The agreement also noted that the syndex rates were not being adjusted for the new license period. In addition, the parties stated that they were unable to agree on whether or how to adjust the 3.75 percent rate but would continue their discussions and notify the Office at a later date as to whether they would seek such an adjustment.

Pursuant to the CARP rules, the Library published in the *Federal Register* the proposed adjustments to the percentages of gross receipts paid by the cable systems and the gross receipts limitations on July 20, 2005. The Copyright Office received no comments objecting to the proposed adjustments or Notices of Intent to Participate in a CARP proceeding. The parties to this proceeding also notified the Office that they would not seek an adjustment of the 3.75 percent rate. The Library was thus in a position to adopt the proposed agreement as final. The final regulations became effective as of July 1, 2005, which means that the new cable rates and the gross receipts limitations apply to the second accounting period of 2005 and thereafter. The notice adopting the final regulations will be published in the *Federal Register* in early Fiscal Year 2006.

*Rate Adjustment for the Satellite Carrier Compulsory License:*

*Docket Nos. 2004-9 CARP SRA (Analog) and 2005-4 CARP SRA (Digital)*

On December 8, 2004, the President signed into law the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA) (as part of the Consolidated Appropriations Act, 2005), Pub. L. No. 108-447, 118 Stat. 3394. SHVERA extends for an additional five years the statutory license for satellite carriers retransmitting over-the-air television broadcast stations to their subscribers, 17 *USC* §119, and makes a number of amendments to the license. One of the amendments to §119 sets forth a process for adjusting the royalty fees paid by satellite carriers for retransmitting analog

transmissions of television network stations and superstations, as well as a similar but separate process for setting royalty fee rates for retransmitting digital transmissions of television network stations and superstations. 17 USC §119(c)(1) and (2).

With regard to the rates for analog signals, the law directed the Librarian of Congress to publish a notice in the *Federal Register* requesting satellite carriers, distributors, and copyright owners to submit to the Copyright Office any voluntary agreements they had negotiated as to the adjustment of the rates for analog stations. The Library published this notice on December 30, 2004, and, pursuant to the statute, requested that any agreements be submitted no later than January 10, 2005. In response to that notice, the Office received one agreement, submitted jointly by the satellite carriers DirecTV, Inc. and EchoStar Satellite L.L.C., the copyright owners of motion pictures and syndicated television series represented by the Motion Picture Association of America, and the copyright owners of sports programming represented by the Office of the Commissioner of Baseball. SHVERA required the Library to publish the rates set forth in the voluntary agreement in order to afford parties an opportunity to object to the proposed rates. The Library published a notice of proposed rulemaking on January 26, 2005, to fulfill this requirement. No objections were received; consequently, the rates were adopted as final on April 6, 2005. These rates are for the license period January 1, 2005, through December 31, 2009.

With regard to the rates for digital signals, SHVERA adopted as the initial rates the rates set by the Librarian of Congress in 1997 for the retransmission of analog broadcast signals, reduced by 22.5 percent. The statute called for these rates to be adjusted in accordance with the procedure used to adjust the rates for analog signals outlined above. On March 8, 2005, the Copyright Office received a letter from EchoStar Satellite, L.L.C., DirecTV, Inc., Program Suppliers, and the Joint Sports Claimants requesting that the Office begin the process of setting the rates for the retransmission of digital broadcast stations signals so that rates for both digital and analog signals would be in place before the July 30, 2005, deadline for satellite carriers to pay royalties for the first accounting period of 2005. The Office granted the request, and, pursuant to the statute, published a notice in the *Federal Register* initiating a voluntary negotiation period and requesting the submission of any agreements reached during that period to be submitted no later than April 25, 2005.

As with the rates for analog signals, the Office received a single agreement, submitted jointly by the same satellite carriers and copyright owners who submitted

the agreement adjusting the rates for analog signals. The agreement proposed rates for the private home viewing of distant superstations and distant network stations for the 2005–2009 period, as well as the viewing of those signals for commercial establishments. The agreement specifies that distant superstations and network stations that are significantly viewed do not require a royalty payment, which is consistent with 17 USC §119(a)(3), as amended. In addition, the agreement proposed that, in the case of multicasting of digital superstations and network stations, each digital stream that is retransmitted by a satellite carrier must be paid for at the prescribed rate but no royalty payment is due for any program-related material contained on the stream within the meaning of *WGN v. United Video, Inc.*, 693 F.2d 622, 626 (7th Cir. 1982) and *Second Report and Order and First Order on Reconsideration in CS Doc. No. 98-120*, FCC 05-27 at ¶ 44 & n.158 (February 23, 2005).

In accordance with the statute, the Library published a notice of proposed rulemaking implementing the agreement on May 17, 2005. No objections were received; consequently, the rates were adopted as final on July 7, 2005. These rates are for the license period January 1, 2005, through December 31, 2009.

## Distribution Proceedings

### *Distribution of 2002 and 2003 Digital Audio Recording Royalty Funds:*

#### *Docket Nos. 2003-3 CARP DD 2002 and 2004-4 CARP DD 2003*

On November 30, 2004, the President signed into law the Copyright Royalty and Distribution Reform Act of 2004 (CRDRA) (Public Law 108-419, 118 Stat. 2341), which became effective on May 31, 2005. CRDRA phases out the Copyright Arbitration Royalty Panel (CARP) system and replaces it with three permanent Copyright Royalty Judges. Section 6(b)(1) of CRDRA allows the Library to terminate any CARP proceeding commenced before the date of its enactment. Any such proceeding may then be initiated with the Copyright Royalty Judges.

Before enactment of the CRDRA, the Copyright Office made a number of distributions of the 2002 and 2003 digital audio recording technology (DART) royalties under the CARP system. With regard to the 2002 DART distribution proceeding, the Office made a distribution of the 2002 royalties in the Sound Recordings Fund based on settlement agreements among the claimants to the Copyright Owners and Featured Recording Artists subfunds. The Office also

distributed to an Independent Administrator four percent of the 2002 Sound Recordings Fund, the amount allocated by law to the Nonfeatured Musicians and Nonfeatured Vocalists subfunds.

Similar distributions were made in the 2003 DART proceeding. The Office made two distributions of royalties of the 2003 Sound Recordings funds based on settlement agreements among the interested copyright parties, one for the royalties allocated to the Featured Recording Artists subfund and the other for fees allocated to the Copyright Owners subfund. As it did in the 2002 DART distribution proceeding, the Office made an administrative distribution of the funds in the Nonfeatured Musicians and Nonfeatured Vocalists subfunds.

However, the Office took no action to distribute the 2002 and 2003 Musical Works Funds and decided not to initiate any further proceedings to consider the distribution of these funds. Consequently, the Office elected to terminate these proceedings pursuant to §6(b)(1) of the CRDRA. On August 11, 2005, the Office published a notice in the *Federal Register* announcing the termination of these proceedings. The notice also announced that since the Office did not commence a proceeding to distribute the 2004 DART royalty funds, the Copyright Royalty Judges would assume jurisdiction of all proceedings regarding distribution of these funds on May 31, 2005.

*Termination of proceeding, Docket No. 2004-1 CARP DTRA, and current rates under the Digital Performance Right in Sound Recordings and Ephemeral Recordings Compulsory Licenses*

The Copyright Act requires that rates and payment terms for the statutory licenses governing the reproduction and public performance of sound recordings by means of digital audio transmissions be reconsidered every two years. As reported in FY 2004, on January 6, 2004, the Copyright Office announced the voluntary negotiation period to set rates and terms for the license period beginning January 1, 2005, and ending December 31, 2006. Interested parties proposed to the Office settlements concerning rates and terms applicable to eligible nonsubscription services, small commercial webcasters, and noncommercial webcasters for the new license period. However, before the Office could publish the proposed settlements for notice and comments, on November 30, 2004, the CRDRA was enacted.

In accordance with the Act, the Office published a notice in the *Federal Register* on February 8, 2005, terminating the proceeding initiated in January 2004 to set rates

and terms under §114(f)(2) and §112(e) for the 2005–2006 license period (70 FR 6736). The notice also announced that pursuant to the Act the rates and terms in effect on December 31, 2004, under §114(f)(2) and §112(e) for new subscription services, eligible nonsubscription services, and services exempt under §114(d)(1)(C)(iv) of the Copyright Act, and the rates and terms published in the *Federal Register* under the authority of the Small Webcaster Settlement Act of 2002, would remain in effect at least for 2005, or until they have been set under new procedures.

### Notices of Intent to Audit

DMX Music, Inc., Muzak LLC, and Music Choice are known as “preexisting subscription services,” meaning that they were in existence and were performing sound recordings by means of noninteractive audio-only subscription digital audio transmissions to the public for a fee on or before July 31, 1998. Pursuant to §260.5 of title 37 of the *Code of Federal Regulations*, any interested party may initiate an audit of any one of the three preexisting services by filing a notice of intent to audit a preexisting service with the Copyright Office and serving the notice of intent on the service to be audited. The Copyright Office is then required to publish in the *Federal Register* a notice announcing the interested party’s intent to conduct an audit within thirty days of receipt of the notice of intent to audit.

On December 21, 2004, SoundExchange, a collecting rights entity that the Librarian designated to collect and distribute royalty fee payments made under §114(d)(2) by the three preexisting services and, thus, an interested party, filed with the Copyright Office three notices of intent to audit the three preexisting subscription services for the purposes of verifying their statements of account for the years 2001–2002. SoundExchange later filed with the Office on February 16, 2005, a notice of intent to audit DMX Music, Inc., for the purpose of verifying its royalty payments for the years 2002–2004. The Office published these announcements in the *Federal Register* on January 19, 2005 (70 FR 3069) and March 11, 2005 (70 FR 12242).

### Claims Filed for Royalty Fees

The Copyright Office received and processed claims from copyright owners who are entitled to receive royalty fees generated from the use of their copyrighted works during calendar year 2004 under the terms of the DART compulsory license. In January and February of 2005, the Office received 129 claims for DART royalty fees. With the passage of the Copyright Royalty and Distribution Reform Act of 2004, the Copyright Royalty Judges assumed jurisdiction over cable, satellite and DART claims on May 31, 2005. As a result, cable and satellite claims for calendar year 2004 were filed with the Copyright Royalty Judges and not the Copyright Office.

[Regulations related to statutory licenses are listed in the Regulatory Activities portion of this report.]





The Register

# Regulatory activities, policy assistance, & litigation

*The United States Capitol  
as seen from the Ralph Waldo  
Emerson Collection in the  
Library's Jefferson Building*

## COPYRIGHT OFFICE REGULATIONS

The Register of Copyrights is authorized under 17 USC §702 to establish regulations for the administration of the copyright law. In addition to regulatory activities discussed elsewhere in this report, regulations issued during Fiscal Year 2005 included the following:

### Reconsideration Procedure

On December 28, 2004, the Copyright Office issued a final rule governing requests that the Office reconsider decisions to refuse registration (69 FR 77636). With a few modifications, the rule codifies the procedures that have governed these requests since the Office implemented them internally in 1995, by incorporating these practices specifically into the *Code of Federal Regulations*.

Under the new rule, as has been the practice, applicants for registration have two sequential opportunities to seek reconsideration of a Copyright Office decision to refuse registration. At the first level of reconsideration, the Copyright Office's Examining Division reviews its initial decision to refuse registration after considering the arguments advanced by the applicant. If not satisfied with the Office's decision at this level, the applicant can request a second and final reconsideration by the Review Board (formerly known as the Appeals Board). The Register of Copyrights, the General Counsel (or their respective designees) and a third member designated by the Register compose the Review Board.

The rule also addresses applicable deadlines and delivery requirements for requests for reconsideration. Moreover, it clarifies that the procedures for reconsideration apply to the Office's



refusals to register not only copyright claims, but also mask works and vessel hull design claims, and it changed the name of the Copyright Office “Board of Appeals” to the “Review Board.”

### Preregistration of Certain Unpublished Copyright Claims

On July 22, 2005, pursuant to the Artists’ Rights and Theft Prevention Act of 2005 (the ART Act), Title I of the Family Entertainment and Copyright Act of 2005, the Copyright Office proposed regulations for the preregistration of unpublished works that are being prepared for commercial distribution in classes of works that the Register of Copyrights determines have had a history of prerelease infringement (70 FR 42286). As part of this process, the Register must determine the classes of works eligible for preregistration based on whether they have had a history of infringement prior to authorized release and whether they meet the other statutory requirements. The initial proposed rule and a Supplemental Notice of Proposed Rulemaking (70 FR 44878, August 4, 2005) elicited 10 comments on the proposed classes and preregistration procedures, and 230 comments on the utility of employing the web browser that had been tested for filing preregistration forms in the Copyright Office, an issue which had been raised in the supplemental notice.

### Group Registration of Published Photographs

Copyright Office regulations permit group registration of certain photographs taken by an individual photographer in a calendar year. On March 28, 2005, the Copyright Office amended its final regulations governing such group registration to limit to 750 the number of photographs that may be identified on continuation sheets submitted with a single application form and filing fee (70 FR 15587). The amendments only affect registrations utilizing continuation sheets, and were implemented in response to the submission of a number of group registration applications containing many hundreds of continuation sheets with thousands of photographs, creating a tremendous administrative burden. The regulation continues to place no limit on the number of photographs that may be included in a single group registration when the applicant elects not to use continuation sheets and instead it requires the identification of the date of publication for each photograph on the deposit image and that the

applicant meet the other regulatory requirements for group registration of published photographs. The amended regulation also clarifies that the date of publication given for each photograph may be identified in a text file on a CD-ROM or DVD that contains the photographic images or on a list that accompanies the deposits and provides the publication date for each image.

### Acquisition and Deposit of Unpublished Audio and Audiovisual Transmission Programs

On October 26, 2004, the Copyright Office issued final regulations amending its rule governing the Library of Congress's authority to record unpublished transmission programs (69 FR 62411). The amended regulations extended the Library's authority to record television programs to include unpublished radio and other audio and audiovisual transmission programs. The Library of Congress may now record or demand unpublished radio transmission programs and unpublished cable, satellite, and Internet transmission programs. Copyright owners whose programs are recorded or demanded may use the recordings so acquired by the Library to satisfy the deposit requirements to register their copyright claims.

In response to comments, the Office further amended its rule to require the Library to maintain on its website, at [www.loc.gov/rr/record](http://www.loc.gov/rr/record) for audio recordings or [www.loc.gov/rr/mopic](http://www.loc.gov/rr/mopic) for audiovisual recordings, a list of the transmission programs that it has recorded under this authority. The amended rule also requires the Library to add to this list the name of each audio, cable, satellite, or Internet transmission program that it has recorded and to do so within fourteen days of recording the program. Copyright owners may use this list to challenge the Library's presumption that a particular transmission program has been fixed and is unpublished, and to receive notice that a recording made by the Library is available for use as a deposit for registration.

### Registration of Claims to Copyright: New Format for Certain Copyright Registration Certificates

On January 21, 2005, the Copyright Office announced a policy decision modifying the format of copyright registration certificates issued for certain works under a pilot project designed to test reengineered business processes (70 FR 3231; see also



70 FR 9111). A work processed in the reengineered system is issued a registration certificate generated from data stored in an electronic information base, and while the content is almost identical to the current certificate based on the paper application, its general appearance is significantly different. Until the Office adds other classes to its information technology pilot programs, certificates in the new format will be issued only for motion pictures and other audiovisual works registered in class PA.

### Inspection and Copying of Records

On December 6, 2004, the Copyright Office issued a technical amendment to its regulations governing the inspection and copying of public records (69 FR 70377). The amended rule removes from the regulatory text the hours of direct public use of computers intended to access the automated equivalent of portions of the in-process files in the Records Maintenance Unit of the Copyright Office. This change allowed the Office to adopt new, reduced hours to allow (1) ample time for the small staff in the Unit to both open and close the public area each day and adequately serve the public and (2) sufficient time for public use of the files. For administrative reasons, the new hours of operation have not been included in the regulation. Hours are posted on the Copyright Office website under the “About” tab.

### Statements of Account

On July 1, 2005, the Copyright Office amended its regulations to require cable operators, satellite carriers, and manufacturers and importers of digital audio recording technology and media to file with the Licensing Division an additional copy of their statements of account together with the original statement (70 FR 38022). The change will eliminate the costs associated with creating a separate copy for the public records and it will expedite the creation of the public file.

### Filing of Claims for Cable, Satellite, and DART Royalties

Copyright owners must file claims with the Copyright Office each year in order to claim and receive a portion of the royalties collected the preceding calendar year under 17 USC §111, §119, and chapter 10. The Office’s regulations require that a claimant either

mail or hand deliver its claim to the Office during the prescribed filing period. Each year since 2002, however, the Office had waived its mailing requirement and offered several additional means for delivering a cable, satellite, or DART claim to the Office, including online submission of the claim, or in the case of DART claims, facsimile submission. The Office took this action in response to a disruption in mail delivery caused by the threat of anthrax-contaminated mail and the continued delays in receipt of mail due to the diversion of mail to an off-site location for screening.

Because of the continuing delays in mail receipt and other problems associated with untimely filings of claims by mail, the Office, on October 18, 2004, published a notice in the *Federal Register* proposing to amend its regulations governing the filing of claims to allow for the online submission of these claims as well as requiring that claimants filing their claims by mail or hand delivery use forms created by the Office (69 FR 61325). For the sake of uniformity, the proposed amendments eliminated the option for filing DART claims by facsimile transmission. The Office also proposed the use of a Personal Identification Number (PIN), to be selected by the claimant either before the requisite filing period or at the time of filing, to replace the current signature requirement.

Although the comments supported revising the rules to provide for electronic filing of royalty claims, the comments received by the Office raised several issues concerning the proposed PIN system. Specifically, commenters questioned the effectiveness of such a system in deterring the filing of fraudulent claims and argued that a PIN system would be unduly burdensome on claimants. In light of the controversy over the use of a PIN system, the Office was unable to issue final regulations before the next filing period for DART claims. Consequently, on November 29, 2004, the Office again waived its mailing requirement for the filing of DART claims, offering the same alternative means of filing: either online submission or facsimile transmission (69 FR 69288).

Immediately thereafter, on November 30, 2004, the President signed into law the Copyright Royalty and Distribution Reform Act of 2004, which phases out the Copyright Arbitration Royalty Panel (CARP) system and replaces it with three permanent Copyright Royalty Judges (the Copyright Royalty Board). Consequently, the Copyright Royalty Board will carry out the functions previously performed by the CARPs, including the taking in and processing of claims to royalty fees collected under §111, §119, and chapter 10 of the copyright law. Jurisdiction over such claims

passed to the CRJs on May 31, 2005, the effective date of the Act, and shortly thereafter, the Copyright Royalty Board issued its own regulations governing the filing of claims. Consequently, on July 1, 2005, the Office published a notice in the *Federal Register* removing from the CARP rules the sections pertaining to the filing of cable, satellite, and DART claims (70 FR 38022).

### Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

In 2004, the Copyright Office published interim regulations governing the records that must be maintained and delivered by digital audio services making use of the statutory licenses in §112 and §114 of the copyright law, the type and nature of those records, and the requirements for serving notices of use of the licenses (69 FR 11515). These regulations specified the content of the records, but they did not include regulations on format and delivery.

In the continuing effort to adopt regulations on these exceedingly controversial issues, the Office published a further notice of proposed rulemaking on April 27, 2005, seeking another round of comments from the interested parties on format and delivery (70 FR 21704). However, pursuant to the Copyright Royalty and Distribution Reform Act of 2004, authority over this matter passed to the Copyright Royalty Judges on May 31, 2005, before the Office could act on the comments received in response to the notice. Since that time, the Copyright Royalty Board has considered the comments filed in response to the April 2005 notice and has sought supplemental comment on the proper format and delivery requirements. It will publish appropriate regulations at a future date.

### Reports of Use of Sound Recordings Under Statutory License

On May 9, 2005, the Copyright Office adopted amendments to its rules governing the filing of reports of use of sound recordings by preexisting subscription services at the joint request of the preexisting subscription services and the organizations that represent the copyright owners of the sound recordings (70 FR 24309). The amended rules require the preexisting subscription services to report the copyright notice, i.e., the “P” line, accompanying the record albums or sound recordings, where it is available; extend the period for filing the reports of use so that the filing period

covers the payment periods; and make technical changes to clarify that these filing requirements apply only to preexisting subscription services.

### Cost of Living Adjustment for Performance of Musical Compositions by Colleges and Universities

Each year, the Copyright Office adjusts the rates for the public performance of musical compositions in the repertoires of the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music Inc. (BMI) and the Society of European Stage Authors and Composers (SESAC) by public broadcasting entities licensed to colleges and universities to reflect the change in the Consumer Price Index. On December 1, 2004, the Office published the new rates, adjusting for a 3.2 percent cost of living increase (69 FR 69822). The revised rates became effective on January 1, 2005.

[Docket numbers and dates of *Federal Register* documents issued during Fiscal Year 2005 are listed in an appendix of this report.]

## REPORTS AND LEGISLATION

The Copyright Office provides reliable advice and testimony to Congress on copyright matters and proposed copyright legislation, and undertakes studies and provides authoritative reports on current issues affecting copyright.

### Hearings

The Register of Copyrights testified in four congressional hearings during Fiscal Year 2005. The subjects of these hearings were:

*Before the Subcommittee on Courts, the Internet, and Intellectual Property of the House Committee on the Judiciary —*

- Music licensing reform on June 21, 2005

*Before the Senate Committee on the Judiciary —*



- Protecting copyright and innovation in a post-*Grokster* world on September 28, 2005

*Before the Subcommittee on Intellectual Property of the Senate Committee on the Judiciary —*

- Piracy of intellectual property on May 25, 2005
- Music licensing reform on July 12, 2005

### *Piracy of Intellectual Property*

The Register testified on May 25, 2005, before the Subcommittee on Intellectual Property of the Senate Judiciary Committee on the issue of “piracy of intellectual property.” The Register stated that piracy is one of the most enduring copyright problems and that Congress should strive to reduce piracy to the lowest levels possible.

The Copyright Office has a long history of working toward this goal. The Copyright Office has used several avenues to assist in the strengthening of international copyright treaties and the laws of countries. The Register stressed that better laws are not, in themselves, a guarantee against piracy. There must also be effective enforcement of those laws. Treaties, no matter how well negotiated, cannot compel enforcement.

The Register explained the current state of affairs regarding international copyright, in particular the lax enforcement in countries like China and Russia, which contributes to piracy problems. Criminal syndicates carry out piracy for profit in factories throughout China, southeast Asia, Russia, and elsewhere, churning out millions of copies of copyrighted works, sometimes before they are even released by the rightsholders.

International piracy poses a tremendous threat to the prosperity of one of America’s most vibrant economic sectors: its creative industries. Accordingly, it deserves consistent and long-term attention. While it is not realistic to expect to eliminate all piracy, the United States can continue to improve the global situation.

### *Music Licensing Reform: Modernization of §115 of the Copyright Act*

Continuing discussions from previous fiscal years, the Copyright Office assisted Congress in exploring whether §115 of the Copyright Act should be modernized and how best to accomplish such modernization. Section 115 provides a compulsory license

to reproduce and distribute musical works as embodied in phonorecords, including digital phonorecord deliveries. The Copyright Office believes that §115, as currently written, is insufficient to address, and in some cases incompatible with, the practical realities of online music distribution and the continuing fight against piracy. Most of the music industry agrees. On March 8, 2005, representatives of record labels, songwriters, music publishers, and digital music service providers testified before the House Subcommittee on Courts, the Internet, and Intellectual Property in an oversight hearing on §115 to inform the Subcommittee on the progress of private sector negotiations to remedy perceived deficiencies in the licensing processes. The Chairman of the Subcommittee then asked the Copyright Office to explore in model legislation the possibility of permitting music rights organizations to license on a consolidated basis both the public performance right of a musical work as well as its reproduction and distribution rights. The Register of Copyrights testified about this potential avenue for reform before the Subcommittee on June 21, 2005.

Subsequently, the Register of Copyrights met with numerous members of the music industry to learn about their specific concerns regarding potential reform. The Senate Judiciary Committee's Subcommittee on Intellectual Property then asked the Register of Copyrights, as well as members from various sectors of the music industry, to testify before it on July 12, 2005, as to the need for reform and the possible avenues for achieving it. The Register presented several possible solutions, including a blanket statutory license for digital phonorecord deliveries.

The result of the hearings and meetings described above is a substantial agreement that §115 should be modernized to reflect the needs and realities of the online world. However, substantial contention exists as to how such modernization should be structured and implemented. This debate will continue at least into the next fiscal year. No relevant legislation was introduced in Fiscal Year 2005.

### *Protecting Copyright and Innovation in a Post-Grokster World*

On September 28, 2005, the Senate Judiciary Committee held a hearing on “protecting copyright and innovation in a post-*Grokster* world,” examining legal and policy issues in the wake of the Supreme Court's June 27 decision in *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.* The Register of Copyrights testified, calling the *Grokster* decision “one of the most significant developments in copyright law in the past twenty years.” She said the decision clarified that those who offer products and services in a way that

induces others to engage in copyright infringement can be held secondarily liable for that infringement, thereby encouraging productive negotiations and agreements within the music industry that will ultimately benefit the music consumer by making it easier to obtain music online legitimately. She noted that subsequent U.S. and foreign court decisions demonstrate a growing acceptance of the *Grokster* ruling that those who induce infringement can be held responsible for what they have unleashed and that the ruling had also helped to raise the public consciousness as to the legal status of unauthorized peer-to-peer file-sharing of copyrighted works. While she did not believe that there was an immediate need for legislation to clarify the rules regarding secondary liability, she repeated the theme of her July 12, 2005, testimony that the opportunity presented to the music industry by *Grokster* will be squandered if Congress does not modernize the existing §115 statutory licensing regime so that legitimate music services can take advantage of the blow the Court has struck against illegitimate offerings.

## Other Legislation

### *Copyright Royalty and Distribution Reform Act of 2004*

On November 30, 2004, the President signed the Copyright Royalty and Distribution Reform Act of 2004, Pub. L. No. 108-419. This law, which became effective on May 31, 2005, phases out the Copyright Arbitration Royalty Panels (CARPs) and replaces them with a new Library program, which is independent of the Copyright Office, and employs three full-time Copyright Royalty Judges (CRJs) and three staff. This organization is known as the Copyright Royalty Board. The Librarian of Congress, after consultation with the Register of Copyrights, appoints the CRJs.

As with the Copyright Royalty Tribunal and the CARPs which preceded the CRJ program, the primary responsibilities of the CRJs are to set rates and terms for the various statutory licenses contained in the Copyright Act and determine distribution of royalty fees collected by the Copyright Office pursuant to certain of these licenses. The CRJs have the additional responsibility to promulgate notice and recordkeeping regulations to administer some of the statutory licenses.

The Register of Copyrights retains a role in the process, which requires that the CRJs seek a written determination from the Register on any novel question of copyright law and permits the CRJs, on their own initiative or at the request of

the parties, to seek a written determination from the Register on other material questions of substantive law. In such cases, the CRJs are to apply the Register's legal interpretation. The Register may also review the final determinations of the CRJs for legal error in the resolution of material questions of substantive law. Although the Register's review may not affect the result in a particular proceeding, conclusions of substantive law made in the Register's review shall be binding as precedent upon the Copyright Royalty Judges in subsequent proceedings.

Unlike the CARP program, which had required the participants in a ratesetting proceeding to pay the arbitrators directly for their service, the CRJ program will be funded fully through appropriations with funds acquired from the royalty pools. As a result, cost will no longer be a barrier to participation in the process. Moreover, the use of CRJs, who serve for extended periods, will ensure consistent decision-making and preserve institutional expertise.

The Act also changed the process for adjusting royalty rates. The Act requires the CRJs to reconsider the rates and terms for the statutory licenses every five years, establishes a new procedure for considering voluntary agreements that would set rates and terms applicable to all users, grants the CRJs continuing jurisdiction to correct any technical or clerical errors or to modify any terms in response to unforeseen circumstances, and establishes new rules of discovery for rate setting proceedings.

The first rate adjustment proceeding under the new Act, to establish rates and terms for the statutory license which provide for the public performance of sound recordings by means of a digital audio transmission, commenced with the publication of a *Federal Register* notice on February 16, 2005. The notice published under the transitional provisions of the Act requests petitions to participate in this rate setting proceeding and explains the structure of the proceeding under the CRJs. The transition provisions also allow the Library of Congress to retain jurisdiction over any proceeding that had commenced prior to the effective date of the Act. The Copyright Office is reviewing the status of each such proceeding and intends to make any further distributions possible or conclude any necessary rate adjustments before terminating these proceedings as near as possible to the end of calendar year 2005.

### *Family Entertainment and Copyright Act of 2005*

On April 27, 2005, the President signed into law the Family Entertainment and Copyright Act (FECA), Pub. L. No. 109-9. The Office assisted in the drafting of many parts of FECA. FECA consists of four titles.

Title I, the Artists' Rights and Theft Prevention Act of 2005, or "ART Act," amends the criminal code (title 18 of the *United States Code*) to add a new §2319B, which makes it a criminal offense to knowingly film or record a motion picture or other audiovisual work from a performance of such work in a motion picture exhibition facility (such as a movie theater). It also amends 17 *USC* §506, governing criminal copyright infringement, to add a new ground for imposing criminal liability: the distribution of a work being prepared for commercial distribution, by making it available on a computer network accessible to members of the public, when the person making the distribution knows or should know that the work is intended for commercial distribution. Additionally, it provides for preregistration of certain unpublished works that are being prepared for commercial distribution. Preregistration satisfies the requirements of 17 *USC* §411(a) and §412, permitting a copyright owner to file a suit for prerelease infringement of a preregistered work and to obtain an award of statutory damages and attorneys fees for a work preregistered prior to the commencement of infringement, so long as the copyright owner registers the work within three months after the work has been first published or within one month after the copyright owner has learned of the infringement, whichever is earlier. Preregistration is to be made available for classes of works that the Register of Copyrights determines have had a history of infringement prior to authorized commercial distribution.

Title II of FECA is the Family Movie Act, which amends 17 *USC* §110 to add a new exemption from liability for copyright infringement. This exemption covers instances when a member of a private household makes imperceptible limited portions of audio or video content of an authorized copy of a motion picture, e.g. by skipping (i.e., fast-forwarding) past certain audiovisual content or muting portions of the soundtrack. It also applies when a company creates or provides a computer program or other technology that enables such activity and that is designed and marketed to be used by a member of a private household for this purpose, provided the computer program or other technology does not create a fixed copy of the altered version of the motion picture. This legislation was enacted to protect the makers and users of software products that permit persons viewing motion pictures on DVD players to omit from

the performances portions of the audio and/or video contents of the motion pictures that they believe would be offensive.

Title III of FECA consists of the National Film Preservation Act of 2005, which reauthorizes the activities of the Library of Congress's National Film Preservation Board, and the National Film Preservation Foundation Reauthorization Act of 2005, which reauthorizes the activities of the National Film Preservation Foundation.

Title IV of FECA, the Preservation of Orphan Works Act, amends §108 of the Copyright Act to extend the exemption in §108(h) to include all types of works. The §108(h) exemption permits libraries and archives to reproduce, distribute, display, or perform in facsimile or digital form a copy or phonorecord of a work for purposes of preservation, scholarship, or research during the last twenty years of copyright protection if the work is not subject to normal commercial exploitation and a copy or phonorecord of the work cannot be obtained at a reasonable price. Previously, the exemption did not apply to musical works, pictorial, graphic or sculptural works, or motion pictures or other audiovisual works other than audiovisual works dealing with news. The Register had urged Congress to correct this exclusion, which was not what the framers of the §108(h) exemption had intended.

#### *Individuals with Disabilities Education Improvement Act of 2004*

On December 3, 2004, the President signed the Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446. While this legislation, which reauthorized the Individuals with Disabilities Education Act, primarily addresses issues having nothing to do with copyright, §306 of the Act amended §121 of the Copyright Act, which permits reproduction and distribution of copies of nondramatic literary works in special formats for use by blind or other persons with disabilities. Among other things, the new law instituted a program requiring publishers of print instructional materials, such as textbooks for elementary and secondary schools, to give electronic versions of those textbooks to a new National Instructional Materials Access Center (NIMAC). The amendment to §121, which was drafted with the assistance of the Copyright Office, exempts publishers from liability for providing those electronic files to NIMAC, defines "print instructional materials" as "printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by a State educational agency or local educational agency for use by students in the

classroom,” and modified the existing definition in §121 of “specialized formats,” but only with respect to print educational materials, to include large print formats when such materials are distributed exclusively for use by blind or other persons with disabilities.

#### *Satellite Home Viewer Extension and Reauthorization Act of 2004*

On December 8, 2004, the President signed the Satellite Home Viewer Extension and Reauthorization Act (SHVERA), a part of the Consolidated Appropriations Act of 2005, Pub.L. No. 108-447. SHVERA extends by five years the statutory license for satellite carriers retransmitting over-the-air television broadcast signals to their subscribers, as well as making several changes to the license to provide greater parity between it and the statutory license applicable to cable television operators. Specifically, SHVERA allows satellite companies to offer certain “significantly viewed” distant signals, thus, in effect, expanding the programming satellite companies can offer their subscribers. Staff of the Copyright Office actively assisted the Congress in drafting this legislation.

#### *Intellectual Property Protection and Courts Act of 2004*

In December 2004, the Intellectual Property Protection and Courts Act of 2004 became law. Copyright Office staff, primarily from the Office of Policy and International Affairs, worked with both Senate and House staff for over 2 years to achieve this result. The Act amends 18 USC §2318 to prohibit trafficking in an “illicit authentication feature.” That term is defined as an authentication feature that: (1) without the authorization of the respective copyright owner, has been tampered with or altered so as to facilitate the reproduction or distribution of a phonorecord, a copy of a computer program, a copy of a motion picture or other audiovisual work, or documentation or packaging, in violation of the rights of the copyright owner; (2) is genuine, but has been distributed, or is intended for distribution, without the authorization of the respective copyright owner; or (3) appears to be genuine but is not. The law also authorizes a copyright owner who is injured by a violation of this Act or is threatened with injury to bring a civil action in an appropriate U.S. district court, and sets forth remedies for violations.



### *Study on Statutory Licensing*

The Satellite Home Viewer Extension and Reauthorization Act of 2004, Pub. L. No. 108-447, requires the Copyright Office to conduct two studies regarding statutory licensing and report its findings to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate. The first, due at the end of 2005, requires the Office to examine select portions of §119 of the copyright law to determine what, if any, effects it and §122 have had on copyright owners whose programming is retransmitted by satellite carriers. To obtain public comment from the interested parties on these issues, the Office published a notice of inquiry in the *Federal Register*, 70 FR 39343 (July 7, 2005), seeking public input and is in the process of evaluating the submitted comments in preparation of completing the study.

The second study, which requires an examination and consideration of the entire copyright statutory licensing scheme for retransmission of over-the-air broadcast stations, is due in 2008.

### *Study on Orphan Works*

In January 2005, Senators Orrin Hatch, then chairman, and Patrick Leahy, ranking member of the Senate Judiciary Committee, requested that the Copyright Office prepare a study of the problems raised when users are unable to identify and locate the copyright owner of a work they wish to use. There are concerns that the uncertainty surrounding ownership of such works might needlessly discourage subsequent creators and users from incorporating such works in new creative efforts, or from making such works available to the public. The Office began the study with a request for written comments from all interested parties. The Office asked specifically whether there are compelling concerns raised by orphan works that merit a legislative, regulatory or other solution, and if so, what type of solution could effectively address these concerns without conflicting with the legitimate interests of authors and right holders. The Office collected over 800 written comments from the public and held roundtable meetings with dozens of interested parties in the summer of 2005 in both Washington, DC, and Berkeley, California, as part of an effort to produce a report and recommendations on orphan works in January 2006.

### *Section 108 Study Group*

The Copyright Office and the Library of Congress National Digital Information Infrastructure and Preservation Program (NDIIPP) are sponsoring this group, which began its work in mid-2005. The Section 108 Study Group is a select committee of public-sector and private-sector copyright experts charged with updating for the digital world the copyright law's balance between the rights of creators and copyright owners and the needs of libraries and archives.

Digital technologies are radically transforming how copyrighted works are created and disseminated, and also how libraries and archives preserve and make those works available. Cultural heritage institutions, in carrying forward their missions, have begun to acquire and incorporate large quantities of “born digital” works (those created in digital form) into their holdings to ensure the continuing availability of those works to future generations.

Yet it has been observed that §108 of the copyright law, which provides limited exceptions for libraries and archives, does not adequately address many of the issues unique to digital media, either from the perspective of rights owners or libraries and archives.

The Section 108 Study Group is reexamining the exceptions and limitations applicable to libraries and archives under the copyright law, specifically in light of the changes wrought by digital media. The group is studying how §108 may need to be amended to address the relevant issues and concerns of libraries and archives, as well as creators and other copyright holders. The group will provide findings and recommendations on how to revise the copyright law in order to ensure an appropriate balance among the interests of creators and other copyright holders, libraries and archives in a manner that best serves the national interest. The findings and recommendations will be submitted by mid-2006 to the Librarian of Congress.

## INTERNATIONAL ACTIVITIES

The Copyright Office undertakes international copyright activities by offering advice to Congress on compliance with multilateral agreements, such as the Berne Convention for the Protection of Literary and Artistic Works, and by working with executive branch agencies to promote copyright principles and protection worldwide.

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

The Copyright Office continued to work in tandem with executive branch agencies on international matters, particularly with the United States Trade Representative (USTR), the Patent and Trademark Office (USPTO), and the Departments of State and Commerce.

The Office participated in numerous multilateral, regional, and bilateral negotiations in FY 2005. International affairs staff were part of the U.S. delegation in a meeting of the World Intellectual Property Organization (WIPO) Standing Committee on Copyright and Related Rights considering issues related to a possible treaty on the protection of broadcasting organizations, as well as regional consultations on such protection in Kenya and Belgium. The Copyright Office also participated in other copyright-related meetings at WIPO headquarters in Geneva, such as the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, and various meetings related to the “Development Agenda” considering how WIPO should address issues related to the role of intellectual property in developing countries.

Copyright Office staff were instrumental in drafting and negotiating the intellectual property provisions of bilateral Free Trade Agreements (FTAs) between the United States and Oman and Thailand, as well as several multilateral agreements, including with a group of Andean nations. Staff also provided technical assistance in the implementation of various FTA obligations related to copyright, for example, with Australia and Morocco.

Staff actively participated in the U.S. delegation to the World Summit on the Information Society, the first phase of which was held in Geneva in 2003, and the second phase of which will take place in Tunis in November 2005. Staff likewise were part of the U.S. delegations to various meetings at UNESCO, including meetings on

*The Copyright Office's international activities advance the economic health of the United States by promoting adherence to copyright protections that ensure compensation to American creators, thereby encouraging the creation and dissemination of works to the public throughout the world.*

the Convention on Cultural Diversity, the Intergovernmental Committee on Copyright and Related Rights, and the Intergovernmental Committee on the Rome Convention.

Throughout the year, staff actively participated in numerous additional bilateral negotiations and consultations with dozens of countries around the world, including those held with Brazil, Canada, China, Japan, Oman, Paraguay, Poland, Russia, South Korea, Taiwan, Thailand, Ukraine, and the United Arab Emirates, on issues ranging from enforcement to copyright law revision. For USTR, staff additionally provided assistance to nations such as Brazil, Ecuador, Egypt, Iraq, Jamaica, Japan, Mongolia, Nigeria, Norway, Paraguay, the Philippines, Qatar, Sierra Leone, Trinidad and Tobago, and Tunisia in their World Trade Organization accession processes and provided responses regarding U.S. copyright law and policy to the WTO Trade Policy Review queries.

The Copyright Office sent representatives to the interagency Special 301 Committee, which evaluates the adequacy and effectiveness of intellectual property protection and enforcement throughout the world. This annual process, established under U.S. trade law, is one of the tools used by the U.S. government to improve global protection for U.S. authors, inventors, and other holders of intellectual property rights.

The Office also promotes the international protection of copyrights by engaging foreign government officials in training sessions, educational conferences, and meetings. The Copyright Office conducts or participates in a range of intellectual property training to assist countries to comply with international agreements and to enforce their provisions. Such training is in the areas of awareness of international standards and the U.S. legal and regulatory environment, U.S. copyright law, legal reform, and statutory drafting assistance.

Among the Office's responsibilities is engaging in the public debate about copyright and educating the public about copyright law. To this end, staff gave presentations and participated in a number of international conferences on copyright.

In May 2005, the Register of Copyrights gave two presentations at a program of the External University of Colombia in Bogotá, on "the social function of copyright" and "global copyright issues resulting from new technologies."

At the invitation of the State Department Speakers Program, the Register attended the Fourth German–American Copyright Law Summit in Potsdam, Germany, from August 30 to September 3, 2005. She spoke on recently enacted copyright legislation in the United States and the licensing of online uses and online music services in the United States.

For five days beginning September 8, the Register gave six speeches and two press interviews in Brazil as part of the State Department Speakers Program. She made a presentation at the National Library of Brazil on the challenges of digital technology to copyright law. At SENAC University in Sao Paulo, the Register participated in a two-day seminar on intellectual property for 350 representatives of the academic, library, media, publishing, and author communities. At the seminar the Register made a major presentation on copyright and digital issues, and participated in a panel discussion of protection of databases and access to digital information. In Brasilia, the Register conducted two sessions for 300 members of the Brazilian Congress, staff, and guests.

On September 18–21, 2005, the Register attended the Congress of the Association Littéraire et Artistique Internationale in Paris, the subject of which was “exploring sources of copyright.” The Register was also a member of the U.S. delegation at the September 2005 meeting of the Assemblies of the Member States of WIPO in Geneva.

Other staff appearances included the WIPO Asia-Pacific Regional Symposium on Digital Copyright Issues in New Delhi, India, where staff presented papers on copyright legislation in the United States and implementation of the WIPO Internet Treaties; a presentation at a conference in Ottawa among Canadian officials and professors on legislative efforts in the United States to address copyright infringement on peer-to-peer services; discussion of “developments before national copyright offices” at the annual meeting of the Intellectual Property Institute of Canada; “developments in U.S. copyright law” at a program on current developments in U.K., European, U.S., and international copyright law in London; presentations in New York at the Fordham University International Intellectual Property Conference and Symposium on Asian Intellectual Property Issues; and presentations in Geneva, Switzerland, at the WIPO Symposium on intermediary liability on the United States experience with online service provider liability. In addition to these presentations, staff met on a regular basis throughout the year with scores of foreign officials and visitors interested in learning about the U.S. copyright system and exchanging information about topics of mutual concern. Other staff also gave presentations on copyright to State Department economic officers in Brussels and Hong Kong.

Although there were no International Copyright Institute symposia in FY 2005, the Office hosted an eight-member delegation of Egyptian copyright officials and journalists in February as part of USAID-sponsored study tours on “copyright in the United States: principles and practices.”

## LITIGATION

Although the Office does not enforce the provisions of title 17, it may be involved in litigation in several ways. It can choose to intervene under §411(a) in a case where registration has been refused. It may be sued under the Administrative Procedure Act. It may be asked to participate in litigation by assisting in the preparation of an *amicus curiae* brief in support of a particular position; by assisting the Department of Justice in defending a particular action; or by asking the Justice Department to bring a suit under §407 to compel the deposit of copies of the best edition of a work.

The Office was involved in several cases where the Office was a party, and it continued to respond to requests for assistance from the Department of Justice relating to copyright litigation.

### *MGM v. Grokster*

The Copyright Office assisted the Solicitor General's Office in drafting the government's brief and in preparing the Solicitor General for oral argument before the Supreme Court. This case represents one of the most significant developments in copyright law in the past two decades. The case raised the question of whether a distributor of products or services could be shielded from secondary liability for copyright infringement simply by showing that its product or service was "capable" of substantial noninfringing uses, even if the predominant use of the product was for infringing purposes.

In 1984, the Supreme Court had held, in *Sony Corp. of Am. v. Universal City Studios, Inc.*, that the manufacturer of a VCR could not be found liable solely on the basis of distribution of a product that was capable of substantial noninfringing use. Relying on the *Sony* decision, the U.S. Court of Appeals for the Ninth Circuit ruled that the *Sony* decision precluded the imposition of liability against peer-to-peer software manufacturers, because their programs were capable of substantial noninfringing uses.

The United States government disagreed with the court of appeals' decision and filed an *amicus curiae* brief arguing that this case was different from *Sony*, and that the Ninth Circuit had misconstrued the *Sony* decision as a *per se* rule. The government argued that courts must examine all of the relevant facts to determine whether secondary liability should be imposed. The government argued that when the Ninth

Circuit misconstrued *Sony* as a *per se* rule, the court failed to consider critical facts. Alternatively, the government argued, liability could be predicated on the defendants' active inducement of infringement by the users of their software.

On June 27, 2005, the Supreme Court reversed the Ninth Circuit and remanded the case for further findings of fact. The Court found that the Ninth Circuit misconstrued the *Sony* decision when it failed to consider evidence that the distributor of the product or services induced infringement by users. The Court held that secondary liability for copyright infringement may be established by proving that a distributor of products or services induced others to engage in copyright infringement.

### *Illinois Tool Works v. Independent Ink*

The Copyright Office assisted the Solicitor General's Office in drafting the government's *amicus curiae* brief to the Supreme Court in support of the petitioners. The case raises the question of whether, in an action under §1 of the Sherman Act, an antitrust plaintiff alleging improper tying of a patented product or copyrighted work to another product must prove that the defendant has "appreciable market power" in the tying product market or whether market power is presumed based solely on the existence of a patent or copyright on the tying product.

In the specific case before the Court, Illinois Tool Works is a manufacturer of a patented ink jet printhead, a patented ink container, and a nonpatented ink specially formulated for use in its patented printhead system. Independent Ink is a distributor and supplier of printer ink and printer products, and the plaintiff in an antitrust tying claim against Illinois Tool Works. Independent Ink brought the antitrust claim against Illinois Tool Works for conditioning use of its patented product on use of its nonpatented ink. Independent Ink offered no proof of market power in the printhead market, but rather relied on a presumption of market power based on Illinois Tool Works' ownership of a patent.

Although a series of Supreme Court precedents have stated that there is a presumption of market power in tying cases where the owner of the tying product is the owner of a patent or copyright, the U.S. government has not relied on this presumption in antitrust enforcement actions. The government argued in its brief that no presumption should exist, but rather an antitrust plaintiff should be required to establish market power in the tying product market.



The Supreme Court granted *certiorari* on June 20, 2005. The government filed its *amicus* brief on August 4. Oral arguments will be heard on November 29, 2005.

### *Recording Industry Association of America, Inc. v. Charter Communications, Inc.*

The Recording Industry Association of America, Inc. (RIAA) sought an order to compel Charter Communications, an online service provider, to comply with subpoenas to identify subscribers who allegedly infringed issued pursuant to 17 USC §512(h). On November 17, 2003, the United States District Court for the Eastern District of Missouri issued an order granting the RIAA's request. Charter appealed to the United States Court of Appeals for the Eighth Circuit.

The government entered the case as an intervener and *amicus curiae* to defend the applicability of §512(h) to “mere conduit” online service providers covered by §512(a) of the Copyright Act and to defend the constitutionality of §512(h). The Copyright Office assisted the Department of Justice in presenting the U.S. government's position.

On January 4, 2005, the Court of Appeals reversed the district court and held that §512(h) does not allow a copyright owner to request a subpoena for an online service provider which merely acts as a conduit for data transferred between two internet users, and adopted the reasoning of the United States Court of Appeals for the District of Columbia Circuit in *Recording Industry Association of America, Inc. v. Charter Communications, Inc.*, 351 F.3d 1229 (D.C. Cir. 2003), *cert. denied*, 160 L. Ed. 2d 222, 125 S. Ct. 309 (2004). The Eighth Circuit found no need to reach the constitutional arguments.

### *Southco v. Kanebridge*

This case involved a claim that individual part numbers for fasteners are protected by copyright. In 2000, the Office assisted the Department of Justice in preparing an *amicus curiae* brief urging a panel of the Third Circuit that individual part numbers cannot be copyrighted. That panel agreed, reversing a grant of a preliminary injunction, and remanded the case to the district court for further proceedings. The district court then granted summary judgment in favor of the defendant, despite the plaintiff's submission of a new declaration purporting to show the creativity involved in the assignment

of the part numbers. On appeal early in 2003, a different panel of the Third Circuit distinguished the earlier panel's decision and held that the new declaration could support a finding of copyrightability in the part numbers, reversing the district court's decision. The entire court of appeals then granted rehearing of the case *en banc*. The Office again assisted the Justice Department in preparing an *amicus* brief in support of the defendant, reiterating the position that individual part numbers are not copyrightable.

On December 3, 2004, the court of appeals issued its opinion, holding that the part numbers are not protected by copyright and affirming the summary judgment for the defendant. The court, noting that "Southco does not assert any claim of copyright in its numbering system, but instead focuses on the part numbers themselves," held that the part numbers did not meet copyright's originality requirement because they were not sufficiently creative, each number being "rigidly dictated by the rules of the Southco system." The court also concluded that the part numbers "are analogous to short phrases or the titles of works" and gave deference to the Office's longstanding practice of denying registration to words and short phrases.

#### *Metro-Goldwyn-Mayer Studios, Inc. v. Peters*

#### *Universal City Studios, LLP v. Peters*

As reported in Fiscal Year 2004, the United States District Court for the District of Columbia, in separate opinions, granted the Copyright Office's motions for summary judgment, upholding the Office's rejection of the cable and satellite claims filed by Metro-Goldwyn-Mayer Studios, Inc. (MGM) and Universal City Studios LLP (Universal), respectively, for their shares of the compulsory royalty fees collected in 2000 due to the studios' failure to file their claims on a timely basis in accordance with the Office's regulations. MGM and Universal each appealed the district court's decisions to the United States Court of Appeals for the District of Columbia Circuit. MGM and Universal argued, as they had before the district court, that the Register's denial of their requests for a waiver was arbitrary and capricious as well as an abuse of discretion because, they asserted, the Office had not consistently enforced its regulations regarding timely filing. MGM also argued that the Office had incorrectly interpreted its regulations regarding timely submission of claims. Finally, both studios contended that the Office violated due process by refusing to accept any evidence, other than a stamped postal receipt, that their claims were mailed in July.

The case was argued on February 17, 2005, and the court issued its decision on April 8, 2005, affirming the district court's decision in each case that the Register's rejection of their claims was not arbitrary, capricious, or an abuse of discretion. The court also found "no basis on which to set aside the Office's reading of the pertinent regulations to bar the studios' claims as untimely." Finally, the court dismissed as "entirely unpersuasive" the studios' arguments that the Office had violated their due process rights.

### *Program Suppliers v. Librarian of Congress*

As reported in Fiscal Year 2004, the Motion Picture Association of America (MPAA), on behalf of Program Suppliers (copyright owners of motion pictures and syndicated television series), and the Public Broadcasting Service (PBS), on behalf of copyright owners of public television programming, each sought review, in the United States Court of Appeals for the District of Columbia Circuit, of the Librarian's decision setting forth the distribution of royalty fees collected under the §111 cable statutory license for calendar year 1998 and 1999.

The MPAA's appeal centered on the Librarian's acceptance of the Copyright Arbitration Royalty Panel's (CARP) decision to rely solely on an economic study conducted by Bortz Media, Inc., which values programming based on cable operators' perceptions of its value, and to disavow reliance on an opposing economic study conducted by Nielsen Media Research, Inc., which values programming based on viewing. The MPAA argued that this decision violated the statutory scheme, inexplicably departed from precedent, and occurred without sufficient notice to the parties. PBS argued that the Bortz study was not the proper methodology to use in assessing whether circumstances had changed since 1992 (the most recent year for which a distribution determination had been made) to affect the relative market value of public television programming. Moreover, PBS contended that the CARP misapplied the Bortz survey when assessing the relative market value of public television programming.

Oral argument was held on April 8, 2005, and the Court issued a decision on May 31, 2005, upholding in full the Librarian's determination.

### *Beethoven.com v. Librarian of Congress*

On July 8, 2002, the Librarian announced a final rule in the *Federal Register* setting copyright license rates for eligible nonsubscription transmissions (webcasters) and transmissions by new subscription services made by persons who operate under the statutory license that provides for public performances of sound recordings by means of digital audio transmissions. Three separate groups challenged the final rule in the United States Court of Appeals for the District of Columbia Circuit. One group consisted of small webcasters who did not participate in the CARP proceeding but who nevertheless sought to petition for review of the decision or, in the alternative, to intervene in order to challenge the rates set by the Librarian. This group also argued that the CARP process itself violated their rights to due process and freedom of expression because it excluded small webcasters who could not afford to pay the costs of the arbitrators. The two remaining groups divided along ownership/user lines. The copyright owners argued that the Librarian's failure to consider adequately certain past agreements resulted in rates that were arbitrarily low; whereas the users took the opposite position, maintaining that the Librarian's rates were too high because they did not reflect actual market value.

The case was argued on October 13, 2004, and the court issued its decision on January 14, 2005. In making its decision, the court first considered the case of the Nonparticipants-Interveners and found that they had no standing to appeal directly the Librarian's decision. The statutory language limits appeals to "any aggrieved party," and the court held that, consistent with prior decisions construing such language, the use of the word "party" refers only to parties who participated in the agency proceeding giving rise to the order, and that had Congress intended to extend the right to others it would have said so, using the phrase, "person aggrieved," instead of restricting the right to appeal to an aggrieved party. The court also denied the Nonparticipants-Interveners' petition to intervene because they sought to raise new issues for the first time on appeal.

As to those issues properly before the court, the court reviewed the Librarian's determination under the deferential standard of review adopted by Congress and found no reversible error.

### *Luck's Music Library, Inc. v. Gonzalez*

As is related in the Annual Report for Fiscal Year 2004, the United States District Court for the District of Columbia dismissed this declaratory judgment action against the Attorney General and the Register of Copyrights in June 2004. The action claimed that §514 of the Uruguay Round Agreement Act, which restored copyrights in foreign works (as codified in 17 USC §104A), violated the Copyright Clause of the Constitution and the First Amendment.

On May 24, 2005, the United States Court of Appeals for the District of Columbia affirmed the dismissal. *Luck's Music Library, Inc., v. Gonzalez*, 407 F.3d 1262. The plaintiffs's appeal raised only the Copyright Clause issue, and the court of appeals rejected the plaintiffs' argument that the Copyright Clause forbids Congress from removing works from the public domain.

### *Golan v. Gonzalez*

As is reported in the Annual Report for Fiscal Year 2004, this case filed against the Attorney General and the Register of Copyrights in the United States District Court for the District of Colorado is similar to the *Luck's Music* case. Plaintiffs challenged the Sonny Bono Copyright Term Extension Act and the restoration provisions of the Uruguay Round Agreements Act (URAA). The term extension claims were dismissed in 2004. On April 20, 2005, the court granted summary judgment dismissing the remaining claims, concluding that Congress acted within its authority and had a rational basis for enacting §514 of the Uruguay Round Agreement Act, and that §514 did not violate the First Amendment and was not unconstitutionally retroactive. The plaintiffs have appealed the decision to the United States Court of Appeals for the Tenth Circuit.

### *Kahle v. Ashcroft*

As reported in the Annual Report for Fiscal Year 2004, this lawsuit in the United States District Court for the Northern District of California challenges the constitutionality of four copyright statutes: the 1976 Copyright Act, the Berne Convention Implementation Act, the Copyright Renewal Act of 1992, and the Sonny Bono Copyright Term Extension Act, arguing that, among other things, the removal of

various formalities such as copyright notice and renewal violate the First Amendment and the Copyright Clause of the Constitution. On November 19, 2004, the court granted the government's motion to dismiss for failure to state a claim upon which relief may be granted, rejecting all of the plaintiffs' constitutional challenges. The plaintiffs are appealing that decision to the United States Court of Appeals for the Ninth Circuit.

### *Kay Berry v. Taylor Gifts*

The United States Court of Appeals for the Third Circuit requested the views of the United States government on registration issues in connection with an appeal from an order granting summary judgment to the defendant in this copyright infringement suit. The case involved infringement of a "garden rock," a fabricated rock on which a public domain poem was inscribed, and which had appeared in a catalog containing images of over one hundred garden rocks. The plaintiff had submitted the catalog as the deposit accompanying an application for registration of "Garden Accent Rocks," describing the nature of the work as "[s]culptural works with design and text," and the Office issued a certificate of registration.

The court of appeals sought the government's views on two questions: (1) whether Kay Berry properly registered a copyright in each of its Garden Accent Rocks by filing a single registration statement and a catalog of its products, and (2) whether 37 CFR §202.3(b)(3) provides an avenue for group registration of sculptural works. The General Counsel's Office worked closely with the Civil Division of the Department of Justice in preparing a letter brief in response to the court's questions. The letter brief explained that (1) The Copyright Office has a longstanding practice of issuing a single certificate of registration to cover multiple copyrightable works where the multiple works are first published together, but such a registration covers only copyrightable material first published in the deposited work; and (2) 37 CFR §202.3(b)(3) does not provide an avenue for "group registration," but does permit registration for multiple works that are first published together in a single unit of publication. Although the Office wanted to advise the court of appeals that it did not consider the particular garden rock at issue to be copyrightable, the Solicitor General's Office declined to so advise the court in the letter brief because the court had not expressly asked that question.

On August 30, 2005, the court of appeals issued its opinion. *Kay Berry, Inc. v. Taylor Gifts, Inc.*, 421 F.3d 199. The court concluded that the garden rocks were not registrable under the Office’s group registration provisions, but were registrable as a “single work” because they were included in a single unit of publication. The court also concluded that the particular garden rock at issue in the case was copyrightable, and reversed the judgment of the district court.

### *Coach, Inc. v. Peters*

In 2003, Coach Inc. sued the Register of Copyrights in the Southern District of New York under the Administrative Procedure Act (APA) to challenge a decision by the Copyright Office Review Board denying registration to Coach’s “Signature CC Fabric Design.” The design consists of two C’s facing each other and two C’s facing the same direction, repeated symmetrically. The Examining Division examined the work and refused registration twice, and in a final reconsideration, the Review Board refused registration, having determined that the designs did not contain the required amount of original pictorial or graphic authorship.

On cross-motions for summary judgment, the district court granted the Register’s motion and denied Coach’s motion on September 6, 2005. The court determined that under the APA the Copyright Office decision could be overturned only if “the Register fails to intelligibly account for her ruling or if her decision is not the product of reasoned decisionmaking.” [Internal quotations omitted.] The court observed that the Register’s decision “is explained in a thorough, well-reasoned and well-articulated letter.” After analyzing plaintiff’s assertions, the court concluded that Coach had “failed to overcome the substantial deference that the Court must afford to the Register’s decision denying registration because Coach had not shown that the Register acted arbitrarily and capriciously.”

### *New York Mercantile Exchange v. Intercontinental Exchange*

In this copyright infringement suit, the plaintiff commodities exchange sued a competitor for using its “settlement prices” for oil to clear transactions involving futures contracts, alleging that such use constituted copyright infringement. After being advised by the Examining Division that applications for copyright registration



expressly claiming authorship in settlement prices would be rejected, the plaintiff withdrew those applications and submitted new applications alleging compilation authorship. However, the subsequent infringement suit alleged infringement of the individual prices. At the hearing on the defendant's summary judgment motion, it was suggested that the Register of Copyrights should have been notified of the lawsuit and given an opportunity to intervene under 17 *USC* §411(a) because the Examining Division had indicated it would not register the individual settlement prices. Accordingly, the Register was given notice under §411(a). The Office declined to intervene, but instead filed a Statement of Interest pursuant to 28 *USC* §517, which permits the Department of Justice "to attend to the interests of the United States in a suit pending in a court of the United States." The Statement of Interest asserted that individual settlement prices are not copyrightable, but represent facts or ideas rather than copyrightable expression and are uncopyrightable short phrases. The district court agreed, granting summary judgment to the defendant on September 29, 2005.

### *Darden v. Peters*

On September 7, 2004, William Darden brought suit against the Register of Copyrights in the U.S. District Court for the Eastern District of North Carolina for refusing to register his copyright claims in two works. Darden asked the district court to order the Copyright Office to register his works, alleging violations under the Administrative Procedure Act. On May 17, 2002, Darden had submitted applications to the Copyright Office to register copyright claims in two works; one consisted of pages from a website and the second, in a separate application for registration, consisted of maps that appeared in those pages. The Office refused registration on the basis that Darden's claim in the website pages was for the formats in the pages, which is not copyrightable subject matter, and that Darden's maps do not have sufficient creativity to be copyrightable. On June 6, 2005, the district court held a hearing on the Register's motion for summary judgment, but it has not yet issued a final ruling.

### *United States v. Martignon*

On September 24, 2004, the U.S. District Court for the Southern District of New York dismissed an indictment against Jean Martignon, who was accused of violating 18 *USC*

§2319A, the antbootlegging statute that makes it unlawful to record a live musical performance without the consent of the performer or to distribute or offer to distribute copies or phonorecords of such recordings. Martignon was accused of selling such recordings at his record store. The district court held that §2319A is unconstitutional because it violates the Copyright Clause by granting exclusive rights to non-“Writings” (live performances) for an unlimited time and because it violates the First Amendment by altering the “traditional contours of copyright protection” in a speech-inhibiting manner by granting perpetual protection to unfixed performances. The General Counsel’s Office assisted the Department of Justice in its appeal defending the constitutionality of §2319A, which was argued in June 2005. The appeal was still pending at the end of the fiscal year.

### *Kiss Catalog, Ltd. v. Passport International Productions, Inc*

On December 21, 2004, the United States District Court for the Central District of California held that 17 USC §1101, the civil analog to 18 USC §2319A, is unconstitutional. The court agreed with the reasoning of the court in *Martignon* that perpetual protection for live performances violates the “limited Times” provision of the Copyright Clause and that Congress did not have the power to avoid that result by relying on its powers under the Commerce Clause. Although the court was required under 28 USC §2403(a) to give the Attorney General notice that the constitutionality of §1101 was being challenged, the court had failed to do so. The General Counsel’s Office assisted the Department of Justice in its decision to intervene in the case to seek reconsideration of the order and in its preparation of papers in support of reconsideration. At the end of the year, the motion for reconsideration was still pending.

### *Lowe’s Companies, Inc. v. Chevro International, Inc.*

The Copyright Office was notified by Chevro International, Inc. that it had filed counterclaims against Lowe’s Companies, Inc. in the United States District Court for the Western District of North Carolina alleging copyright infringement of works that the Copyright Office had denied registration. This case involved the copying of ornamental pot hangers, and, although the Copyright Office had no particular interest in the litigation on the merits, Chevro requested the court to declare that the works were copyrightable and to direct the Register of Copyrights to issue a certificate of

registration. Based on this requested relief, the Register decided to intervene to defend her decision to deny registration. Shortly after the Register entered the litigation, the defendants decided to settle the litigation and dismiss the claim against the Register.

### *Planesi v. Peters*

Ronald Planesi, representing himself, filed suit in the United States District Court for the Eastern District of California in 2003, seeking relief against other private parties for alleged copyright and trademark infringement but also naming the Register of Copyrights as a defendant and asking the court to invalidate Copyright Office rules and regulations that deny copyright registration for individual words. Planesi claimed copyright protection for the word “Kingmaster,” which was the name he gave to a board game that he had created, and alleged that defendants who used the word “Kingmaster” in connection with their fishing rods and reels, fishing tournaments, and other products and services infringed his copyright. The district court dismissed the complaint in September 2004, accepting the magistrate judge’s conclusion that the “words and short phrases” doctrine barred Planesi’s copyright claim.

On August 15, 2005, the United States Court of Appeals for the Ninth Circuit affirmed the dismissal in an unpublished opinion, concluding that “[t]he district court properly dismissed Planesi’s copyright infringement claim because the one-word name of Planesi’s board game is not entitled to copyright protection.”

### *Aharonian v. Gonzales*

The Office of the General Counsel is assisting the Civil Division of the U.S. Department of Justice in defending the constitutionality of certain portions of the Copyright Act relating to copyright protection for computer programs. Specifically, Gregory Aharonian, a *pro se* plaintiff, claims: (1) the Copyright Act is unconstitutionally vague because it fails to differentiate with mathematical precision an uncopyrightable idea from copyrightable expression and fails to define the terms “concept” and “computer program”; (2) computer programs cannot be afforded both patent and copyright protection; and (3) Congress failed to satisfy the requirements of bicameralism and presentment in affording copyright protection to computer programs. In essence, the plaintiff seeks to overturn the applicability of copyright law to computer programs.

The plaintiff filed this action in December 2004 in the United States District Court for the Northern District of California. The U.S. government filed a motion to dismiss, or in the alternative for summary judgment, in June 2005. The government argues that the plaintiff lacks specific injury to confer standing, and the court lacks jurisdiction to decide the issues presented. The government further argues that the plaintiff's claims fail as a matter of law because the availability of copyright protection for computer programs has appropriately been long recognized by the courts and Congress. The court is scheduled to hear this motion on November 7, 2005. The Register of Copyrights has not been named as a defendant in this action.

### *Cooper v. Library of Congress*

The Office of the General Counsel assisted the U.S. Attorney's Office for the District of Columbia in defending the Copyright Office in litigation filed by a federal prisoner alleging that the Office failed to register a collection of unpublished songs. Copyright Office records revealed that the Copyright Office received but returned plaintiff's submission due to plaintiff's failure to pay the associated fee. On October 12, 2004, the United States District Court for the District of Columbia granted summary judgment and concluded that since the Register of Copyrights was following a statutory mandate in requiring the payment of the fee, the decision not to process the plaintiff's application was not an abuse of discretion. The court dismissed the case the following day.

### *Borset v. Copyright Arbitration Royalty Panels*

On August 4, 2005, Trudy Ann Borset, a *pro se* litigant, filed suit in the United States District Court for the Eastern District of Michigan challenging the Library's dismissal of her 2003 and 2004 DART claims to royalty fees allocated to the Copyright Owners Subfund. Borset, whose claims were dismissed for failure to provide adequate information that would identify her as the owner of the exclusive right to reproduce the identified sound recording, sought to have the court review her evidence *de novo* and make a ruling on what should be her share of the royalty fees.

The court, however, never reached the merits of the suit. Instead, it granted codefendant American Association of Recording Artists' motion to dismiss for lack of subject matter jurisdiction even before the government filed its answer to the

complaint. The court held that Congress had vested exclusive jurisdiction to appeal such decisions in the United States Court of Appeals for the District of Columbia Circuit and stated that if Ms. Borset wished to pursue this action, she would have to seek relief in that court.

### *Register of Copyrights v. Kenneth Hornak, dba Editorial Castilla La Vieja*

In a case concerning failure to deposit after a demand for mandatory deposit, a default judgment was entered in August 2005 in the sum of \$6,122.50 against defendant Hornak, the Philadelphia-based publisher of Spanish language dictionaries. The Copyright Acquisitions Division had demanded seven titles that were wanted by the Library for its collections. The defendant contested the right of the Copyright Office to demand deposit, but he failed to appear in court to defend his position. Under §407(d) of the copyright law, failure to deposit is punishable by a fine of not more than \$250 for each work, as well as the total retail price of the copies demanded.

### *Potential Copyright Office Intervention Pursuant to 17 USC §411(a)*

The Copyright Office continued to review all copyright cases in which the Register of Copyrights received notice of her right to intervene pursuant to 17 USC §411(a). Of the three cases received under §411(a), the Register chose to intervene in one case, *Lowe's Companies, Inc. v. Chevro International, Inc.*, which is discussed above.

### *Section 508 Notices*

Section 508 of the Copyright Act requires the clerks of the courts to send written notification to the Register of Copyrights of any action filed under the Copyright Act and of any final order or judgment issued thereon. The Office is collecting and reviewing data regarding the federal courts' compliance with §508's requirements. The Office will use such data to determine what changes should be made to this section, including the possibility of permitting electronic filing of §508 notices and the possibility of repealing the requirement. Staff attorneys will monitor the current practices for a one-year period, and plan to meet with the Administrative Office of the U.S. Courts to discuss any proposed changes.



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# Public information & education

*ABOVE: The 2005 Junior Fellows  
Summer Interns display "finds" from  
copyright deposits for Library staff.*

*BACKGROUND: One of the many  
boxes of copyright deposits the  
Intern Project examined.*



## cy responsible

As the agency responsible for administering provisions of the copyright law, the Copyright Office is well qualified to provide information on copyright law and its application. The Copyright Office provides copyright education to the public and responds to public information requests received by telephone, correspondence, or visits to the Office.

The Register and her staff spoke at more than seventy domestic symposia, conferences, and workshops on various aspects of copyright law and the intellectual property world's current challenges. These included two important annual symposia sponsored by the Copyright Society of the USA entitled "The Copyright Office Comes to California" and "The Copyright Office Comes to New York"; and a public workshop on "peer-to-peer file-sharing technology: consumer protection and competition issues" at the Federal Trade Commission headquarters in Washington, DC. International appearances are discussed in detail in the International Activities section of this report. A significant portion of these appearances were about the copyright issues posed by digital content, the Internet, and current technology.

### Copyright Office Website

The Copyright Office website served as a public face for the Copyright Office and continued to play a key role in disseminating information to the copyright community and to the general public. The website ([www.copyright.gov](http://www.copyright.gov)) makes available circulars, announcements, regulations, the copyright law and related material, all copyright application forms, and historical information on copyright. The website also provides the capability to search records of copyright registrations and recorded documents from 1978 to the present. Portions of the website and popular circulars are available in Spanish. The Office logged 29.5 million external hits on key pages of its website during the year—a 49 percent increase over the previous year. The public conducted almost 1.5 million searches of the Copyright Office registration database utilizing the Office website's search feature. The Spanish language pages attracted more than 34,000 hits.

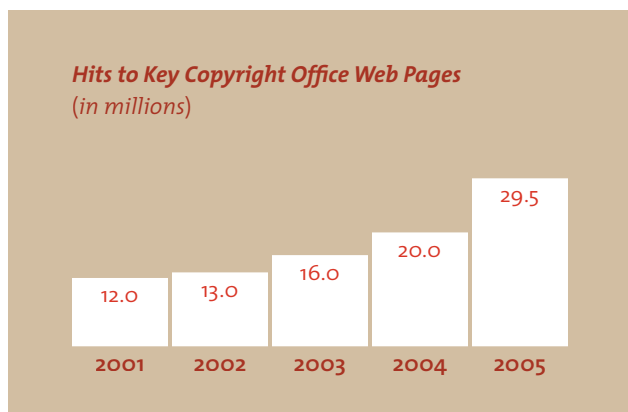


The website received numerous additions and enhancements throughout the year, including:

- A section devoted to historical documents, including biographies of former Registers of Copyright; annual reports dating back to 1930, with the intention to post earlier additional annual reports; previous enactments of copyright law; office reports; and copyright lore and articles that highlight notable events in the history of copyright and the Copyright Office.
- The addition of a “Top Searches” page that leads website visitors to the most popular pages on copyright issues and subjects.
- The initiation of RSS (Really Simple Syndication) feeds by which members of the public can receive instant notification of updates and revisions on pages that change frequently. This innovation proved to be highly successful and was well received by users. This effort enhanced the Office’s reputation as an early adopter of new technology.
- A broadening of the scope of documents relating to rulemakings and other timely copyright topics, such as orphan works, *MGM v. Grokster*, and the Satellite

Home Viewer Extension and Reauthorization Act of 2004 report.

- The Copyright Office became an integral component of LCNet, a new online gateway for members of Congress and their staff to focus the resources of the Library on their interests, research needs, and programs of note for their constituents.



### Other Public Information Activities

At the 2004 and 2005 National Book Festivals (both held during the fiscal year), public information staff provided information about copyright to the many authors and the general public in attendance. The Copyright Office also supported the Copyright

Awareness Week kick-off activities at the Library and worked to promote the message and goals of Copyright Awareness Week among members of Congress.

### Jefferson Patterson Junior Fellows Summer Intern Program

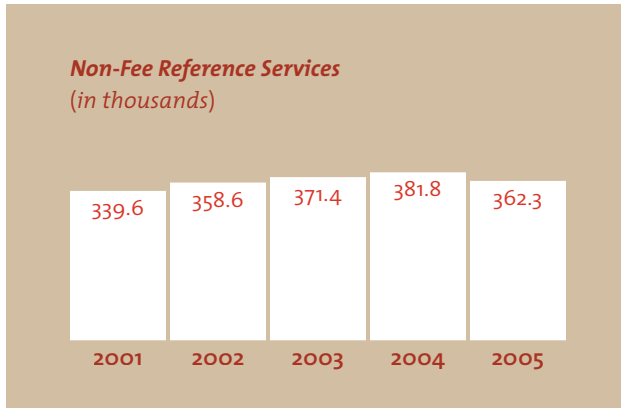
The Copyright Office served as cosponsor of the Librarian's 2005 Jefferson Patterson Junior Fellows Summer Intern Program, with an Office staff member serving as that program's project manager. The ten-week program was designed to enable the Library of Congress to locate and itemize works deposited for copyright that have grown in significance since they were originally registered. Twenty-one junior fellows were selected for this program, and two were assigned to work with Copyright Office deposits and records. The interns reviewed applications from 1898 through 1905 and Class C registrations from 1909 through 1935. The Copyright Office records yielded such finds as a 1904 photograph that depicts baseball Hall of Famers Napoleon Lajoie (Cleveland Blues) and Honus Wagner (Pittsburgh Pirates) shaking hands, a photograph of President McKinley taken hours before his assassination, and a rare collection of eighteen photographs of Native Americans from various tribes by F.A. Rinehart (1899).

### Copyright Records Project

The Copyright Office, with the Library's Office of Strategic Initiatives, pursued the Copyright Records Project to determine the feasibility of digitizing millions of Copyright Office paper records from 1790 to 1977 by conducting a business analysis and developing technical approaches for integrating the resulting digital records with post-1977 digital records. In 2005, the project team completed testing of vendor capabilities to digitize and index sample records. A comprehensive report of the project provided implementation strategies, cost estimates, and a recommendation for how the conversion could be handled in two stages. The first stage would cost approximately \$6,000,000 over a six-year period and would achieve the preservation goal and very basic online access. The second stage would add item level indexing, enhanced searching and retrieval, and would cost between \$5,000,000 and \$65,000,000 depending on the extent of fields indexed. The Copyright Office plans to submit a FY 2007 budget request for \$1 million to start the first stage.

## Public Information Outputs

In Fiscal Year 2005, the Office overall responded to 362,263 requests for direct reference services, including at least 56,872 email inquiries of all types. The Office as a whole assisted more than 21,500 public visitors.



The Public Information Section alone assisted 9,035 members of the public in person, taking in 15,400 registration applications and 1,358 documents for recordation. The section answered 104,836 telephone inquiries (with the average caller

waiting an average of 25 percent longer than the target of 90 seconds), 9,542 letter requests, and 34,443 email requests for information from the public.

The Copyright Office provides a free electronic newsletter that alerts subscribers to hearings, deadlines for comments, new and proposed regulations, new publications, and other copyright-related subjects. The Office electronically published 39 issues of *NewsNet* during the year to 5,406 subscribers.

In response to public requests, the Reference and Bibliography Section searched 18,801 titles and prepared 846 search reports (an increase of one-third in titles but a decreased number of reports). In addition, the section received 9,653 telephone calls and assisted 9,485 visitors to the Copyright Card Catalog.

The Clerical Support Unit responded to 24,568 letter requests, 40,568 telephone requests, and 19,588 email requests from the public for forms and other publications.

During the fiscal year, the Office processed 381,878 deposits, constituting some 7,052 cubic feet, for storage at the Deposit Copies Storage Unit in Landover, Maryland. This was a modest increase over the volume processed in Fiscal Year 2004. The unit transferred 5,178 cubic feet of records, consisting of unpublished deposits and registration applications, to other remote off-site storage facilities. The unit met its performance goal of retrieving requested deposits within one business day.

### Freedom of Information Act (FOIA)

The Office received and responded to 50 requests under the FOIA during the fiscal year. Although several of these requests sought information that is already publicly available or that is under the control of the Library of Congress, the Copyright Office responded to the requests or referred them to the Library as appropriate. The Office of the General Counsel also received one appeal from the Copyright Office's refusals to disclose particular protected information.

### Planned Storage Facility at Fort Meade

Efforts continued to provide a strong and economically viable case for congressional approval of funds to construct the proposed copyright deposit copy storage facility at Fort Meade, Maryland. During FY 2005, the Office explored possible alterations to the original design for this facility. The Architect of the Capitol and the Army Corps of Engineers continued to work closely with a private architectural firm to control costs while still meeting the program requirements of the project. Discussions included redesign so that the storage areas are single floor instead of multistory, with the height of storage shelving in these areas increasing from six to fifteen feet. While these moves will impact some work processes in this facility and require the purchase of some new equipment, the construction cost savings of these moves make them more than justified.

# Management

In fis



*Among the locations considered as potential off-site space for the Copyright Office during renovations are Crystal Plaza 5 and 6 in Arlington, Virginia.*



## REENGINEERING

In Fiscal Year 2005, the Copyright Office continued its multiyear effort to reengineer its principal public services. The reengineering effort began in FY 2000, and full implementation is scheduled for FY 2007. Reengineering objectives include: improving the efficiency and timeliness of Copyright Office public services; providing more services online; ensuring the prompt availability of new copyright records; providing better tracking of individual items in the workflow; and increasing the acquisition of digital works for Library of Congress collections. See the Copyright Office's annual reports for FY 2000 through FY 2004 for additional background on the project.

### Reengineering Planning and Management

The Office's implementation efforts in FY 2005 continued to focus on the three fronts that support the reengineered processes: organization, information technology (IT), and facilities. Each front has a coordinator who monitors and tracks program-related risks, issues, and change requests. Because the three fronts are interconnected and the Office must provide uninterrupted customer service, the Office will implement all fronts at one time when it switches to new processes in 2007. Before the full implementation, the Office is conducting pilot projects to test the new processes and IT systems.

The Reengineering Program Office (RPO) manages the overall effort. It held regular meetings with the front coordinators and a July 2005 two-day off-site planning session with managers and management support personnel to review all aspects of the reengineering project.

On June 16, 2005, the Information Technology Technical Review Board (ITTRB), an external consultative group of IT industry managers who are familiar with complex IT implementations in government organizations, met Copyright Office stakeholders and gave a positive assessment of the IT effort.

### **The Three Fronts Supporting Reengineered Processes**

*The Office has redesigned its core processes of registering claims, recording documents, answering requests, acquiring deposits for Library of Congress collections, processing licenses, receiving mail, and maintaining accounts. Final implementation requires completion of work on three fronts:*

**Organization:** *Development of a revised organizational structure centered on the new processes, with new job descriptions focused on the requirements of those processes*

**Information Technology:** *Development of a new integrated system to permit primarily electronic processing of copyright services*

**Facilities:** *Reconfiguration of Copyright Office space so that space relationships support movement of work through the processes*

### **Organization**

To implement its new processes, the Office will reorganize, and in some cases realign, its divisions and modify many of its position descriptions. In FY 2005, significant work was accomplished in the development of the proposed reorganization package, and a large number of position descriptions were revised or rewritten. At the end of the fiscal year, this major drafting effort was close to completion; the reorganization package will go to the Register of Copyrights for her review and approval in mid-FY 2006.

### **Information Technology (IT)**

In 2003, the Office selected SRA International, Inc., of Fairfax, Virginia, to design and develop its new systems infrastructure to integrate the functions currently performed by six nonintegrated major IT systems and dozens of smaller ones. The integrated IT infrastructure, to be known as eCO (Electronic

Copyright Office), will use Siebel customer relationship management (CRM) and case management software along with the ENCompass search engine from Endeavor Information Systems and Captiva optical character recognition software.

eCO will enable the Office to provide its services to the public online in a timely manner and manage its internal processes through a centralized case management



system. Users of Copyright Office services will be able to check the status of in-process service requests, supply additional information, and resolve discrepancies.

The system is being constructed in five “builds.” Build 1 included initial Siebel screen design and navigation. Build 2 included the Receive Mail and Register Claim requirements and the receipt and processing of electronic deposits, laying the groundwork for pilot processing of motion picture claims that began in February 2005. Builds 3 through 5 will add functionality for the remaining processes and processing of electronic claims receipts. The present CORDS system will be supplanted by eCO, available through the new Copyright Office web portal and business-to-government links for high volume remitters.

To ensure compliance with a new Library of Congress system security regulation and newly issued security directives, the Office established a Security Review Board (SRB) made up of Copyright staff and consultants. The SRB created a System Security Plan defining the security requirements, conducted a risk assessment, carried out a security compliance test and evaluation, and made recommendations to Copyright management about the security status of the software for the pilot. The Office thus obtained interim authorization to operate and moved the system to production.

Implementation of the new system’s full operating capability will occur in Fiscal Year 2007 upon completion of the facilities renovation in the Library of Congress Madison Building.

## Facilities

The Copyright Office completed essential steps toward facilities redesign to support a reconfiguration of the Office’s existing space to accommodate the new processes. The new design will support the new organization and proposed workflow using existing space on portions of three levels in the Madison Building.

The design is intended to implement architectural improvements and utilize space efficiently for adjacency and materials flow; create functional workspace with adequate furniture and lighting levels; create more secure facilities for in-process materials; consolidate public record viewing areas; and provide an aesthetically pleasing work environment.

In November 2004, the Library’s Facilities, Design, and Construction Office (FD&C) appointed a full-time project manager to oversee the renovation of Copyright

Office facilities, including master scheduling and design scheduling. The FD&C also assigned a full-time senior and junior designer to the project.

In late September 2005, the Library's Facilities Office received the final draft construction documents for the Office's existing space in the Madison Building. Following a final review and revisions, the documents will be signed, delivered, and ready for contractor bidding.

In September 2005, after an extensive search effort for temporary off-site lease space, the Library signed occupancy agreements with Government Services Administration (GSA) for space within two buildings in Crystal City, Virginia. GSA signed the lease with the landlord for one building and the other lease is expected to be signed in October 2005. FD&C developed and submitted design intent drawings to the architect who is developing the construction documents for the off-site rental space. Renovation of the rental space is scheduled to begin in January 2006, with the Office planning to move most of its operations to the temporary off-site space in May 2006. The remaining operations and staff will be relocated in swing space on Capitol Hill.

Moving a large part of the Copyright Office to Crystal City and back to the Madison Building a year later will be a huge undertaking. The Library hired a move management contractor (MMC) to plan, coordinate, and supervise the effective completion of the Office's relocation. The selection of the MMC signifies the beginning of the relocation process.

## Communication

The RPO continued to involve stakeholders in reengineering discussions and included Copyright Office management and staff at all levels. The Office communicated about reengineering implementation through *ReNews*, the reengineering newsletter; *ReNews Lite*, an email version used for quick updates; articles in *Copyright Notices*; the Reengineering Intranet website; and stakeholder meetings with staff and managers within the Office and in affected areas of Library of Congress service and support units. The Office encouraged staff to submit ideas and questions to a designated RPO email address.

The Office held regular monthly meetings with representatives of labor organizations to provide updates and discuss staff concerns regarding the temporary relocation of staff to off-site office space and other reengineering-related issues.

During FY 2005, the Office provided reengineering overviews and updates to House and Senate Appropriations Committees staff members, the Library's Executive Committee, American Intellectual Property Law Association members, and managers and staff throughout the Library of Congress and the Copyright Office.

## Training

The Office trained staff in the Motion Picture Pilot project and the Selection Pilot to test reengineered processes and systems.

In January 2005, Motion Picture Pilot staff attended change management training. Approximately thirty staff members completed the three-hour training workshop, delivered by a contractor representative. The training focused on preparing the staff for the changes in procedures and job roles in the Motion Picture pilot, as well as change involved with the reengineering effort as a whole. The objectives of the training included identification of historical factors for change, understanding the emotional responses to change, identification of resistance to change, and promotion of the success of change.

In September 2005, a group of managers and staff of the Examining and Cataloging Divisions received change management training. Based on feedback from attendees, the Office decided to shift the approach to training the remaining Copyright Office staff in change management using an online course offered through the Library's Center for Learning and Development.

In September 2005, all staff who work with Copyright Office catalog records received extensive training in the Voyager system. This training was done in anticipation of the conversion of copyright records from the current COPICS system to the Voyager system in early FY 2006. More information on the COPICS-to-Voyager conversion can be found in this chapter's section on information technology activities.

During the latter half of FY 2005, the Office completed extensive work to communicate about, and prepare for, a major cross-training program for examiners and catalogers scheduled to begin in October 2005. The purpose of the training is to prepare current catalogers and examiners to perform the combined duties of the proposed registration specialist position, which will include both examining and creation of registration records. The plan calls for a series of four-month training

sessions, in each of which a small group of catalogers will be trained in examining, and vice versa.

By the end of FY 2005, the position description and related documentation were completed for the new position of Training Officer for the Copyright Office. The position was posted at the end of the fiscal year and is expected to be filled in early FY 2006.

### Motion Picture Pilot

On February 14, 2005, the first pilot project testing the new processes and the eCO system began in the Motion Picture Unit. The examiners, catalogers, and technicians who participated in this pilot project processed real copyright registration claims and generated official certificates using most features of the new system. Staff processed fees and printed final certificates using current systems. New features tested in the pilot included scanning paper application forms upon receipt, and no use of paper forms or paper files of any kind in the rest of the process; using the eCO system for examining and cataloging; catalogers and examiners working as registration specialists to perform both cataloging and examining functions; viewing catalog records in MARC format; and tracking the location of deposits at every stage in the eCO system.

This pilot helped the Office to identify and resolve problems and document proposed future enhancements. The use of the current paper application Form PA created a limitation on the pilot project, since this form was not designed for Optical Character Recognition (OCR). The Office is studying possible alternatives to OCR.

### Electronic Deposit Pilot

The Office began a pilot project in the Copyright Acquisition Division to test the receipt of electronic deposits via the eCO system. On a voluntary basis, selected publishers submitted deposits in electronic formats via the Internet, attaching the deposit files to a simple online form that captured some basic bibliographic data. The pilot brought to light a number of technical issues, including the need for additional work with various web browsers and their operational and security features. Many of these had been resolved by the end of the fiscal year. This pilot was to prepare the way

for a future pilot in which registration claims, including online applications, filing fees, and deposits in electronic formats, will be received via the Internet.

### Selection Pilot

Selection is the process of deciding whether materials should be added to the Library of Congress collection. On March 14, 2005, a pilot project began in the Examining Division to test the new procedures under which Copyright Office staff members make selection decisions for routine categories of registration deposits. In FY 2003, Library Services and the Copyright Office approved the pilot proposal of the Selection Joint Issue Group, cochaired by a supervisor in the Literary Section of the Examining Division. The pilot implementation team began meeting in 2004 and continued its work in Fiscal Year 2005. Several copyright examiners received training and began making selection decisions that were reviewed by Library Services selection officials, devoting 1 day per week to the pilot. Deposits examined in the pilot include books from large trade publishers, other monographs, printed music, and audio compact discs.

### Electronic Registration Pilot

In the latter half of FY 2005, the Office prepared extensively for a pilot project to test the submission of copyright registration claims via the Internet. The pilot is scheduled to begin in FY 2006. Working groups met with the IT contractor to design the online application form and help text. At the beginning of the pilot, a limited number of copyright applicants, consisting of the current CORDS participants and selected motion picture applicants, will submit applications via the Internet. The pilot will also test the receipt and processing of both electronic and hard copy deposits with electronic applications, and the first use of the eCO system to process fees.

The pilot will also include support for filing of applications for preregistration (described in the first section of this report) and search capability for the Answer Request process area. Preregistration is to be a first release of functionality within this pilot and will include support for payment via *Pay.gov* or through existing deposit accounts. Electronic claim processing through the Copyright Office webpage portal will follow in the same pilot.

## Public Records of the Future

On March 14, 2005, the Register of Copyrights issued a memorandum entitled “Decisions Concerning the Recommendations of the OPAC Group on Copyright Public Records Requirements” in response to an earlier recommendation on the content of copyright records made by the Online Public Access Catalog (OPAC) Group, a task group developing the future public view of catalog records. In her memorandum, the Register emphasized the primacy of copyright facts in registration records and the importance of clearly distinguishing copyright facts from bibliographic information. The latter should be limited to information clearly necessary to identify the registered work and essential for searching using current automated search technology.

The Register directed that a working group deal with unresolved issues and develop detailed recommendations. The group forwarded recommendations to the Register for her review and approval, to be followed by the revision of rules for registration records.

## Revised Application Form

In FY 2005, a group worked on the design of a revised application form to replace the current Forms PA, SR, TX, and VA. The new form, intended to be easier for applicants to complete correctly and formatted for the best possible results with optical character recognition (OCR), did not have the expected benefits. The Office postponed a final decision on the form until after the large scale OCR test is completed.

## INFORMATION TECHNOLOGY ACTIVITIES

In addition to the IT work done as part of the reengineering program and outlined above, the following technology work was undertaken during the fiscal year:

### Migration of Copyright Registration Record Data to the Voyager Integrated Library System

For the past twenty-five years, the Copyright Office has used the Copyright Online Publication and Interactive Cataloging System (COPICS) on the Library’s mainframe computer to create and provide access to the historical records of copyright ownership.

The Library scheduled the mainframe computer for retirement at the end of September 2005. The Office decided to use Voyager, the same software used by the Library for the Integrated Library System, to maintain its records in the future.

The value of using Voyager is that it provides for much more flexible searching of Copyright Office records by keyword and for previously nonsearchable fields. Voyager will also hold all Copyright Office records in one database. Persons searching the Library's records will be using the same search tool for both bibliographic records and copyright records.

Through the continued collaboration of Library Services, the Catalog Distribution Service, CTO, and ITS, the Office made major progress on the conversion of Copyright Office records of registrations and recordations to the Voyager system. The Office refined specifications as anomalies were discovered in three rounds of conversion testing. The team involved in the migration worked primarily with a small database containing a representative sample of COPICS records. Starting in July, the team also had access to a fully loaded test database containing approximately twenty million converted copyright records.

In addition to the conversion effort, the Office designed a web-based online public access catalog to be used to search and display the records, and conducted training in use of the system for staff and several regular public users of Copyright records.

Copyright Office staff also collaborated with the information technology contractor to test the migration of data for registered claims from eCO into the Voyager database.

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

CORDS is the Copyright Office's current prototype system to receive and process digital applications and digital deposits of copyrighted works for electronic registration via the Internet from a limited number of cooperating participants who meet current criteria.

The Office processed nearly 20,000 electronic claims in textual works and musical compositions through the system in FY 2005. The Office halted further development and testing of the CORDS system to redirect time to the creation of a new IT systems infrastructure that will incorporate electronic submission. The knowledge and



experience gained from the CORDS system were applied towards the design and development of the new web-based system.

### Copyright Office In-process System (COINS)

The Office provided user support during the second year of processing under the new COINS system. Staff also collaborated with system users to design and develop several new reports. In addition to tracking claims and all other fee service requests, the system continued to be used to provide statistics on the workload and processing status. The eCO system will replace COINS when eCO goes into full production in 2007.

### Copyright Imaging System (CIS)

The current version of the imaging system completed its second full year of processing. The eCO system will replace CIS when eCO goes into full production in 2007.

## MANAGEMENT CONTROLS, SECURITY, BUDGET

### Management Controls

The Management Control Program ensures that Copyright Office programs are carried out in the most effective and economical manner possible and that assets are safeguarded.

During Fiscal Year 2005, the Office conducted Vulnerability Assessments on its twenty-four management control modules and decided to perform control reviews for eight modules. There were several management letter findings. There are seventeen findings that remain open from previous years, virtually all of which will be closed upon completion of the reengineering project.

## Security

The Office's initiatives stem from the Library of Congress Security Plan, security studies, and risk assessments. The Security Plan directly supports the Library's Strategic Plan and provides a comprehensive framework for Library-wide security-related initiatives, programs and activities.

In FY 2005, the Office reported a small number of items missing from the Copyright Office workflow process and a small cash fee loss. The Office tightened compliance with various procedures that provide reasonable assurance of security from loss.

## Budget

The Copyright Office annually receives three appropriations from Congress: Basic, Licensing, and CARP. Total Fiscal Year 2005 Copyright Office budget authority was \$53,182,112 with a full time equivalent (FTE) staff ceiling of 530.

The Basic appropriation (\$46,738,080) funds the majority of the Offices activities. The Licensing budget activities (\$3,731,904) and the CARP budget activities (\$2,712,128) were fully funded from user fees withdrawn from royalty pools. The Office's Basic fund received \$3.6 million in new offsetting collections authority to support the facilities activities within the Reengineering Program. The total Basic appropriation derives its funding from two revenue sources: net appropriations from the U.S. Treasury (\$19,972,928 in Fiscal Year 2005) and offsetting collections authority from user fees (\$26,765,152). At the end of the fiscal year, the Office had applied \$23,788,227 in user fees and \$99,720 in Deposit Account interest to the appropriation.

Respectfully submitted to the Librarian of Congress by

MARYBETH PETERS

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

# Appendices & tables



*The Copyright Card Catalog  
contains approximately  
45 million cards covering the  
period 1870 through 1977.*

## Register's Testimony to Congress

- Testimony before the Subcommittee on Intellectual Property of the Senate Committee on the Judiciary on piracy of intellectual property (May 25, 2005)
- Testimony before the Subcommittee on Courts, the Internet, and Intellectual Property of the House Committee on the Judiciary on music licensing reform (June 21, 2005)
- Testimony before the Subcommittee on Intellectual Property of the Senate Committee on the Judiciary on music licensing reform (July 12, 2005)
- Testimony before the Senate Committee on the Judiciary on protecting copyright and innovation in a post-*Grokster* world (September 28, 2005)

## Federal Register Documents Issued

- Notice and Recordkeeping for Use of Sound Recordings Under Statutory License: Correction (69 FR 59648, October 5, 2004)
- Filing of Claims for Cable, Satellite, and DART Royalties: Proposed rule (69 FR 61325, October 18, 2004)
- Acquisition and Deposit of Unpublished Audio and Audiovisual Transmission Programs: Final rule (69 FR 62411, October 26, 2004)
- Filing of Claims for DART Royalty Funds: Waiver of regulation (69 FR 69288, November 29, 2004)
- Cost of Living Adjustment for Performance of Musical Compositions by Colleges and Universities: Final rule (69 FR 69822, December 1, 2004)
- Inspection and Copying of Records: Final rule; technical amendment (69 FR 70377, December 6, 2004)
- Reconsideration Procedure: Final rule (69 FR 77636, December 28, 2004)
- Adjustment for the Satellite Carrier Compulsory License: Notice of voluntary negotiation period (69 FR 78482, December 30, 2004)
- Notice of Intent to Audit: Public notice (70 FR 3069, January 19, 2005)
- Registration of Claims to Copyright: New format for certain copyright registration certificates (70 FR 3231, January 21, 2005)
- Orphan Works: Notice of inquiry (70 FR 3739, January 26, 2005)
- Adjustment of Cable Statutory License Royalty Rates: Request for comments (70 FR 3738, January 26, 2005)

- Rate Adjustment for the Satellite Carrier Compulsory License: Notice of proposed rulemaking (70 FR 3656, January 26, 2005)
- Digital Performance Right in Sound Recordings and Ephemeral Recordings: Notice of termination of proceeding and current rates (70 FR 6736, February 8, 2005)
- Reconsideration Procedure: Final rule: technical amendment (70 FR 7177, February 11, 2005)
- Digital Performance Right in Sound Recordings and Ephemeral Recordings: Notice announcing commencement of proceeding with request for Petitions to Participate [Issued by Copyright Royalty Judges, Library of Congress.] (70 FR 7970, February 16, 2005)
- Registration of Claims to Copyright: New Format for Certain Copyright Registration Certificates: Policy decision, correction (70 FR 9111, February 24, 2005)
- Notice of Intent to Audit: Public notice (70 FR 12242, March 11, 2005)
- Reports of Use of Sound Recordings Under Statutory License: Notice of proposed rulemaking (70 FR 12631, March 15, 2005)
- Rate Adjustment for the Satellite Carrier Compulsory License: Notice of voluntary negotiation period (70 FR 15368, March 25, 2005)
- Registration of Claims to Copyright, Group Registration of Published Photographs: Final regulations (70 FR 15587, March 28, 2005)
- Adjustment of Cable Statutory License Royalty Rates: Request for notices of intention to participate, and announcement of negotiation period (70 FR 16306, March 30, 2005)
- Rate Adjustment for the Satellite Carrier Compulsory License: Final rule (70 FR 17320, April 6, 2005)
- Notice and Recordkeeping for Use of Sound Recordings Under Statutory License: Notice of proposed rulemaking (70 FR 21704, April 27, 2005)
- Reports of Use of Sound Recordings Under Statutory License: Final rule (70 FR 24309, May 9, 2005)
- Rate Adjustment for the Satellite Carrier Compulsory License: Notice of proposed rulemaking (70 FR 28231, May 17, 2005)
- Statements of Account: Final rule (70 FR 30366, May 26, 2005)
- Procedural Regulations for the Copyright Royalty Board: Procedural regulations with request for comments [Issued by Copyright Royalty Board, Library of Congress.] (70 FR 30901, May 31, 2005)

- Filing of Claims for Cable, Satellite and DART Royalties: Technical amendment (70 FR 38022, July 1, 2005)
- Copyright Rules and Regulations: Statements of Account: Final rule; Technical amendments (70 FR 38022, July 1, 2005)
- Satellite Home Viewer Extension and Reauthorization Act of 2004: Notice of inquiry (70 FR 39343, July 7, 2005)
- Orphan Works: Notice of public roundtables (70 FR 39341, July 7, 2005)
- Rate Adjustment for the Satellite Carrier Compulsory License: Final rule (70 FR 39178, July 7, 2005)
- Adjustment of Cable Statutory License Royalty Rates: Notice of proposed rulemaking (70 FR 41650, July 20, 2005)
- Preregistration of Certain Unpublished Copyright Claims: Notice of proposed rulemaking (70 FR 42286, July 22, 2005)
- Notice and Recordkeeping for Use of Sound Recordings Under Statutory License: Supplemental request for comments [Issued by Copyright Royalty Board, Library of Congress.] (70 FR 43364, July 27, 2005)
- Recordation of Documents: Notice of policy decision (70 FR 44049, August 1, 2005)
- Preregistration of Certain Unpublished Copyright Claims: Supplemental notice of proposed rulemaking (70 FR 44878, August 4, 2005)
- Distribution of the 2001, 2002, and 2003 Satellite Royalty Funds: Request for comments [Issued by Copyright Royalty Board, Library of Congress.] (70 FR 46193, August 9, 2005)
- Distribution of 2002 and 2003 Digital Audio Recording Royalty Funds: Notice of termination of proceedings (70 FR 46891, August 11, 2005)
- Satellite Home Viewer Extension and Reauthorization Act of 2004: Extension of comment period (70 FR 47587, August 15, 2005)
- Distribution of the 2003 Cable Royalty Funds: Request for comments [Issued by Copyright Royalty Board, Library of Congress.] (70 FR 53973, September 13, 2005)

[All testimony and *Federal Register* items are available at [www.copyright.gov](http://www.copyright.gov)]

## Registrations, 1790–2005

<i>Date</i>	<i>Total</i>	<i>Date</i>	<i>Total</i>	<i>Date</i>	<i>Total</i>	<i>Date</i>	<i>Total</i>
1790–1869	150,000 <sup>1</sup>	1904	104,431	1939	175,450	1974	372,832
1870	5,600	1905	114,747	1940	179,467	1975	401,274
1871	12,688	1906	118,799	1941	180,647	1976	410,969
1872	14,164	1907	124,814	1942	182,232	1976	108,762 <sup>2</sup>
1873	15,352	1908	120,657	1943	160,789	1977	452,702
1874	16,283	1909	121,141	1944	169,269	1978	331,942
1875	16,194	1910	109,309	1945	178,848	1979	429,004
1876	15,392	1911	115,955	1946	202,144	1980	464,743
1877	16,082	1912	121,824	1947	230,215	1981	471,178
1878	16,290	1913	120,413	1948	238,121	1982	468,149
1879	18,528	1914	124,213	1949	201,190	1983	488,256
1880	20,993	1915	116,276	1950	210,564	1984	502,628
1881	21,256	1916	117,202	1951	200,354	1985	540,081 <sup>3</sup>
1882	23,141	1917	112,561	1952	203,705	1986	561,208 <sup>3</sup>
1883	25,892	1918	107,436	1953	218,506	1987	582,239 <sup>3</sup>
1884	27,727	1919	113,771	1954	222,665	1988	565,801
1885	28,748	1920	127,342	1955	224,732	1989	619,543 <sup>4</sup>
1886	31,638	1921	136,765	1956	224,908	1990	643,602
1887	35,467	1922	140,734	1957	225,807	1991	663,684
1888	38,907	1923	151,087	1958	238,935	1992	606,253
1889	41,297	1924	164,710	1959	241,735	1993	604,894
1890	43,098	1925	167,863	1960	243,926	1994	530,332
1891	49,197	1926	180,179	1961	247,014	1995	609,195
1892	54,741	1927	186,856	1962	254,776	1996	550,422
1893	58,957	1928	196,715	1963	264,845	1997	569,226
1894	62,764	1929	164,666	1964	278,987	1998	558,645
1895	67,578	1930	175,125	1965	293,617	1999	594,501
1896	72,482	1931	167,107	1966	286,866	2000	515,612
1897	75,035	1932	153,710	1967	294,406	2001	601,659
1898	75,634	1933	139,361	1968	303,451	2002	521,041
1899	81,416	1934	141,217	1969	301,258	2003	534,122
1900	95,573	1935	144,439	1970	316,466	2004	661,469
1901	93,299	1936	159,268	1971	329,696	2005	531,720
1902	93,891	1937	156,930	1972	344,574		
1903	99,122	1938	168,663	1973	353,648		
						<b>Total</b>	<b>31,992,213</b>

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

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

3. The totals for 1985–1987 were corrected as of the FY 2004 annual report to include mask works registrations.

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



## Number of Registrations by Subject Matter, Fiscal Year 2005

<i>Category of Material</i>	<i>Published</i>	<i>Unpublished</i>	<i>Total</i>
Nondramatic literary works:			
<i>Monographs and computer-related works</i>	131,924	59,515	191,439
<i>Serials:</i>			
Serials (non-group)	44,892	—	44,892
Group Daily Newspapers	3,106	—	3,106
Group Serials	9,639	—	10,639
<b>Total literary works</b>	<b>189,561</b>	<b>59,515</b>	<b>249,076</b>
<hr/>			
Works of the performing arts, including musical works, dramatic works, choreography and pantomimes, and motion pictures and filmstrips	48,874	84,868	133,742
Works of the visual arts, including two-dimensional works of fine and graphic art, sculptural works, technical drawings and models, photographs, cartographic works commercial prints and labels, and works of applied arts	47,321	35,196	82,517
Sound recordings	15,886	34,048	49,934
<b>Total basic registrations</b>	<b>301,642</b>	<b>213,627</b>	<b>515,269</b>
<hr/>			
Renewals			15,893
Mask work registrations			506
Vessel hull design registrations			52
<hr/>			
<b>Grand total all registrations</b>			<b>531,720</b>
<b>Documents recorded</b>			<b>11,874</b>

## Fee Receipts and Interest, Fiscal Year 2005

<i>Fees</i>	<i>Receipts recorded<sup>1</sup></i>
Copyright registrations	\$17,829,429
Mask works registrations	\$40,950
Vessel hull design registrations	\$14,700
Renewal registrations	\$1,236,653
<b>Subtotal</b>	<b>\$19,121,732</b>
<hr/>	
Recordation of documents	\$2,052,029
Certifications	\$232,387
Searches	\$149,563
Expedited services	\$2,064,610
Other services	\$315,050
<b>Subtotal</b>	<b>\$4,813,639</b>
<hr/>	
<b>Total receipts recorded</b>	<b>\$23,935,371</b>
<hr/>	
Fee receipts applied to the Appropriation	\$23,788,227
Interest earned on deposit accounts	\$99,720
<b>Fee receipts and interest applied to the Appropriation<sup>2</sup></b>	<b>\$23,887,947</b>

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

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

## Estimated Value of Materials Transferred to the Library of Congress, Fiscal Year 2005

	Registered works transferred to other Library departments	Non-registration works transferred to other Library departments	Total works transferred to other Library departments	Average unit price	Total value of works transferred to other Library departments
<b>Books<sup>1</sup></b>	<b>196,910</b>	<b>86,846</b>	<b>283,756</b>		<b>\$14,257,212</b>
Ink print	178,410	44,460	222,870	\$62.35	\$13,895,945
Electronic works (ProQuest)	15,546	41,791	57,337	\$3.94	\$225,908
Microfilm	2,954	595	3,549	\$38.14	\$135,359
<b>Serials<sup>2</sup></b>	<b>230,428</b>	<b>465,377</b>	<b>695,805</b>		<b>\$12,604,035</b>
Periodicals	205,431	421,700	627,131	\$32.85	\$12,360,752
Ink print newspapers	21,891	41,400	63,291	\$1.00	\$37,975
Microfilm newspapers	3,106	2,277	5,383	\$38.14	\$205,308
<b>Computer-related works</b>	<b>7,198</b>	<b>2,659</b>	<b>9,857</b>		<b>\$2,832,464</b>
Software	2,519	117	2,636	\$27.67	\$72,938
CD-ROMs	1,440	2,542	3,982	\$693.00	\$2,759,526
Printouts	3,239	0	3,239	indeterminate value	
<b>Motion Pictures</b>	<b>10,383</b>	<b>1,768</b>	<b>12,151</b>		<b>\$6,344,068</b>
Videotapes	9,843	1,758	11,601	\$87.55	\$1,015,668
Feature films	540	10	550	\$9,688.00	\$5,328,400
<b>Music</b>	<b>51,838</b>	<b>2,684</b>	<b>54,522</b>	\$51.82	<b>\$2,825,330</b>
<b>Dramatic works, choreography and pantomimes</b>	<b>1,143</b>	<b>0</b>	<b>1,143</b>	\$62.35	<b>\$71,266</b>
<b>Other works of the performing arts</b>	<b>119</b>	<b>0</b>	<b>119</b>	\$51.82	<b>\$6,167</b>
<b>Sound recordings</b>	<b>30,249</b>	<b>3,195</b>	<b>33,444</b>	\$14.22	<b>\$475,574</b>
<b>Maps</b>	<b>1,661</b>	<b>59</b>	<b>1,720</b>	\$36.00	<b>\$61,920</b>
<b>Prints, pictures, and works of art</b>	<b>5,903</b>	<b>0</b>	<b>5,903</b>	\$29.10	<b>\$171,777</b>
<b>Total</b>	<b>535,832</b>	<b>562,588</b>	<b>1,098,420</b>		<b>\$39,649,813</b>

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

2. 60% of "Serials" are selected for the collections, except in the case of microfilm newspapers (100% of which are selected).

3. Includes 36 copies selected by the Library under motion picture agreements.

## Non-Fee Information Services to Public, Fiscal Year 2005

<b>Information and Reference Division direct reference services</b>	
In person	21,515
By correspondence	92,627
By email	56,872
By telephone	163,900
<b>Total</b>	<b>334,914</b>
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<b>Office of the General Counsel direct reference services</b>	
By correspondence	1,358
By telephone	1,598
<b>Total</b>	<b>2,956</b>
<hr/>	
<b>Receiving and Processing Division services</b>	
By correspondence	5,540
By telephone or email	11,753
<b>Total</b>	<b>17,293</b>
<hr/>	
<b>Licensing Division direct reference services<sup>1</sup></b>	
In person	331
By correspondence	639
By telephone	6,130
<b>Total</b>	<b>7,100</b>
<hr/>	
<b>Grand total direct reference services</b>	<b>362,263</b>

1. As of FY2005, the Licensing Division figures do not include correspondence and telephone contacts initiated by licensing examiners.

## Financial Statement of Royalty Fees for Compulsory Licenses for Secondary Transmission by Cable Systems for Calendar Year 2004

Royalty fees deposited	\$132,373,458.03
Interest income	\$2,039,733.06
Gain on matured securities	\$838,705.54
Transfers in	\$13,757.79
<b>Total</b>	<b>\$135,265,654.42</b>

**Less:**

Licensing operating costs	\$2,805,220.22
Refunds issued	\$8,418.11
Cost of investments	\$131,684,594.29
Cost of initial investments	\$426,895.44
CARP operating costs	\$321,716.62
Transfers out	\$12,593.03
<b>Total</b>	<b>\$135,259,437.71</b>

Balance as of September 30, 2005	\$6,216.71
<b>Plus:</b> Face amount of securities due	<b>\$132,059,627.83</b>

<b>Cable royalty fees for calendar year 2004 available for distribution by the Library of Congress</b>	<b>\$132,065,844.54</b>
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## Financial Statement of Royalty Fees for Statutory Obligations for Distribution of Digital Audio Recording Equipment and Media for Calendar Year 2004

Royalty fees deposited	\$2,666,859.53
Interest income	\$22,774.38
Gain on matured securities	\$33,670.01
Transfers in	\$29,566.31
<b>Total</b>	<b>\$2,752,870.23</b>

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<b>Less:</b>	
Licensing operating costs	\$51,736.39
Refunds	\$17.70
Cost of investments	\$1,521,941.50
Cost of initial investments	\$3,710.56
CARP operating costs	\$115,428.90
Distribution of fees	1,000,807.52
Transfers out	58,932.30
<b>Total</b>	<b>\$2,752,574.39</b>

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Balance as of September 30, 2005	\$295.36
<b>Plus:</b> Face amount of securities due	\$1,526,695.25

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<b>Audio Home Recording Act royalty fees for calendar year 2004 available for distribution by the Library of Congress</b>	<b>\$1,526,990.61</b>
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## Financial Statement of Royalty Fees for Statutory Licenses for Secondary Transmission by Satellite Carriers for Calendar Year 2004

Royalty fees deposited	\$70,338,477.62
Interest income	\$765,472.50
Gain on matured securities	\$513,953.36
<b>Total</b>	<b>\$71,617,903.48</b>

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**Less:**

Licensing operating costs	\$28,508.39
Cost of investments	\$71,586,452.13
Cost of initial investments	(\$122,787.95)
CARP operating costs	\$125,465.48
<b>Total</b>	<b>\$71,617,638.05</b>

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Balance as of September 30, 2005	\$265.43
<b>Plus:</b> Face amount of securities due	\$71,769,284.35

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<b>Satellite carrier royalty fees for calendar year 2005 available for distribution by the Library of Congress</b>	<b>\$71,769,549.78</b>
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## COPYRIGHT OFFICE CONTACT INFORMATION

U.S. Copyright Office  
Library of Congress  
101 Independence Avenue SE  
Washington, DC 20559-6000

Website · [www.copyright.gov](http://www.copyright.gov)

Public Information Office · (202) 707-3000

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

Forms and Publications Hotline · (202) 707-9100

TTY · (202) 707-6737

### *NewsNet*

Subscribe to the Copyright Office free electronic mailing list via the Copyright Office website, or send an email message to [listserv@loc.gov](mailto:listserv@loc.gov). In the body of the message, indicate: *Subscribe USCopyright*

Publication design and photography by Charles Gibbons, Information and Reference Division.  
Photograph on page 1 by Judith Nierman, Information and Reference Division.





## INTERNATIONAL COPYRIGHT TREATIES AND CONVENTIONS

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

### Treaties and Conventions

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

# 2005

ANNUAL REPORT OF THE REGISTER OF COPYRIGHTS · 2005

Annual Report of  
the Register of Copyrights

YEAR ENDING SEPTEMBER 30, 2005

Annual Report

United States Copyright Office

COVER / TITLE PAGE PHOTO:  
The dome of Library of Congress's  
James Madison Memorial Building

# Organization of the U.S. Copyright Office

SEPTEMBER 30, 2005



# International Copyright Treaties and Conventions

RELATIONS AS OF SEPTEMBER 2005



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