

Statement of Maria Strong
Acting United States Register of Copyrights
Before the
Subcommittee on the Legislative Branch
Committee on Appropriations
U.S. House of Representatives
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Chairman Ryan, Ranking Member Herrera Beutler, and Members of the Subcommittee,

Thank you for the opportunity to submit the United States Copyright Office's fiscal 2021 budget request.

The Copyright Office has had an exceptionally busy year and has made significant progress on a number of fronts. As the main federal entity charged with administering the Copyright Act, the Office has many responsibilities, including overseeing the national copyright registration and recordation systems, advising Congress on copyright policy and legislation, working with the Department of Justice and other federal agencies on copyright litigation, managing over \$1 billion in royalties from compulsory licenses, and educating the public about copyright law. We do all of this work with a lean staff of approximately 440 employees who are dedicated to copyright's Constitutional mission of "promot[ing] the progress of science and useful arts."¹

This past year, we successfully implemented a number of measures throughout the Office. We released the 2019–2023 Strategic Plan, *Copyright: The Engine of Free Expression*, which focuses on information technology modernization, optimizing business processes, organizational change management, education and engagement, impartial expertise on copyright law and policy, and measuring success. Regarding information technology, fiscal 2019 marked the first year Congress appropriated funds specifically for IT modernization, which allowed the Copyright Office and the Library of Congress Office of the Chief Information Officer (OCIO) to continue laying the groundwork for a modernized Enterprise Copyright System. The Office collaborated closely with OCIO, providing business information that OCIO, which undertakes the development work, uses to develop the system. This includes finishing development on the first phase of a recordation pilot set to launch next month and by working on user interface development for the new registration system, among other things.

¹ U.S. CONST. art. I, § 8, cl. 8.

The Office also kicked off business process reengineering (BPR) and organizational change management (OCM). These efforts will streamline and improve workflows and help build and maintain a workforce that is efficient, adaptable, and inclusive. This work complements IT modernization, helping make workstreams more efficient and productive.

Since the Office's last budget testimony, the Office engaged in a number of outreach activities to provide accurate and unbiased information on copyright law. The Office developed a comprehensive communications strategy and conducted significant outreach, including to educate the public about implementing the landmark Music Modernization Act (MMA). In fiscal 2019, the Office also answered over 100,000 public inquiries regarding copyright, helping people understand copyright and the Office's services.

Additionally, the Office continued its longstanding role of providing expert legal and policy advice. This past year alone, the Office developed and issued a number of regulations to implement appropriate provisions of the MMA, conducted policy studies, and provided legal advice and assistance across the government regarding complex or emerging areas of policy, including Supreme Court litigation and international matters.

The data also measures how much we have achieved this year. In fiscal 2019, for example, the Office issued more than 547,000 registrations involving millions of works and recorded 12,550 documents containing 457,731 titles. Importantly, the Office decreased the overall average processing time for reviewing copyright claims from seven months to four, a substantial decrease of over 42 percent within a one-year period. And by the end of the year, the Office had reduced the number of workable claims on hand by over 90,000 claims, effectively eliminating the working backlog. The Office also received more than 700,000 deposited works, which were transferred to Library collections and that have a total value of more than \$52 million.

The Office is proud to have made so much progress this year and is honored to serve the country and the copyright ecosystem. The Office is grateful for this opportunity to present a budget request that would enable this important work to continue in fiscal 2021.

FUNDING AND OVERALL FISCAL 2021 BUDGET REQUEST

The recurring financial support for the Office's modernization efforts, initially funded as part of the fiscal 2019 budget, continues for fiscal 2021, and the Office is pleased to provide an update on a number of accomplishments for those initiatives now fully underway. In addition to ongoing Office modernization, the Office is fully engaged in addressing new responsibilities assigned to the Office and the Copyright Royalty Board (CRB) by the MMA. To meet the new MMA mandates, the Office is requesting \$1.6 million in additional funding for fiscal 2021, primarily for Office and CRJ staffing as described further below.

The Copyright Office's overall budget is composed of three separate budgets or program areas:

- (1) *Basic Budget*, which funds most of the Office's core operations, including the majority of payroll-related expenses. Historically the basic budget has been composed of a combination of appropriated dollars and authority to spend fee revenue, with fees constituting a majority of this funding (generally in the range of 50% to 67%);
- (2) *Licensing Budget*, which is derived completely from licensing royalty collections otherwise payable to copyright owners and filing fees paid by cable and satellite licensees pursuant to statutory licenses administered by the Office; and
- (3) *Copyright Royalty Judges Budget*. Although the Copyright Royalty Judges (CRJ) program is not a part of the Office, the Office provides it with budget formulation and execution support on behalf of the Library of Congress.

For fiscal 2021, the Office requests a combined total of \$94.891 million in funding and 435 FTEs, of which \$44.8 million would be funded through offsetting collections of fees collected in fiscal 2020 and in prior years.

The Office's fiscal 2021 requests are:

- *Basic Budget*: \$85.8 million and 403 FTEs. The fiscal 2021 budget request requests funding for its Basic Budget from \$38.0 million in offsetting fee collections (44%) and \$47.8 million (56%) in appropriated dollars. The request includes mandatory pay-related and price level increases of \$3.2 million and a program increase of \$0.7 million for staffing and public outreach and education activities to implement the MMA. The request also includes a reduction in the amount of \$2.1 million for non-recurring costs that were associated with program increases that involved the Office's warehouse move and contract support for the Office of Public Records and Repositories. The fiscal 2021 submission includes a request to shift base funding from offsetting fee collections to appropriations due to a projected, continued negative fee impact resulting from the enactment of the MMA. The MMA made significant changes to the section 115 compulsory license, and in accordance with the new law, the Office no longer accepts certain section 115 filings. This change resulted in a fiscal 2019 reduction in fee collections of \$4.2 million that is expected to be permanent. The Office will adjust its fee schedule effective March 20, 2020, and various fees are anticipated to increase. However, as noted in its report to Congress *Proposed Schedule and Analysis of Copyright Fees To Go Into Effect in Spring 2020* (submitted October 16, 2019)², the Office did not

² U.S. COPYRIGHT OFFICE, PROPOSED SCHEDULE AND ANALYSIS OF COPYRIGHT FEES TO GO INTO EFFECT IN SPRING 2020 (Oct. 16, 2019), at <https://www.copyright.gov/rulemaking/feestudy2018/proposed-fee-schedule.pdf>.

attempt to recoup any loss due to the MMA through fees because doing so would increase fees beyond those proposed in the 2018 Notice of Proposed Rulemaking, potentially significantly reducing the overall number of filings, thus undermining the copyright system overall.

- *Licensing Division Budget:* \$6.2 million and 23 FTEs, all of which are funded via filing and royalty fees. The requested increase includes mandatory pay-related and price level increases of \$0.3 million.
- *Copyright Royalty Judges Budget:* \$2.9 million and 9 FTEs, with \$0.1 million to support mandatory pay-related and price level increases. Included in the request is a program increase of \$0.9 million to support 3 FTEs and other costs associated with implementing the MMA and other increased workloads. Of the total, \$0.5 million (for non-personnel-related expenses) is offset by royalties and participation fees. The remainder, \$2.3 million in appropriated dollars, is to cover the personnel-related expenses of the judges and their staff.

FOCUS OF FISCAL 2021 ACTIVITIES

The Copyright Office's fiscal 2021 funding request provides resources necessary to continue the progress already started towards the Office's strategic goals, which include: (1) meeting the mandates of the MMA, (2) modernization of the Office's IT systems and applications, including the Office's historical records initiative, and (3) modernization of the Office's business environment and practices so that the Office's core registration and recordation services are delivered as efficiently as possible.

Music Modernization Act (MMA)

The enactment of the MMA assigned new responsibilities to both the Copyright Office and the CRJ. The MMA requires the Register of Copyrights to "engage in public outreach and educational activities" regarding the amendments made to section 115 of title 17.³ Specifically, the Register must engage in public education and other outreach activities to inform interested members of the public and songwriters about the process by which a copyright owner may claim ownership of musical works through a "mechanical licensing collective" (MLC) which will administer a blanket licensing system for digital music providers to make and distribute digital phonorecord deliveries (e.g., permanent downloads, interactive streams). The Office has planned a number of public outreach programs to address the requirements of the MMA, and is

³ Orrin G. Hatch–Bob Goodlatte Music Modernization Act, Pub. L. No. 115-264, § 102(e), 132 Stat. 3676, 3722 (2018).

requesting a program increase to include three additional FTEs to ensure these efforts are fully resourced.

The MMA assigned additional responsibilities to the CRJ, as well. In the MMA, Congress assigns to the CRJ the duty to ascertain the reasonableness of the MLC's operating budget and the allocation of contributions to that budget by the various licensees or licensee representative groups. Previously, under 17 U.S.C. 802(b), the number of support staff authorized to support the royalty judges was capped at three. A proviso in the fiscal 2020 Further Consolidated Appropriations Act (Section 1405 of Public Law 116-94) permanently removed the staffing cap, allowing for the new hires requested in fiscal 2021.

Copyright IT Modernization

Modernization of the Copyright Office's aging information technology systems and applications continues to be a top priority, and as the Office enters the second year of its five-year modernization plan, there are a number of accomplishments to report. OCIO is working alongside the Office on software development activities, which are progressing across multiple programmatic areas—including registration, recordation, statutory licensing, and access to public records. This calendar year, we are collaborating on several components of the new Enterprise Copyright System (ECS) which will allow us to gather public feedback in a number of ways. The first effort will involve the new recordation system, a system which is currently paper-based. This recordation pilot will be initially available to small number of public users, and will allow those users to record a document using the new recordation module in development for the ECS. We had targeted a launch in spring 2020, and are pleased to report that we are expecting to launch this pilot possibly as soon as late March. The user feedback from this pilot will be incorporated into iterative improvements as part of future releases. In addition to the recordation pilot, there are plans to release, for public feedback, a limited prototype for at least one type of copyright registration submission. Also expected to be delivered is the release of a new Copyright Public Records Proof of Concept by the end of calendar 2020.

For the historical records project, the Office is currently working with the Library's own experts in digital collections management to ensure that the digitization of the Office's 26,278 physical copyright record books incorporates best practices and can be made available for public, online viewing as rapidly as possible. Combined, these books contain well over 20 million pages of records that date back to 1870 through 1977, covering works as diverse as books, photographs, musical compositions, sound recordings, motion pictures, software, and more. The Office will be digitizing more than 800 volumes over the next year alone. The Office will continue improving the metadata for the more than 40 million registration application cards that are

already publically viewable using the Office's Virtual Card Catalog (VCC). The metadata effort will enhance the public's user experience by providing more accurate online search capability.

As directed by the Committee, the Office has developed an integrated master schedule (IMS) for its modernization activities. To ensure the IMS maintains alignment with best practice criteria, the Office is procuring expert consulting services to assist in developing a program for IMS management that allows for continuous improvement and refinement of the IMS and its estimates. The consultant services are being procured under the Library's pending contract for Library-wide performance planning and measurement services.

Modernization of Copyright Office Business Practices

In the past year alone, the Copyright Office completely eliminated the backlog of pending registration claims, reduced registration processing times by more than 40%, and completely resolved all older claims received prior to 2017. Additionally, the Office drafted a number of revised regulations to streamline registration practices and procedures. The Office also recently completed an independent analysis of its recordation business processes and began more targeted efforts to reduce the existing recordation backlog. The Office has also made significant progress in its business process reengineering efforts, with 66 distinct processes scheduled to complete the reengineering review this summer.

The Office's modernization initiative is about more than just technology—it also encompasses Office organization and people. This past year the Office of Personnel Management (OPM) completed a review of the Office's organization and structural needs for modernization. The Office has engaged OPM for additional organizational review work, including assisting the Office in succession planning as part of the Office's continued focus on processing time reduction efforts.

Consolidation of Copyright Office Storage Facilities

I am pleased to report that the Copyright Office is making exceptional progress in its planned consolidation of copyright materials from several geographically-dispersed storage facilities into a single, modern facility. The collaborative warehouse construction project between the Library, the Office, and Architect of the Capitol is currently months ahead of the original 2021 construction completion schedule. The physical structure, located in the Landover, Maryland area, is expected to be completed in March 2020 with a limited occupancy permit expected to be granted in September 2020. The new facility will allow the Office to provide faster location, better tracking, and improved security of the Office's significant inventory of copyright deposits.

PENDING CHANGES TO COPYRIGHT OFFICE FEES

Though the Copyright Office provides many of its services at no cost, the Copyright Act requires that the Office charge fees for certain services.⁴ When proposing a balance of user fees and taxpayer funded monies to support its operations, the Office gives careful consideration to the public benefits of the national copyright system, including the impact of user fees on a copyright system that is dependent on voluntary copyright registration and recordation. To ensure that the Office's fees are "fair and equitable and give due consideration to the objectives of the copyright system,"⁵ the Office conducts regular studies of its operating costs and fee structure. The Office released its most recent fee study as part of a Notice of Proposed Rulemaking in May 2018, and in June 2019, the Office issued a supplemental notice proposing limited revisions to the 2018 notice. After carefully considering comments from a variety of interested parties in response to the notices, in October 2019 the Office proposed the adoption of new fee schedule for certain Office services to Congress. By law, the Register may institute the new fees 120 days after the Office submits the proposed schedule to Congress, unless Congress enacts a law within the 120-day period stating that it does not approve the schedule. That period has passed, and on February 19, the Office published its new fees in the Federal Register; these fees will enter into effect on March 20, 2020.⁶

MORE FLEXIBLE FEE AUTHORITY

The Copyright Office would also benefit significantly from greater flexibility in the use of its fee collections, specifically the authority to use existing fee balances to provide services to the public in the event of a lapse in appropriations. As we have noted before, flexibility in management of fee balances across budget cycles also could provide for more efficient and cost-effective administration of large, non-recurring projects related to modernization and other capital expenditures. To that end, once authorized, the Office anticipates including in a future budget request a change in appropriations language to allow for 20% of the balance of fees collected in prior-years to be available each year, in addition to appropriated amounts, for obligation without fiscal year limitation, and to allow the Office to access existing fee balances to continue operations during a lapse in appropriations.

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The Copyright Office appreciates the Committee's continued support of the Office's efforts to modernize both its technology and services, and to the operation of the copyright system overall.

⁴ 17 U.S.C. § 708.

⁵ 17 U.S.C. § 708(b)(4).

⁶ Copyright Office Fees, 85 Fed. Reg. 9374 (Feb. 19, 2020); the Copyright Office's webpage on the fee study and the final fee schedule is available at <https://www.copyright.gov/rulemaking/feestudy2018/>.



Maria Strong is the Acting Register of Copyrights and Director of the U.S. Copyright Office. She was appointed to the position effective January 5, 2020. Strong leads a 400-person workforce and directs the administration of important provisions of the United States Copyright Act, Title 17.

Strong also serves as Associate Register of Copyrights and Director of Policy and International Affairs, directing a team that focusses on domestic and international policy analyses, legislative support, and trade negotiations. The Office of Policy and International Affairs represents the Copyright Office at meetings of government officials concerned with the international aspects of copyright protection and enforcement, and provides regular support to Congress and its committees.

Prior to her April 2019 appointment as director of PIA, Strong served as its deputy director since January 2015. Upon joining the Copyright Office in 2010, she served as senior counsel for policy and international affairs and also served as acting general counsel from April to July 2013. Before joining the Office, Strong spent nineteen years in private practice in Washington, DC, where she represented clients in the media, technology, and entertainment sectors and provided analyses and advocacy on global and domestic issues involving copyright law, enforcement, trade policy, and e-commerce. She began her legal career as a staff attorney at the Federal Communications Commission.

Strong earned her JD from George Washington University Law School, her MA in communications management from the University of Southern California's Annenberg School of Communications, and her BA in communication studies from UCLA.