

**Statement of
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**Before the
Committee on the Judiciary
U.S. House of Representatives
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Chairman Nadler, Ranking Member Jordan, and Members of the Committee:

Thank you for the opportunity to report on the numerous activities and accomplishments of the United States Copyright Office.

For over 150 years, the Copyright Office has provided tremendous value to the copyright system and to the American public. Even during this past year, as the pandemic required staff to adapt rapidly to new working conditions, the Office has been extremely productive. We have registered almost half a million copyright claims, recorded ownership information for titles of over 230,000 works, published a comprehensive study of section 512 of the Copyright Act, implemented key parts of the Music Modernization Act (MMA)¹ and the Copyright Alternatives in Small Claims (CASE) Act,² made progress in modernizing our services, managed over \$1 billion in royalties, and provided assistance to almost two hundred thousand members of the public with copyright questions. The Office's expert and dedicated staff has handled changing and expanded duties during these challenging times, and they are to be commended for the achievement of such impressive results.

I am honored to have returned to the Office as the fourteenth Register of Copyrights this past fall. Since my tenure as the first Associate Register for Policy and International Affairs in the 1990s, the Office's responsibilities have grown, including as a result of Office studies that led to landmark legislation like the MMA and the CASE Act. With the concurrent advances in technology, the Office needs up-to-date systems and operations to effectively fulfill its public mission. I am pleased to provide the Committee with a summary of the work being done to meet these responsibilities and needs. I will begin by outlining our major current initiatives, then describe the Office's other ongoing work, and conclude with high-level priorities for the Office going forward.

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

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

I. MAJOR CURRENT INITIATIVES

The Copyright Office has long played a key role in supporting a thriving copyright system in the United States. This role continues to grow, as the Office engages in transformational initiatives regarding the MMA, the CASE Act, and modernization of our processes and information technology (IT) systems.

A. Implementation of the Music Modernization Act

In 2018, the MMA was enacted, ushering in a historic change in music copyright law. The MMA charges the Copyright Office with promulgating a number of regulations to implement its provisions.³ Days after the law was enacted, the Office issued the first interim regulations. Since then, we have completed nine rulemakings to implement various provisions of Title I (Musical Works Modernization Act) and Title II (Classics Protection and Access Act).⁴ This included establishing the initial regulatory framework required for the new mechanical licensing collective to administer the new blanket license. The Office also fully implemented Title II, which provides protection for pre-1972 U.S. sound recordings and establishes a safe harbor for noncommercial uses of such works. As part of these rulemakings, the Office hosted dozens of *ex parte* meetings with stakeholders to receive information and develop records. The Office handled these diverse responsibilities with care and speed. On average, agencies generally take more than one year to complete a rulemaking;⁵ we completed nine rulemakings in approximately 2.5 years.

In addition, the Office is concluding its policy study to recommend best practices that the MLC may implement to effectively identify and locate copyright owners with unclaimed

³ The MMA contains more specific references to promulgating regulations than the entire 1976 Copyright Act.

⁴ See <https://copyright.gov/music-modernization/related-rulemakings.html>. One of the rulemakings consisted of a notification of inquiry seeking public comment regarding topics on which the MMA directs the Office to promulgate regulations with respect to the operation of the new blanket mechanical license and the mechanical licensing collective. Based on the comments received, the Office subsequently issued multiple notices of proposed rulemaking seeking further comments on draft regulations governing the blanket license regime.

⁵ In one academic study analyzing over 16,000 proceedings, rulemakings were generally found to take, on average, 462.79 days to complete; an unrelated GAO study of rulemakings conducted by various executive branch agencies concluded that rulemakings take on average four years to complete. Anne Joseph O'Connell, *Agency Rulemaking and Political Transitions*, 105 NW.L. REV. 471, 513 (2011); U.S. GOVERNMENT ACCOUNTABILITY OFFICE, *Improvements Needed to Monitoring and Evaluation of Rules Development as Well as to the Transparency of OMB Regulatory Reviews* 5–6 (2009), available at <https://www.gao.gov/assets/gao-09-205.pdf> (“GAO Report”).

royalties of musical works, encourage copyright owners to claim accrued royalties, and ultimately reduce the incidence of unclaimed royalties. We plan to complete the study by the July 8, 2021, deadline.

The Office has also made substantial progress engaging in public outreach and educational activities, as required by the MMA. We have engaged in almost fifty such activities, including to educate songwriters about the process by which they may claim ownership of musical works in the MLC database and receive royalties for uses of these works. We updated our website to inform the public of important changes under the law and relevant implementation dates, developing a comprehensive resource of information suitable for audiences of all levels of expertise. The Office has prepared printed educational materials on the MMA (e.g., *Intro to Title I of the MMA*; *Overview of MMA and Office Initiatives*; *What Musicians Should Know About Copyright*; *How Songwriters, Composers, and Performers Get Paid*; and *Music and Metadata Acronym Glossary*). The Office also has produced six online tutorials, as well as a collection of videos of interviews with Members of Congress who were closely involved in the passage of this historic legislation. Finally, we have created an MMA newsletter to provide updated information about the law, which is circulated on a regular basis to members of the public who subscribe through the website.

B. Implementation of the CASE Act

When Congress passed the CASE Act last December, it required the Office to establish the Copyright Claims Board (CCB) to resolve disputes regarding copyright claims that have relatively low economic damages.⁶ Located within the Office, the CCB will be a voluntary, alternative forum to federal court staffed by copyright experts that will use streamlined, affordable procedures. When operational, the CCB will be the first intellectual property small claims tribunal in the United States.

The Office is working intensively to set up this groundbreaking system. First, we have begun regulatory activity to address the CASE Act's requirements. Following informal consultation with a broad range of stakeholders, on March 26 the Office issued a notice of inquiry to solicit public comment regarding features of the new system, including important safeguards to ensure respondents have adequate notice and the opportunity to opt out of

⁶ Copyright Alternatives in Small Claims Act, 17 U.S.C. § 1502 (2020). The CASE Act was adopted following the Copyright Office's 2013 study on small copyright claims and includes much of the Office's suggested statutory language. U.S. COPYRIGHT OFFICE, *COPYRIGHT SMALL CLAIMS* (2013), <https://www.copyright.gov/docs/smallclaims/usco-smallcopyrightclaims.pdf>.

participation, as well as potential rules to govern discovery or other aspects of proceedings before the CCB.⁷ Comments received so far reflect a keen public interest in this new tribunal, with submissions ranging from individual creators, Members of Congress, companies, and associations representing libraries, user groups, and copyright industries. Additionally, on April 26, the Office proposed a rule to enable expedited registration for claims pending before the CCB and to update the Office's Freedom of Information Act (FOIA) regulations as they apply to CCB proceedings. Comment periods remain open for both notices.

Second, the Office has begun the hiring process for the CCB. Currently, we are reviewing applications for the three Copyright Claims Officers, and I anticipate being able to recommend appointments to the Librarian later this spring. Meanwhile, the Office has begun preparatory work to hire support staff, including attorneys, once the Officers arrive.⁸ In parallel, we are collaborating with other Library units to identify and develop a case management system, virtual hearing capabilities, office space, and other needs so that the CCB can begin to operate within the statutorily required timeframe.

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

C. Office Modernization

The Office continues to make significant progress on the initiative to modernize our services, both on IT and non-IT initiatives, all of which is detailed on the Office's

⁷ U.S. Copyright Office, Notification of Inquiry, Copyright Alternatives in Small Claims ("CASE") Act Regulations, 86 Fed. Reg. 16156 (Mar. 26, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-03-26/pdf/2021-06322.pdf>.

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

modernization webpage.⁹ On IT matters, the Office works closely with the Library of Congress's Office of the Chief Information Officer (OCIO) to provide the business information needed for OCIO to undertake system and software development.

In fiscal 2020, the Office met its objectives on three major IT modernization work streams for the planned Enterprise Copyright System (ECS): the launch of an electronic recordation pilot; the release of a new interface for the Copyright Public Records System; and the release of a clickable prototype of the planned new registration application. We also are making good progress on our non-IT modernization goals.

1. Enterprise Copyright System

Current ECS work streams include recordation, public records, registration, and licensing. In addition, OCIO is leading work on user experience design and platform services—the design and architecture capabilities underpinning the ECS.

Recordation: The Office met its spring 2020 target to launch the public pilot of the new electronic recordation system. This was a major step forward, as the recordation system has until now been paper-based. The pilot initially was made available to a limited number of public users on April 27, 2020, enabling them to record documents related to copyright ownership under section 205 of title 17. We have already incorporated user feedback into four point releases and are making iterative improvements. In this continuous development phase, we will add functionality and waves of users, with this year's focus turning to recordation of notices of termination.

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

Registration: The Office began moderated user testing on a limited prototype for the copyright registration standard application, from which we will gather public feedback and

⁹ See <https://www.copyright.gov/copyright-modernization/>. As the Library of Congress uses a centralized IT model, the Office relies on OCIO for technical services, including system and software development. This past year the Library has been building on its agile software foundation and has implemented the Scaled Agile Framework (SAFe) to improve collaboration across projects, as well as a program-level view of the modernization work as a whole.

incorporate improvements for a second round of user testing. We are also developing the internal side of the registration system.

Licensing: The Office is beginning development of user experience design and initial automated workflow for licensing processes, which currently utilize outdated systems. The Office anticipates that licensing modernization expenses can be accommodated within the licensing base budget, and development is being limited to minimize the costs for copyright owners. Development will focus on migrating the statement of account examination processes to ECS and migrating all royalty accounting processes onto the Library's financial system, diminishing the need to develop unique software code.

Additional Developments Related to the ECS: In February, the Library of Congress announced that it is convening a public committee to enhance communication with external stakeholders about the technology-related aspects of the Office's modernization initiative.¹⁰ Applications from qualified members of the public have been received; the Chief Information Officer and the Register will nominate individuals to serve on the committee and the Librarian will make the final selections. In addition to the Office's website, webinars, and other public outreach, this Copyright Public Modernization Committee will offer an ongoing forum to share information and answer questions about our technology modernization.

The Office has also evaluated our overall approach to modernization development. In response to a Congressional inquiry, the Office carefully considered whether an alternative development approach for overall IT modernization would be preferable. In 2020, the Office issued a Request for Information (RFI) for ECS system development as a follow-on activity to the Office's 2018 Request for Information, and also enlisted the U.S. General Services Administration (GSA) to conduct market research. Last summer, a public RFI was issued, resulting in eighteen separate vendor responses. After both OCIO and the Office reviewed the proposals and the GSA report, we concluded that, although exploring the alternative approaches was a valuable exercise, we would not issue a Request for Proposals, and will continue with our current approach.

In early 2020, the Office developed a high-level integrated master schedule (IMS) for IT modernization activities. We then brought in expert consultants to help develop a program for IMS management that allows for continuous improvement and refinement. This

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

work commenced in February 2020 and was completed in February of this year. Working with data supplied by OCIO, we will continue to update the IMS.

2. Modernizing Supporting IT Systems

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

In addition, this year we intend to engage experts to conduct a gap analysis and facilitate roadmap planning for a new contact center for our Public Information Office. Anticipated activities will focus on improved analytics and streamlined responses, including a high-performing, multi-channel customer contact center to support the copyright community and improve communications with the public.

3. Historical Public Records

As part of the Copyright Office's commitment to the preservation of and access to its historical records, a comprehensive effort is underway to digitize print and microfilm records and make them available online. This includes the card catalog, record books, and the Catalogs of Copyright Entries (CCEs). Digitization is the critical first step, to be followed by the perfection of metadata to enhance searchability; a long-term goal is to have all of these items digitized and made available through the Copyright Public Records System. The Office has already digitized our card catalog; the Virtual Card Catalog (VCC) is available online.¹¹ A contract is underway to perfect the metadata on the more than 40 million registration applications and index cards from 1870 to 1977 that are already publicly viewable. As for the record books, the Office is working with the Library's experts in digital collections management to ensure that the digitization of our more than 26,000 physical books incorporates best practices, and the resulting records can be made available for public, online viewing. These record books contain well over 20 million pages of records from 1870 to 1977,

¹¹ See <https://copyright.gov/vcc/>.

covering works as diverse as books, photographs, musical compositions, sound recordings, motion pictures, and more; a contract for their digitization has been awarded. The CCEs are already available online.¹²

The Office also has a contract to create a data-mapping schedule for the historical record collections to use in the development of the Copyright Public Records System. These efforts will enhance the public's user experience by providing more accurate online search capability.

4. Non-IT Office Modernization

In addition to IT, modernization involves processes, organization, and culture. The Office has made significant progress in business process reengineering efforts, working with a consultant to identify processes for improvement, and how or whether they could benefit from IT support. In addition, the Office continues to work with the Office of Personnel Management (OPM) on organizational issues, including competency models for two of our most populated occupation series. Finally, last summer we completed work with a consultant on an organizational change initiative, which involves the development of key change management processes and documents, staff training, and strategic coaching on structuring and leading business transformation.

II. ONGOING WORK OF THE OFFICE

In addition to these major initiatives, the Copyright Office continues to fulfill its statutory responsibilities to administer the Copyright Act. Even during the unprecedented circumstances of the past year, the Office has been able to adapt and provide high-quality services to the American public with minimal disruption.

As I joined the Copyright Office in the midst of limited on-site operations, I have made it a priority to find as many avenues as possible to connect with staff as well as stakeholders.

A. Copyright Office Staff

I have been privileged to spend the past few months learning from the Office's knowledgeable and experienced staff. I have held multiple meetings with groups of all sizes, and toured divisional spaces and the new warehouse facilities. I have instituted new

¹² Over a decade ago, the CCEs were digitized by a third party using optical character recognition. Another party is embarking on a project to build on the OCR data to improve the data set quality.

communication opportunities Office-wide to keep employees informed and engaged while working remotely. In light of the stress of the pandemic as well as events surrounding the security of the Capitol Hill complex, we have promoted listening sessions among teams and supervisors, as well as support from the Library's employee assistance resources.

As of mid-February 2021, the Office had 448 staff on board. For fiscal 2021, the Office anticipates approximately forty hiring actions to cover backfills as well as to staff the CCB. Among full-time, career employees, the Office has a minority representation of 52.1%, and a high representation of women at 59.5%.

In mid-2020, the Office launched a working group on diversity, equity and inclusion. The Office was already participating in the Library's diversity efforts, but this group will focus on Copyright Office-specific matters and includes more of our own staff's voices.

B. Stakeholder Listening Tour

As a means to introduce myself and better understand the concerns and priorities of the different participants in the copyright system, I began my tenure with a virtual "listening tour." To date, this has involved over thirty meetings with over fifty organizations, representing industries including publishing, software, music, broadcasting, and technology companies; individual creators including writers, composers, musicians, photographers, and artists; and user interests including libraries and consumers. These meetings have been informative and well received. I have made clear that they are only the beginning of a continuing conversation, and that the Copyright Office will maintain its longstanding open-door policy.

C. Pandemic Operations

This past year, the Office successfully addressed significant operational challenges, primarily those posed by limits on on-site operations as a result of the global pandemic.¹³ When the Library shut down the Madison Building on March 13, 2020, we quickly transitioned most staff to telework. Some of our work, however, involves physical materials (including paper-based recordation documents, paper-based registration claims, and physical deposits). Office staff was unable to process these materials until June 2020, when limited on-site work resumed.

¹³ See U.S. COPYRIGHT OFFICE, ANNUAL REPORT FISCAL 2020 (2021), <https://copyright.gov/reports/annual/2020/ar2020.pdf>.

The Office implemented a pandemic response plan in March 2020, successfully transitioning 98% of the staff to full or partial telework within just a few weeks. More staff gradually returned on-site throughout the summer and fall, in accordance with the Library's plan for restored on-site operations. Currently, about 27% of staff is on-site, either full-time or on rotating schedules; the rest are teleworking.

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

To further relieve the impact of constraints imposed by the pandemic on users of Office services, the Acting Register had exercised, and I am currently exercising, the authority granted by Congress in the 2020 Coronavirus Aid, Relief, and Economic Security Act (CARES Act). We have temporarily adjusted certain timing provisions, and I continue to review conditions to determine whether further extensions are needed. The Office is also monitoring the impact of COVID-19 on fee receipts. While there has not yet been a significant shortfall, the Office appreciates the Committee's support going forward if funding flexibility is needed to adjust to disruptions in operations or increased workloads when normal operations resume.

D. Registration, Recordation and Acquisitions

In fiscal 2020, the Office registered 443,911 claims to copyright involving millions of works. Ninety-eight percent of registration applications closed were received electronically and two percent by mail. Even with the pandemic, the Office made significant strides in improving processing times: the average overall processing time for examining all copyright claims dropped from 4.0 months in the second half of fiscal 2019 to 2.6 months in the second half of fiscal 2020, representing a 35 percent decrease. The average processing times for fully electronic claims that did not require correspondence (74 percent of all electronic claims) dropped from 3.0 months to 1.6 months, and those that did require correspondence (26 percent) dropped from 6.0 months to 3.6 months. Despite this overall reduction, the pandemic did negatively impact processing times for electronic applications that required the

submission of physical deposits and the small number of paper applications, as registration staff was not on-site for several months.¹⁴

With respect to recordation, the Office recorded 7,098 documents in fiscal 2020, on paper and through the new electronic pilot, containing titles of 233,694 works. The impact of the electronic pilot on processing times was impressive: the average time from submission to generation of the public record for electronic submissions was generally within weeks of receipt. For paper submissions, the average was approximately 11.5 months; this was an increase of 3.5 months from the average fiscal 2019 processing time and again reflects the impact of the pandemic on physical operations.¹⁵ Recordation staff were unable to retrieve submissions from March 2020 until some on-site work resumed in June 2020.

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

E. Legal and Policy Work

Over the past year, the Office continued its longstanding role in the area of copyright law and policy. This included promulgating regulations to implement the MMA and the CASE Act, as well as to update rules to facilitate new practices for group registrations, the deposit of electronic books for the Library's collections, and improved administration for recordation of notices of termination. The Office also continued to provide expert advice and assistance across the government regarding complex and emerging copyright issues, including legislative proposals, Supreme Court and appellate litigation, and work with executive branch agencies on international matters.

¹⁴ Registration processing times are posted at <https://copyright.gov/registration/docs/processing-times-faqs.pdf>. Average registration processing times are likely to rise a bit, given the physical deposits that have yet to be processed due to limited on-site staffing.

¹⁵ Recordation processing information is posted at <https://copyright.gov/recordation/>. The Office is currently processing September 2019 (basic recordation filings) and April 2020 notices of termination.

1. Policy Studies

Last year, the Office published a major policy study and is currently engaged in finishing three others. In May 2020, the Office issued the report *Section 512 of Title 17*, which evaluated the impact and effectiveness of the Copyright Act's safe harbor provisions for certain activities of online service providers. The Office concluded that the current operation of the safe harbor system has shifted the balance that Congress intended when the law was enacted in 1998. While the Office did not recommend any wholesale changes to section 512, we did identify several areas where Congress may wish to fine-tune the statute to better effectuate the intended balance and improve the system overall.

Since the issuance of this report, the Office has taken a number of related actions, including building a new webpage on the DMCA which includes FAQs and model notices and counter notices; hosting three roundtables on the legal and practical issues regarding standard technical measures for identifying and addressing online infringement; and considering appropriate next steps for the Office, as well as responding to inquiries from congressional staff.

The three ongoing studies are all expected to be completed in calendar 2021:

- *Unclaimed royalties*. In December 2019, the Office began the study on unclaimed royalties¹⁶ required by the MMA. This study aims to identify best practices that the new Mechanical Licensing Collective (MLC) can implement to reduce the incidence of unclaimed royalties in musical works. The Office held two days of public roundtables in March of this year.
- *State sovereign immunity*. In June 2020, the Office initiated a study on state sovereign immunity from copyright infringement claims.¹⁷ This study was requested by Congress in the wake of the Supreme Court's decision in *Allen v. Cooper* striking down the Copyright Remedy Clarification Act of 1990. After receiving two rounds of written comments, the Office conducted a public roundtable in December, and entered into an academic partnership to analyze the record of litigated infringement cases against state entities.
- *Satellite compulsory license*. In January, the Office, as requested by Congress, commenced a study on the market effects of the Satellite Television Community

¹⁶ See <https://www.copyright.gov/policy/unclaimed-royalties/>.

¹⁷ See <https://www.copyright.gov/policy/state-sovereign-immunity/>.

Protection and Promotion Act of 2019, which modified the section 119 compulsory license for satellite companies to carry distant broadcast network signals.¹⁸

2. Regulatory Work

In addition to the substantial number of rulemakings undertaken by the Office in fiscal 2020 to implement the MMA and the CASE Act, the Office engaged in regulatory work in other areas, including with respect to our administration of registration, recordation, and mandatory deposit services. Altogether, the Office completed ten rulemaking procedures in fiscal 2020, including a fee study. So far in fiscal 2021, the Office has issued interim or final rules in seven rulemaking procedures, including several MMA matters. These actions include all framework rules necessary to facilitate the operations of the mechanical licensing collective by the statutory deadlines set forth in the MMA. The Office currently is focused on open rulemaking procedures, including with respect to implementation of the CASE Act, issues related to online publication in connection with copyright registration, and administration of the section 111 license.

A larger endeavor is the section 1201 eighth triennial rulemaking on exemptions from the prohibition against circumvention of technological protection measures used to protect copyrighted works. After the Office's successful implementation of a streamlined process for the renewal of unopposed exemptions in the previous triennial cycle, we have followed that same process in the current rulemaking. We published a proposed rule tentatively recommending re-adoption of all existing exemptions. The Office has received written comments in connection with 17 classes for new or expanded exemptions. In April, the Office held seven days of virtual public hearings, and we are on track to provide a recommendation to the Librarian and conclude the rulemaking in October 2021.

3. Litigation

The Office continues to be involved in ongoing litigation matters. Office attorneys worked with colleagues in the U.S. Department of Justice on Supreme Court cases, including *Google v. Oracle*, regarding the copyrightability and fair use of computer code. The Office was also active in two circuit court appeals in fiscal 2020, including to clarify the scope of copyright for an unpublished musical work under the 1909 Copyright Act in *Skidmore v. Led Zeppelin*, and section 411(b)'s provision allowing the Register to provide views on the effect of inaccurate information on a registration application in *Universal Dyeing, Inc. v. Topson Downs*.

¹⁸ See <https://www.copyright.gov/policy/119/>.

The Ninth Circuit subsequently resolved both questions in the manner urged by the government. In addition, the Office continued to participate in litigation matters regarding the Copyright Royalty Board, including the D.C. Circuit's consideration of an appeal to the *Phonorecords III* ratesetting, as well as issues related to the subsequent remand to the CRB.

4. International

The Office continued its international work in various international fora. In 2020, the pandemic prevented in-person meetings of the World Intellectual Property Organization (WIPO) committees where the Office participates as a member of the U.S. delegation. However, there remained much international work on trade-related copyright matters. We were active in participating as part of the interagency team for the annual Special 301 Reports led by the Office of the U.S. Trade Representative (USTR), serving as subject matter experts for bilateral trade talks, and contributing to U.S. government comments for countries having World Trade Organization (WTO) trade policy and accession reviews. The Office also continued to assist USTR on implementation of the United States-Mexico-Canada Agreement (USMCA), and worked with colleagues at the U.S. Patent and Trademark Office (USPTO) and USTR on reviews of dozens of copyright law and policy developments in other countries.

F. Outreach and Education

The Office continues to emphasize a robust outreach and education program. In fiscal 2020, the Office produced twenty-eight events, ranging from a symposium on artificial intelligence and copyright in cooperation with the World Intellectual Property Organization (WIPO), to webinars on modernization and new registration options. Additionally, we fielded almost 200,000 public inquiries in fiscal 2020 and increased our social media presence through 54 educational YouTube videos, 31 blog posts, and 633 tweets. With virtual engagement with the copyright community taking on a new importance during the pandemic, the Office remains committed to a vibrant social media presence and both virtual and in-person outreach in a post-pandemic world.

G. Budgetary Matters

The Copyright Office performs all of this work on a relatively modest budget.¹⁹ It also continues the effective stewardship of over \$1.4 billion in statutory licensing revenues; for the

¹⁹ The Copyright Office's overall budget is composed of three separate budgets or program areas: (1) the Basic Budget, which funds most of the Office's core operations, including the majority of payroll-related expenses; (2) the Licensing Budget, which is derived completely from licensing royalty

third consecutive year, we received an unmodified or “clean” audit opinion of the statutory licensing fiduciary asset financial statements.

1. Budget Status

The Office appreciates Congress’s support for our fiscal 2021 budget.²⁰ This included recurring support for the Office’s modernization efforts, initially funded as part of the fiscal 2019 budget and continuing for five years through fiscal 2023. Congress also provided an additional \$1.6 million in the fiscal 2021 budget, primarily for Office and Copyright Royalty Judges (CRJ) staffing to handle the MMA and other increasing workloads.

To support implementation of the CASE Act, the Office is requesting \$3.2 million in additional funding for fiscal 2022. In total, the Office requests \$98.0 million in funding and 472 FTEs, of which \$45.0 million would be funded through offsetting collections of fees collected in fiscal 2022 and in prior years. This would ensure the resources needed to continue progress towards accomplishment of our strategic goals, which include providing expert law and policy advice and modernizing information technology.

2. More Flexible Fee Authority

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

collections otherwise payable to copyright owners and filing fees paid by cable and satellite licensees pursuant to statutory licenses administered by the Office; and (3) the Copyright Royalty Judges (CRJ) Budget, for which the Office provides budget formulation and execution support on behalf of the Library (although the CRJ program is not itself a part of the Office).

²⁰ The fiscal 2021 enacted budget totals \$93.416 million, and consists of the following three elements: \$84.317 million for Copyright Basic; \$6.232 million for Licensing; and \$2.867 million for the Copyright Royalty Judges.

III. PRIORITIES MOVING FORWARD

Based on the virtual listening tour as well as internal discussions, I have identified several high-level priorities for the Office's future work.

First, the Office will continue and take forward the project of modernization, going beyond the scope of our current initiative. Once that initiative is completed, it does not make sense to simply declare victory and wait until the IT is outdated to begin again. Rather, the Office will engage in a process of constant improvement and updating, with public input throughout. We will also consider a variety of exciting new projects, drawing on cutting-edge technologies. Once the Office's trove of valuable data is all digitized and fully searchable, we want to take steps to maximize its usefulness to the public. For example, the Office can connect its datasets to other reliable datasets with relevant information. We will also look at expanded functionalities such as the use of APIs and mobile apps.

A second overarching goal is to further open up the copyright system, involving more participants. We want to make the law and our services as easy to understand and as accessible as possible, for individuals as well as businesses of all sizes. This will include broadening our outreach and education efforts, with a focus on underserved communities. The CCB will be an important tool, and it is critical to educate people about its existence and help them to navigate the process. The current modernization initiative will also further this goal, as the new ECS system will require considerably less expertise to use. And the Office has begun to participate in the National Council on Expanding American Innovation (NCEAI) established last year by the USPTO. The end result of these efforts should be a more diverse pool of creativity for the public to draw on, enriching our culture.

Third, the Office will enhance our development and use of data by adding in-house economic expertise. We plan to hire a Chief Economist to assist in producing and analyzing the factual evidence on which to base decisions with respect to both policy and financial matters. In my experience working with the Office of the Chief Economist at the USPTO, I saw the great value that its work contributed to the agency's initiatives.

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In conclusion, I note that July 7 marks the end of our celebration of Copyright Office's 150th anniversary. This year has been exceptionally busy, challenging, and productive. I want to thank the Office's dedicated staff for all of their work to serve the copyright community and the public, especially during the pandemic. Finally, let me stress our appreciation for this Committee's continued support of the Office and its mission.