

Statement of Karyn Temple
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Before the
Subcommittee on the Legislative Branch
Committee on Appropriations
United States Senate
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Madam Chairman, Ranking Member Murphy, and Members of the Subcommittee,

Thank you for the opportunity to submit the United States Copyright Office's fiscal 2020 budget request.

As the Supreme Court has recognized, copyright is the very "engine of free expression."¹ The U.S. copyright framework provides a balanced set of protections and exceptions to facilitate the country's economic and cultural growth, resulting in an extremely diverse cultural heritage and flourishing creative and technology sectors for the benefit of the American people. In 2017, the core copyright industries added more than \$1.3 trillion to the U.S. GDP, accounted for 6.85% of the U.S. economy, and employed 3.85% of the U.S. workforce.² These impressive contributions are made by individual creators and businesses working in a wide variety of fields, including software, movies, music, books and journals, visual arts, and more.

The Copyright Office plays a critical role in this ecosystem. The Office is the only federal entity charged by statute with administering the nation's copyright laws. The Office also promotes creativity and free expression by offering educational and outreach programs on copyright as well as impartial, expert advice on copyright law and policy, for the benefit of all. A key component of the Office's work is to examine claims for copyright to determine whether to register them, and to record changes in ownership in those claims. In fiscal year 2018, the Office received more than 540,000 new claims for copyright, registered 560,000 claims covering millions of works, and recorded over 21,000 documents regarding copyright ownership. This represents a tremendous public record of the nation's creativity that enables copyright owners to pursue claims in court and provides the public with new access to ownership information.

Registration and recordation are, however, just two of the Copyright Office's important duties. The Office also has a central role in administering statutory licenses to use certain copyrighted works, managing over a billion dollars in royalties in fiscal year 2018 alone. The Office provides key support to the public on copyright issues, handling almost 200,000 public inquiries by

¹ *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 558 (1985).

² INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE, *COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY: THE 2018 REPORT* at 3 (2018).

phone, email, and in person. And the Office continues to handle the Copyright Act's mandatory deposit requirement that provides the Library of Congress with an impressive number of published works for its collection, which in fiscal 2018 included more than 735,000 published works worth over \$47.5 million.

The Copyright Office also serves as a primary advisor to Congress, with a longstanding history of providing expert analysis on all copyright policy matters since its creation.³ In 2018, the Copyright Office continued this work by providing extensive assistance on copyright legislation, including the landmark Orrin G. Hatch-Bob Goodlatte Music Modernization Act ("MMA") and the Marrakesh Treaty Implementation Act. The Office's important work on the Music Modernization Act was lauded by Congress, which emphasized that the Office "has the knowledge and expertise regarding music licensing through its past rulemakings and recent assistance to the Committee during the drafting of this legislation"⁴ to lead the historic law's subsequent implementation. The Office also advised on a variety of other copyright matters, including by providing a detailed analysis on the legal landscape of copyright as it relates to visual artists⁵ and continuing policy studies on the section 512 notice-and-takedown regime and moral rights.

The Copyright Office also is charged with a number of additional legal and regulatory responsibilities. For example, in 2018, the Office completed several rulemaking proceedings, including the seventh triennial section 1201 rulemaking process that provides exemptions to the law's prohibitions on anticircumvention of certain technological protection measures. The Office's section 1201 recommendations, which were based on the Office's updated and streamlined 1201 process, were widely praised in diverse areas of the copyright community. And the Office worked with the executive branch and the courts on a number of high-profile matters, including several Supreme Court litigations and international treaties.

At the same time, the Copyright Office has dedicated significant resources and attention to modernization. Now more than ever, the Office recognizes the need to ensure that copyright owners and users have a robust, user-centered, and highly efficient system that will support prompt action on applications for registration and the development of a comprehensive record

³ See, e.g., H.R. REP. NO. 105-796, at 77-78 (1998) (Conf. Rep.) (directing the Office to continue its "longstanding role as advisor to Congress" by, among other things, providing "testimony [on] pending legislation," conducting "studies [that] have often included specific policy recommendations," and responding to "specific requests by Committees for studies and recommendations on subjects within the Copyright Office's area of competence").

⁴ H.R. REP. NO. 115-651, at 14 (2018).

⁵ See Letter from Acting Register Karyn Temple to Senate Judiciary Committee and House Judiciary Committee, Copyright and Visual Works: The Legal Landscape of Opportunities and Challenges (Jan. 18, 2019); Senate letter *available at* <https://www.copyright.gov/policy/visualworks/senate-letter.pdf>.

of ownership data.⁶ Based on 2017's *Modified U.S. Copyright Office Provisional IT Modernization Plan: Analysis of Shared Services, Support Requirements, and Modernization Efforts* ("Modified IT Plan"),⁷ in January 2018, the Office created the Copyright Modernization Office ("CMO"), which is tasked with closely analyzing the Office's modernization needs. The Office also worked with the Library of Congress' Office of the Chief Information Office ("OCIO") to begin the process of identifying both internal and external goals for a new system, and how to best move forward. For example, in 2018 the Office and the OCIO began joint design work to create public interfaces for the Office's forthcoming modernized applications (in conjunction with internal analysis of business requirements for potential substantive regulatory or practice changes). To help the public understand the process and planned timeline, the Office established a dedicated webpage and initiated a bimonthly webinar series to inform the public and highlight progress; staff members also conducted a number of presentations. While still at the beginning stages of IT modernization, the Office is excited to continue this essential work.

The Office's focus on modernization, however, does not encompass only information technology. Over the past year, the Office began several important initiatives to modernize its work flow and processes, and to continue to reduce processing times. The Office conducted a comprehensive review of older applications (those pending more than one year) to determine the basis for the processing delay and to follow up with applicants if the Office still required further information to determine whether to register a work. To date, the Office has reduced the number of these claims by 74%.

Additionally, the Office has explored a number of other ways to improve efficiency and processing times. For example, in 2017, the Office assembled a working group to review pendency times that included representatives from throughout the Office to develop recommendations for improvements. In 2018, the Office also formally reevaluated its training program for onboarding new registration examiners to identify ways to more quickly complete training. This evaluation included a working group with a cross-section of staff from each division of the Registration Program who identified efficiencies to shorten the previous year-long training program to six months, enabling examiners to more quickly begin fully participating in the application review process. The Office also engaged the Smithsonian Organization and Audience Research ("SOAR") to review registration workflow and processes and provided recommendations. At the same time, the Office enhanced training initiatives to address more complex issues so that less correspondence with applicants is required. And, in the past two budget cycles, the Office requested additional examiner resources (fifteen examiners in fiscal year 2018 and fifteen examiners in fiscal year 2019). These important steps

⁶ See *Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC*, -- U.S. --, 2019 WL 1005829 (2019) (confirming that copyright owners can only institute copyright suits after the Copyright Office has acted on their copyright applications).

⁷ U.S. COPYRIGHT OFFICE, MODIFIED U.S. COPYRIGHT OFFICE PROVISIONAL IT MODERNIZATION PLAN: ANALYSIS OF SHARED SERVICES, SUPPORT REQUIREMENTS, AND MODERNIZATION EFFORTS (2017), available at <https://www.copyright.gov/reports/itplan/modified-modernization-plan.pdf>.

have yielded a significant positive effect on the Office's processing times and number of pending claims. In the past year, the Office reduced its workable claims by 46% and has seen a sharp drop in the processing time for pending registration applications. The Office also continued to focus on streamlining registration practices to make the process more efficient, and in the past two years alone has initiated or closed seventeen rulemakings to modernize its regulatory practices, resulting in updated regulations regarding filing fees, deposit requirements, and registration policies. Rulemakings on topics as diverse as short online literary works and architectural works are pending public comment.

The Office performs all of this important work on a relatively modest budget. As the Supreme Court noted just this month, changes in funding have real-world effects on the copyright community, and resulting processing delays can be "attributable, in large measure, to staffing and budgetary shortages that Congress can alleviate, but courts cannot cure."⁸ With the loss of certain fees resulting from passage of the MMA,⁹ combined with the new statutory requirement for the Office to provide outreach pursuant to that legislation,¹⁰ the Office must undertake greater responsibilities with fewer resources. The Office is reviewing its overall funding and activities to make the best use of its resources.

The Copyright Office is honored to serve the country and the copyright ecosystem. Building on almost 150 years of experience, the Office is dedicated to advancing the "engine of free expression" and working with the public and other governmental actors. The Office is grateful for this opportunity to present a budget request that would enable this important work to continue in fiscal year 2020.

FUNDING AND OVERALL FISCAL YEAR 2020 BUDGET REQUEST

The Copyright Office greatly appreciates the Committee's support in fiscal 2019 for its priority initiatives, which include fulfilling the *Modified IT Plan* goals, providing the public with online access to historical copyright records, and reducing registration and recordation processing times. Those initiatives are now fully underway, and the Office is pleased to report on a number of accomplishments as part of this fiscal year 2020 budget request. As the fiscal 2019 enacted budgets included recurring annual funding for several of these initiatives, the Copyright Office fiscal 2020 request includes only the mandatory pay-related and price level adjustments necessary to maintain the same level of funding support to continue the progress underway. The request also includes a funding transfer request, which will provide the OCIO

⁸ *Fourth Estate*, -- U.S. --, 2019 WL 1005829, at *7.

⁹ The MMA eliminated the need for certain Notices of Intent for certain mechanical licenses under section 115 of the Copyright Act. This change will reduce the Office's incoming fees by a not insignificant amount.

¹⁰ MMA, H.R. 1551, 115th Cong. tit. I, § 102(e) (2018) (mandating that the "Register of Copyrights shall engage in public outreach and educational activities").

with funding to support IT resources transferred from the Copyright Office to the OCIO as part of the Library's shared IT services initiatives.

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 provided through 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*, which funds the Copyright Royalty Board ("CRB")—although the CRB is not a part of the Office, the Office administers its budget on behalf of the Library of Congress.

For fiscal year 2020, the Copyright Office requests a combined total of \$92.9 million in funding and 429 FTEs, of which \$49.7 million would be funded through offsetting collections of fees collected in fiscal year 2020 and in prior years.

The Office's fiscal year 2020 requests are:

- *Basic Budget*: \$85.1 million and 400 FTEs. The request includes mandatory pay-related and price level increases of \$2.3 million. The request also includes a transfer of \$2.7 million to fund the Library's OCIO for IT resources transferred to them as part of the Library's shared services initiatives, and a reduction in the amount of \$0.3 million for non-recurring costs associated with the Office's warehouse inventory. The fiscal 2020 budget request requests funding for its Basic Budget from \$43.2 million in offsetting fee collections (51%) and \$41.9 million (49%) in appropriated dollars.
- *Licensing Division Budget*: \$5.95 million and 23 FTEs, all of which is funded via fees and royalties. The requested increase includes mandatory pay-related and price level increases of \$0.2 million.
- *Copyright Royalty Judges Budget*: \$1.9 million and six FTEs, with \$0.07 million to support mandatory pay-related and price level increases. \$0.5 million (for non-personnel-related expenses) of the total request is offset by royalties. The remainder, \$1.4 million in appropriated dollars, is to cover the personnel-related expenses of the judges and their staff.

FOCUS OF FISCAL 2020 ACTIVITIES

The Copyright Office's fiscal 2020 funding request provides resources necessary to continue the progress already started towards the Office's strategic goals, which include: (1) modernization of the Office's IT systems and applications, including the Office's historical records initiative, and (2) 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.

Copyright IT Modernization

Modernization of the Copyright Office's aging information technology systems and applications continues to be the Office's top priority. As directed by the Committee, the Copyright Office has engaged in extensive collaboration with the Library's OCIO "to achieve efficiencies in shared services, while allowing for mission-specific modernization to be the responsibility of the Copyright Office."¹¹ With the five-year recurring funding provided in fiscal 2019 through the support of the Committee, the Office and the Library's OCIO have partnered to facilitate work associated with the Office's envisioned Enterprise Copyright System ("ECS"), which will integrate data across the Office's core services for registration, recordation, and statutory licensing.

While the Copyright Office is working to determine its needs from a non-technical standpoint, the Library has a centralized IT model, with all responsibility for technical IT and agile training services consolidated within the OCIO. Thus, the Copyright Office has transferred the bulk of the fiscal 2019 funding to OCIO through an intra-agency agreement so that OCIO can continue to maintain Library-wide responsibility for administering the activities and contracts associated with those services.

The Copyright Office wants to assure the Committee that it has taken seriously the request to investigate innovative contracting methods, including possible no-cost contracting solutions for modernization. The Office coordinated with the OCIO, issuing a public Request for Information ("RFI") in May 2018 that asked for comments on creative solutions, including possible no-cost options, for the development of a next-generation ECS. To further facilitate efforts to reduce risk associated with IT contracts for a project of this scope, the Office consulted with the General Services Administration ("GSA") 18F, the office within GSA that provides expertise to federal agencies in planning successful IT projects. 18F provided the Office with input on the RFI, best practices in contracting for agile projects, and on the Copyright Office's preparedness for facilitating agile teaming. As a follow-on to the RFI and the 18F engagement, the Office and the OCIO are currently working with GSA to leverage their IT contracting experts for future modernization contracting activities, and plan to have GSA coordinate new public requests for proposals for the development of the ECS.

¹¹ S. REP. NO. 115-274, at 43 (2018) *available at* <https://www.congress.gov/115/crpt/srpt274/CRPT-115srpt274.pdf>.

Against this backdrop, and with the Committee's support, the Office has made important progress on modernization activities. Following is a summary of successes already achieved and progress underway:

Public Outreach

The Copyright Office recognizes the interest and investment that the copyright community has in the success of the Office's IT modernization, and the Office is committed to a robust program of communication, outreach, and transparent reporting for the Office's modernization activities.

Beginning in fiscal 2018 and continuing into fiscal 2019, the Office conducted extensive public outreach with the OCIO and a digital User Interface/User Experience (UI/UX) contractor to begin to design the public interfaces relating to recordation functions and registration applications within the ECS. The Office visited four cities (Washington, D.C., New York, Los Angeles, and Nashville), conducting sixty-eight in-depth interviews with copyright registration and recordation applicants and other public stakeholders to gain an understanding of end-user needs for the registration and recordation systems. The Office also conducted an extensive online survey, receiving over 10,000 responses. Using this public feedback, the UI/UX contractor developed preliminary wireframes of the new systems that will allow the Office to conduct ongoing user testing and further refine the user interfaces.

The Office established a dedicated public webpage for modernization efforts located at copyright.gov/copyright-modernization/. Modernization activities have been chronicled on the *Copyright: Creativity at Work* blog and the newly-established CMO established a public email address (askcmo@copyright.gov) for modernization questions. Senior Office staff also gave numerous presentations highlighting ongoing modernization efforts, including at annual meetings of the American Intellectual Property Law Association ("AIPLA") and Copyright Society of the USA ("CSUSA"), and Office staff highlighted modernization efforts at a variety of other speaking engagements. In 2019, the Office is expanding its outreach efforts to ensure that the public is informed and engaged in these processes, including with the newly-launched bimonthly webinar series featuring highlights of modernization.

Additionally, the Office issued a Notice of Inquiry asking for public input on how to improve regulations and practices related to the registration of copyright claims in the digital age. To develop modern registration policies, the Office sought input on three areas of reform: (1) the administration and substance of the application for registration, (2) the utility of the public record, and (3) the deposit requirements for registration. The Office received comments in January 2019 and is reviewing them to assist in the modernization process. The Office is considering issuing additional requests for public input on targeted areas such as types of works in the coming months.

Recordation Automation

Even before fiscal 2019, Copyright Office staff had begun work to re-engineer its antiquated, paper-based document recordation system. Development is now underway on a new automated recordation system that will completely overhaul the current time-consuming, manual recordation of documents. In collaboration with the OCIO, the Office provided business-based objectives for an OCIO development contract to deliver a “minimally viable product” (“MVP”) of the recordation application in advance of an official project launch. This new system will automate customers’ document submissions (i.e., data) and create a searchable data set that is both available and useful to the public. A limited public release of an MVP for the recordation application is expected in February 2020, which will allow the Office to gather feedback for continued development efforts. Product Launch is currently scheduled for the following year, in February 2021.

Historical Records Initiative

The historical records initiative is an IT modernization effort that was separately funded with five-year recurring authority. The goal of the historical records project is to take all of the Office’s historical records of copyright and make them digitally available to the public. This includes all USCO public records from 1870–1977 that are not available online and the public records that are already available online (post-1977 records) but need a more robust search and retrieval interface. The primary digitization efforts are aligned with results of the Office’s recently completed industry analysis, a study conducted to ensure that the Office’s efforts are efficient and in line with best practices. Recent successes include the latest public release of a Virtual Card Catalog (“VCC”) Proof of Concept, which provides the public with images of all of the Office’s card catalog records including registrations, assignments, and other historical records. As of March 2019, the VCC included over 41.5 million card images from 1870–1977, which can be filtered by time period and drawer label. The 1955-1977 indexes can be filtered by the optical character recognition (“OCR”) text on the cards. The public feedback has been overwhelmingly favorable and will be used for future historical records development efforts.

Data Management

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

Modernization of Copyright Office Business Practices

With the funds provided for additional registration specialists in fiscal years 2018 and 2019, the Office has been able to clear a significant number of pending registration applications. As noted

above, the Office also undertook a number initiatives to analyze and address processing times. In fiscal 2018, the volume of workable claims, i.e., claims not requiring applicant action or awaiting the associated copyright deposit, were reduced by almost 1,900 claims per week compared to reductions of only 130 claims per week in fiscal 2017. The Office is continuing to focus on process improvements by including modernization of copyright regulations and practices in the Office's ongoing business process reengineering analysis.

The Office's modernization initiative is about more than just technology — it also encompasses Office business process reengineering, an organizational and workload assessment, and personnel planning. For instance, in fiscal 2018 the Office engaged the Office of Personnel Management's Human Resources Solutions ("OPM") to conduct an organization analysis and redesign to achieve optimal position management and service delivery efficiency. OPM's work will be completed in early fiscal 2020, and the Office intends to use the resulting analysis to reorganize the Office to better align with newly automated processes resulting from modernization.

MMA Implementation

In October 2018, Congress enacted the most comprehensive update to copyright law since the 1998 Digital Millennium Copyright Act. Title I of the MMA amends the section 115 license for reproduction and distribution of musical works. Title II brings pre-1972 sound recordings partially under the federal copyright statute. Title III addresses directing royalties to sound recording producers and engineers. The MMA also requires the Office to conduct multiple rulemakings to implement aspects of the law, engage in outreach and educational activities regarding changes to the section 115 license, and undertake a policy study with respect to the establishment of a public database regarding the section 115 license. The Office has been continuously updating its website to inform the public of the MMA, and relevant implementation dates. The Office has begun publishing updates to its circulars with the statutory changes as well as layman's explanations of the law and its administration.

Days after the MMA was enacted, the Office issued interim rules to implement aspects of the MMA, addressing Title I (regarding the 115 license) and Title II (regarding Pre-1972 sound recordings). The Office issued a Notice of Inquiry and Notice of Proposed Rulemaking addressing additional regulatory updates (noncommercial use). The public comment period for the Notice of Proposed Rulemaking closed on March 7, 2019. There is a statutory deadline of April 9, 2019 for publication of a final rule (noncommercial use).

On December 21, 2018, the Office issued a Notice of Inquiry regarding the designation of a mechanical licensing collective and a digital licensee coordinator to carry out key functions under the updated mechanical licensing process. Comments were due March 21, 2019, with reply comments due April 22, 2019. The Office is committed to an open and transparent designation process. The Acting Register will recommend entities to be designated by July 8, 2019.

The Office’s outreach and educational activities will continue after each implementation step, including regarding the designation of the mechanical licensing collective and a digital licensee coordinator. The Office will also undertake a policy study regarding best practices that the mechanical licensing collective may implement in order to identify and locate musical work copyright owners with unclaimed accrued royalties held by the collective, encourage them to claim their royalties, and reduce the incidence of unclaimed royalties.

PENDING CHANGES TO THE COPYRIGHT OFFICE FEE STRUCTURE

When proposing a balance of user fees and taxpayer-funded monies to support its operations, the Copyright Office gives careful consideration not only to the public benefits of the national copyright system, but also to the impact of user fees on a copyright system that is dependent on voluntary copyright registration and recordation. To ensure that the Office’s fees are “fair and equitable and give due consideration to the objectives of the copyright system,”¹² the Office conducts regular studies of its operating costs and fee structure. For the most recent study, completed in fiscal 2018, the Office engaged an outside consulting firm to comprehensively assess the internal drivers of the Office’s costs as well as external factors, such as an assessment of economic trends that affect stakeholder value, statutory restrictions, and policy goals. The Office released the study in May 2018, along with a Notice of Proposed Rulemaking, giving public notice of the Office’s proposed fee schedule changes.

The Copyright Office received a significant number of public comments regarding the Notice, and is currently reviewing those comments in anticipation of finalizing a new fee structure in fiscal 2019.

MORE FLEXIBLE FEE AUTHORITY

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

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¹² 17 U.S.C. § 708(b)(4).

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