

Copyright Law Administration

TIMELINESS OF SERVICES

Service is central to an effective national copyright system. Effective delivery of client-funded and taxpayer-funded copyright services requires that they be timely.

For several years the Copyright Office wrestled with lengthy time frames for delivering its products. Through focused effort and the energy created by the Office's Reengineering Program, the Office has achieved significantly better delivery times for its services and products since 2001.

Prompt service delivery has decreased the number of status inquiries, freeing time for public information functions to deal more effectively with other substantive inquiries. This achievement took place during a period of increased security concerns and a significant investment of staff resources to reengineer Copyright Office processes.

The security concern that had the most direct impact on the Office's ability to provide its services was the anthrax threat in late 2001, as reported in the annual reports for Fiscal Years 2002 and 2003. Subsequently, Congress created offsite mail screening processes for all Capitol Hill mail. In early February 2004, ricin-contaminated mail was delivered to a Senate office. This incident disrupted the Office's mail delivery for an entire month while enhanced screening processes were put in place. The disruption affected mail processing until early June as delayed mail was delivered along with current mail. The Office worked to restore



Work station where applications are scanned to print registration certificates

normal processing levels. The improvement in timeliness reflects the Office's efforts to overcome the disruption.

REGISTRATION

Copyrighted Works

During Fiscal Year 2004, the Copyright Office received 614,235 claims to copyright covering more than a million works and registered 661,469 claims received during fiscal years 2003 and 2004. The Office examines the materials received to determine whether the deposited work contains copyrightable content, whether the claimant is entitled to claim copyright, and whether there has been compliance with U.S. copyright law and Office regulations. Registration is now two and a half times speedier than in 2001, when there was an average of 200 days between receipt of a claim and the issuance of a certificate. At the end of Fiscal Year 2004, the average time to issue a certificate was 80 days.

Mask Works

Mask works are a series of related images having or representing the predetermined three-dimensional pattern on the layers of a semiconductor chip product. The Office received 357 mask works in Fiscal Year 2004. It registered 377, including some received in Fiscal Year 2003.

Vessel Hull Designs

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

The Office received 55 vessel hull designs this fiscal year. The Office registered 52 and either rejected or corresponded on the others.

Appeals of Denial of Registration

During Fiscal Year 2004, the Examining Division handled 231 first appeals covering 353 claims. Of the 353 initial refusals to register, 101 (29 percent) were reversed upon first appeal.

The Board of Appeals met 10 times during the fiscal year and handled 28 requests for reconsideration involving 68 works. The Board issued decisional letters responding to 33 second appeals involving 77 works. Some of these works were from requests that the Board considered in Fiscal Year 2003 but responded to in Fiscal Year 2004. It agreed to register four works and upheld the refusal to register the other 73.

Cataloging

The copyright law requires that the Register of Copyrights keep records of all deposits, registrations, recordations, and other copyright-related matters; make these records available to the public; and prepare indexes of all the records. The Cataloging Division records the copyright facts, some bibliographic information, and a physical description of the deposited copies for all works registered in the Copyright Office. The Division also creates a record for recorded documents.

Records of copyright registrations are important to users and owners of copyrighted works.

Portions of copyright cataloging records are used by some divisions of the Library of Congress.

The Cataloging Division created cataloging records for 567,607 registrations in Fiscal Year 2004, including 21,078 registrations submitted electronically.

Appeals Process

Under title 17, the Register of Copyrights may determine that the material deposited for copyright registration does not constitute copyrightable subject matter or that the claim is invalid for other reasons. In such cases, the Register refuses registration and notifies the applicant in writing of the reason(s) for such refusal. Applicants whose claims for registration are rejected can appeal such decisions in a two-stage process.

The claimant first appeals to the Examining Division. If the Division upholds the refusal, the claimant may make a second appeal to the Copyright Office Board of Appeals. The Register of Copyrights, the General Counsel, and the Chief of the Examining Division, or their designees, constitute the Board of Appeals.

Copies of Deposits and Certifications

The Information and Reference Division's Certifications and Documents Section produced 4,607 copies of certificates of registration. This was an 18 percent increase from the previous year. During the fiscal year, the section made 2,314 copies of copyright deposits and 1,103 certifications of deposits or records.

Contributions to Library of Congress Collections

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

During the fiscal year, the Office transferred 1,038,561 copies of registered and nonregistered works valued at \$36,456,888 to the Library of Congress collections.

RECORDATION

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

The majority of documents involve transfers of rights from one copyright owner to another. Other recorded documents include security interests, contracts between authors and publishers, and notices of termination of grants of rights.

During Fiscal Year 2004, the Documents Recordation Section recorded 14,979 documents covering more than 470,000 titles of works. As of the end of Fiscal Year 2004, the average processing time was down to 33 days, more than six times faster than the average of 210 days three years earlier.

ONLINE SERVICE PROVIDER DESIGNATIONS OF AGENT

The Digital Millennium Copyright Act amended the law to limit potential liability for monetary and injunctive relief for infringing uses of online service provider services. To take advantage of this limitation, the service provider must designate an agent for notification of claimed infringement and provide contact information to the Copyright Office. These designations of agent are then made available to the public. The Office maintains a directory of agents on its website, one of the website's most-visited areas with more than 3.5 million hits in Fiscal Year 2004. During the year, the Office posted an additional 572 designations of agent to the website, for a total of more than 5,400.

MANDATORY DEPOSIT

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

These copies are deposited with the Copyright Office for the use of the Library of Congress in its collections or for exchange or transfer to other libraries. The Copyright Acquisitions Division (CAD) acquires from publishers works needed for Library of Congress collections when those works have not been obtained as registration deposits or voluntary deposits sent in compliance with the mandatory deposit requirement.

CAD made demands for 3,937 titles based on recommendations by CAD librarians and Library of Congress recommending officers and in response to Congressional requests.

Of the 1,038,561 copies of works the Office transferred to the Library of Congress for its use, more than half—537,903—arrived under the mandatory deposit provisions of the copyright law. The value of these mandatory deposits was \$13,220,977 or 36 percent of the estimated value of all materials transferred to the Library.

The Copyright Acquisitions Division encourages copyright owners to deposit or register works regularly and voluntarily immediately after publication; however, the copyright law authorizes the Register to issue demands for the required copies any time after publication.

STATUTORY LICENSES AND OBLIGATIONS AND THE CARP SYSTEM

The Copyright Office oversees the statutory licenses and obligations in the copyright law. These licenses deal with secondary transmissions of radio and television programs by cable television systems; the making of ephemeral recordings; the noninteractive digital transmission of performances of sound recordings; the making and distributing

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

Licensing Division Responsibilities

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

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

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

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

The Licensing Division collected more than \$212 million in royalty payments during the fiscal year, almost entirely via electronic funds transfer (EFT). The division worked on developing options for electronic filing for cable Statements of Account (SA) to be tested in a pilot e-filing program during Fiscal Year 2005.

The division pursued several other internal measures to create processing efficiencies in workflow and public availability of completed SA documents, including streamlined data entry procedures in the Licensing Division System, abbreviated examination

of the SA1-2 cable short form, and simultaneous examination of SA-3 cable long forms across two accounting periods.

Royalty Fee Distributions

The Copyright Office distributes royalties collected under sections 111 and 119 and chapter 10 of the copyright law.

In Fiscal Year 2004, the Office distributed royalties totaling \$154,109,550.93 in the following distributions:

- On October 23, 2003: two distributions totaling \$79,533,900.59 comprising distribution of the 1998 satellite royalties (\$18,368,179.26) to the Joint Sport and Program Suppliers claimant groups, and 50 percent of the 2001 cable royalties (\$61,165,721.33).
- On October 30, 2003: \$2,150,676.18 comprising the 2002 DART Copyright Owners Subfund and the Featured Artist Subfund.
- On December 4, 2003: two distributions totaling \$444,206.64 comprising the 2002 DART Nonfeatured Musicians (\$58,860.39) and Nonfeatured Vocalists Subfunds (\$30,831.64), and a final distribution to the Devotional Claimants (copyright owners of religious programming) of the 1998 cable royalties (\$354,514.61).
- On July 8, 2004: \$7,567,865.51 of 1997 cable royalties to Program Suppliers.
- On July 29, 2004: \$835,571.32 of the 2003 DART Featured Artist Subfund.
- On September 16, 2004: \$63,577,330.69 comprising 50 percent of the 2002 cable royalties.

Financial statements for royalty fees available for distribution in the cable and satellite statutory licenses and in the digital audio recording technology statutory obligation are compiled and audited on a calendar-year basis as required by law. The total royalty receipts shown in calendar year statements are therefore not the same as the fiscal year total. Calendar year 2003 financial statements are included in the appendices.

Copyright Arbitration Royalty Panels (CARP)

During Fiscal Year 2004, the Copyright Office administered five CARP proceedings—three rate adjustment proceedings and two distribution proceedings. The rate adjustment proceedings involved setting rates and terms for the section 114 license for the digital performance right in sound recordings and the section

112 statutory license for the making of ephemeral recordings to facilitate these transmissions.

The distribution proceedings dealt with distribution of royalty fees collected in accordance with the section 111 cable compulsory license.

Below is a summary of the proceedings conducted this fiscal year and updates on prior-year distribution proceedings not yet concluded.

Copyright Arbitration Royalty Panels (CARP)

CARPs set and adjust royalty rates, set terms and conditions of payment, and determine distribution of royalties collected by the Licensing Division for the cable and satellite licenses and for DART when copyright owners cannot resolve controversies among themselves. A CARP panel consists of three arbitrators. CARP proceedings are divided into two phases. The first phase is the 45-day discovery period during which the parties exchange their documentation and evidence in support of their cases, in preparation for the hearings before a CARP. The second phase is the CARP proceeding itself, including the presentation of evidence. CARPs submit their final decision to the Register of Copyrights. The Librarian of Congress, on the recommendation of the Register of Copyrights, must either accept or reject the panel's determination. If the Librarian rejects the CARP's decision, he substitutes his own determination within a specified time period.

Rate Adjustments

Public Performance of Sound Recordings:

Docket Numbers 2002-1 CARP DTRA3 and 2001-2

CARP DTNSRA

In 2002, the Copyright Office began two proceedings to set rates and payment terms for the statutory licenses governing the reproduction and public performance of sound recordings by means of digital audio transmissions. The first proceeding was to establish rates and terms for services making nonsubscription transmissions, while the second proceeding was to perform the same function for new subscription services. Because both proceedings shared common issues and parties, the proceedings were consolidated in Fiscal Year 2003.

Parties who were then part of the consolidated proceeding negotiated a series of industry-wide agreements that proposed rates and terms for the 2003–2004 license period that would cover the various categories of users. These proposals were submitted to the Copyright Office for publication and comment. In response to the publication of these proposals, four parties who had not previously identified their interest

in these proceedings filed comments with the Office objecting to certain provisions in the proposals. These differences, however, were eventually resolved through further

negotiations, and the objections were withdrawn. Because no controversies remained, the Librarian published a final rule on February 6, 2004, adopting the rates and terms previously published for the license period beginning January 1, 2003, and ending December 31, 2004.

Digital Performance Right in Sound Recordings:

Docket Number 2002-1 CARP DORA 4

The copyright law requires that rates and payment terms for the statutory licenses governing the reproduction and public performance of sound recordings by means of digital audio transmissions be reconsidered every two years. Accordingly, the Copyright Office published a *Federal Register* notice in January 2004 announcing the initiation of a new proceeding to adjust the rates and terms of payment for the 2005–2006 license period. The first six months of the proceeding are set aside for negotiations among representatives of the interested parties. To date, interested parties have reached settlements concerning rates and terms applicable to eligible nonsubscription services, small commercial webcasters, and noncommercial webcasters for the new license period, but two groups who operate under the statutory licenses have yet to reach agreement with the copyright owners of the sound recordings. In accordance with the statute, the proposed rates and terms may be adopted once they have been published for comment provided that no party with a significant interest files an objection. However, at the close of Fiscal Year 2004, publication of the submitted proposals had not yet occurred.

Webcasting: Docket Number 2000-9 CARP DTRA1&2

In 2002, the Librarian of Congress issued his first decision setting rates and terms for the two statutory licenses in sections 112 and 114 that allow for the ephemeral reproduction and the public performance of sound recordings by means of digital audio transmissions (webcasting). This determination covered the initial license period, beginning October 28, 1998, through the second period ending on December 31, 2002. This decision is the subject of a number of appeals pending before the United States Court of Appeals for the District of Columbia Circuit filed by the Recording Industry Association of America, the American Federation of Television and Radio Artists, the American Federation of Musicians, Salem Communications, the National Religious Broadcasters Music License Committee, and five nonparty interveners. Oral argument in this case is scheduled for October 13, 2004.

Distribution Proceedings

1997 Cable Royalty Fees: Docket Number 2000-2 CARP CD 93-9

As reported in the Annual Reports for Fiscal Years 2002 and 2003, the Motion Picture Association of America, Inc., and the Independent Producers Group each filed petitions with the United States Court of Appeals for the District of Columbia Circuit to review the Librarian of Congress's December 26, 2001, decision to reject both the initial and revised recommendations of the CARP, which had been convened to determine the distribution of 1997 cable royalty fees in the Program Suppliers category, and to remand the case for a new proceeding before a new CARP.

In Fiscal Year 2004, the parties settled their dispute. As part of the settlement, it was agreed that the Librarian's December 26, 2001, order would be vacated. On April 21, 2004, the Court of Appeals dismissed the actions. To facilitate the settlement, the Librarian issued an order vacating as moot his December 26, 2001, order as well as the initial and revised CARP reports. On April 30, 2004, the Office published a notice officially terminating the proceeding. (69 FR 23821, April 30, 2004).

1998 and 1999 Cable Royalty Fees: Docket Number 2001-8 CARP CD 98-99

On January 26, 2004, the Librarian of Congress, upon the recommendation of the Register of Copyrights, issued a final determination setting forth the distribution of royalty fees collected under the section 111 cable compulsory license for Calendar Years 1998 and 1999. The Librarian accepted in full the report of the CARP that divided the royalties among the following claimant groups representing various categories of copyright owners: Program Suppliers (movies and syndicated series); Joint Sports Claimants (sports programming); the National Association of Broadcasters (commercial broadcast programming); the Public Broadcasting Service (noncommercial broadcast programming); Devotional Claimants (religious programming); and Canadian Claimants (programming produced by Canadian copyright owners). The Motion Picture Association of America, on behalf of the Program Supplier category, has appealed the Librarian's decision to the U.S. Court of Appeals for the District of Columbia Circuit. On July 23, 2004, the court issued an order setting forth a briefing schedule for this appeal.

Claims Filed for Royalty Fees

The Copyright Office received and processed claims from copyright owners who are entitled to receive royalty fees generated from the use of their copyrighted works during Calendar Year 2003 under the terms of the compulsory licenses for cable and satellite, and the DART statutory obligation.

In January and February 2004, the Office received 71 claims for DART royalty fees. In July 2004, it received 630 claims for cable royalty fees and 300 claims for satellite royalty fees.

Distribution proceedings will begin for these royalty funds some time after the Office determines whether a controversy exists concerning the distribution of the funds among the claimants.

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