

**Statement of Maria A. Pallante  
Acting Register of Copyrights  
before the  
Subcommittee on Legislative Branch  
Committee on Appropriations  
United States House of Representatives  
Fiscal 2012 Budget Request  
March 11, 2011**

Mr. Chairman, Mr. Honda, and Members of the Subcommittee:

Thank you for the opportunity to present the fiscal year 2012 budget request for the U.S. Copyright Office.

We deeply respect the commitment of the Congress to address the federal deficit and government spending, and we appreciate your consideration of our budgetary needs. Indeed, our talented and hardworking employees have always carried out the work of the Copyright Office with a sense of purpose and are fully prepared to share in the burden of these austere times. We are not seeking additional FTEs or funding for new projects at this time. However, we do wish to ensure that our existing staff is compensated competitively so that we may maintain a highly skilled and motivated workforce at a time when copyright law is increasingly complex and the Office's services are increasingly technical and in demand. Specifically, our requests are as follows:

- 1) A 1.7% increase (\$0.843 million) over fiscal 2011 to support mandatory pay-related and price level increases affecting administration of the Office's core business systems and public services; and
- 2) An increase of 1.7 % over fiscal 2011 (\$0.095 million) in offsetting collection authority of the Copyright Licensing Division to support mandatory pay-related and price level increases affecting the administration of the Office's licensing functions.

**Program Overview**

The U.S. Copyright Office has been part of the Library of Congress since 1870. The Office administers the copyright law of the United States, which traces its roots to the Constitution. Principal functions of the Office include administration of the national copyright registration and recordation systems and the mandatory deposit provisions for published works. Each year, the Office acquires hundreds of thousands of books, films, sound recordings and other creative works of authorship to the Library's national collection. In fiscal 2010, the Office transferred 814,243 copies to the Library at value of approximately \$33 million.

The Office also administers the compulsory and statutory license provisions of the Copyright Act, including licenses for satellite and cable transmissions. The Licensing Division is responsible for collecting and investing royalty fees for later distribution to copyright owners, examining related documentation and recording certain licensing documents.

In terms of the larger U.S. economy, many authors, composers, book and software publishers, film and television producers, and creators of musical works depend on the registration system to help them enforce against copyright infringement. Based on a study released in 2009,<sup>1</sup> these core sectors – whose primary purpose is to produce and distribute creative works – account for more than 6% of the U.S. domestic gross product, or \$889 billion (reflecting 2007 data, the most recent year for which data are available). The core copyright industries also employed 5.6 million workers (4.05% of U.S. workers), and that number doubles to over 11.7 million people (8.5% of the U.S. workforce) when the workers that help and support the distribution of these works are added into the equation. The Office facilitates transactions in the marketplace by assisting users of content to track the ownership of copyrighted content and the transfers and licenses of the exclusive rights afforded by law.

The Office has a dedicated team of legal and policy experts who advise Congress on domestic and international policy activities (for example, on legislation) and who also provide assistance and information to the judiciary and executive branch agencies (for example, on litigation of interest to the United States or on matters of bilateral or plurilateral trade). These duties are prescribed in chapter seven of the copyright law, 17 U.S.C. §701.

The Copyright Office is currently in a period of transition, following the retirement of Marybeth Peters on December 31, 2010, who directed the staff and functions for sixteen years. As the Acting Register, I, along with the Library's Chief of Staff, have spent many weeks speaking with a broad spectrum of stakeholders in the copyright community, from book publishers to the technology sector, discussing with them the issues that are or should be priorities of the Office in the coming years.

I have also been meeting with the managers and staff of the Copyright Office, individually or in small groups, to assess the views of those who work here and administer our public services, and to help set a path for our future business and the workplace environment of our employees. This assessment is still under way, but has already proved to be quite helpful to the Librarian and to me and should prove invaluable to the next Register, once appointed.

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<sup>1</sup> Stephen E. Siwek, *Copyright Industries in the U.S. Economy: The 2003-2007 Report*, prepared by Economists, Inc. for the International Intellectual Property Alliance (2009).

## **Program Funding**

Funding for the Office derives from two sources: (1) user fees; and (2) appropriations. Over sixty percent of the Office's budget is collected from fees paid for copyright registration, document recordation, and related services. The remaining operating budget covers the policy, legal, adjudicatory, and support operations. To ensure that fees represent current costs and market conditions, the Office undertakes a triennial fee study, the most recent of which was published in fiscal 2009 with another planned for fiscal 2012. The Office's fiscal 2011 budget request was approximately \$55.5 million, approximately \$34 million of which was funded by Office revenues.

## **Registration of Copyright Claims**

The Copyright Office has made tremendous progress in the past year in reducing the backlog of claims that occurred with the transition to an electronic registration system. In fiscal 2012, we will continue our efforts to improve operational efficiencies in the electronic registration system, including our continued efforts to decrease processing times for registration and recordation filings. Today, the system allows claimants to file registration applications on-line and, in many cases, to upload a digital copy of the work to fulfill the deposit requirement.

Since they were made available in July 2008, electronic filings quickly displaced the use of paper applications. To date in fiscal 2011, electronic filings constitute more than eighty percent of all claims received. The Copyright Office typically handles more than 500,000 copyright claims each year, representing well over one million works. In fiscal 2010, the Office received 522,796 claims to copyright, and closed 682,148, of which it registered 636,527 claims. The Office answered almost 316,000 non-fee information and reference inquiries and served a substantial number of visitors to the Public Information Office and the Copyright Public Records Reading Room.

In building the electronic system, the Office experienced a backlog of claims that was not unexpected given the major work process changes, temporary staff relocations, system testing and servicing, and widespread workforce training. The backlog peaked in 2009, but with support from the Library, the Office has reduced the backlog by hundreds of thousands of claims to around 180,000 as of this writing, while at the same time processing new claims at an average rate of 10,000 a week. We expect that our work on hand will fall to 150,000 claims within the next several weeks – an achievement that speaks to the dedication of our employees.

One issue we will continue to explore going forward is what might constitute a reasonable amount of work on hand for purposes of assessing operational success. Because the electronic filing system allows for hybrid submissions (where the application and fee, submitted on-line, are followed up by a hardcopy deposit mailed separately), and because some claims require the Office to further correspond with the applicant, the Office will always have categories of work that cannot be immediately processed. These claims (presently about 90,000) do not contribute to a backlog but are in fact an

anticipated and routine part of the Office's business operations.

The Office is also cognizant of the need for quality assurance. While we are constantly exploring ways to improve our speed and efficiency, we remain mindful of our obligation to ensure the integrity of the registration records that we create and maintain. Fast processing times, although virtuous, cannot come at the expense of the accuracy and completeness of our public records.

### **Copyright Records Digitization Project**

We continue to make progress in our multi-year project to digitize the millions of disparate pre-1978 copyright records, many of which represent works still protected by copyright law. (Records for post-1977 registrations are already available on-line.) This project is of utmost historic importance, as there is no complete back up of such records for preservation or security purposes. It is also of critical importance to our mission as an office of public record, making it easier for persons to locate copyright owners, analyze copyright term, and facilitate licensing. The records include registration information, assignments of copyrights and licensing documentation going back to the beginning of the Copyright Office and may well implicate works published before the Civil War.

In terms of legal relevance, the Office is prioritizing records for works published between 1923 and 1977, as in many instances, the copyright in such works has not yet expired. We plan to complete up to fifty percent of the card catalog records from this era by the end of fiscal 2012. In so doing, we will continue to test imaging quality, clarity, create searchable metadata, and plan for cross-referencing of the imaged records.

### **Licensing Division Reengineering**

Business reengineering efforts for the Licensing Division began in fiscal 2011. Thus far, the Office has completed an operational baseline, consulted with external stakeholders, and begun benchmarking exercises against entities with similar functions. The goals of this reengineering effort are to: (1) decrease processing times for statements of account by thirty percent or more; (2) implement an on-line filing process; and (3) improve public access to Office records.

In fiscal 2010, the Licensing Division collected more than \$274 million in royalties from cable and satellite companies subject to statutory licenses, accrued more than \$4.3 million in interest on royalties for the copyright owners, and distributed more than \$249 million to copyright owners. As part of our fiscal 2011 budget request, we sought an additional one-time authorization of \$500,000 to cover any unforeseen reengineering expenses. As always, any funds not expended will be returned to the royalty pools.

In fiscal 2012, the Licensing Division will continue to collect and distribute royalty fees and examine licensing documentation. It also will implement and refine its new processes and technology systems. It will test systems for on-line cable licensing

and expects to implement an electronic version of its more complex statements of account, which currently take up to fourteen months to process and which are typically of most interest to users. The Licensing Division will soon solicit proposals to develop the technical infrastructure required by reengineering.

As mentioned below, we are preparing, and will deliver to Congress, a report on market alternatives to statutory licensing, due in August 2011. The Office stands ready to assist and advise Congress with consideration of that report and to modify its operations should Congress enact any changes to current law.

### **Electronic Serials Project**

As more and more journals, magazines, and newspapers are “born digital,” the Copyright Office is leading a Library-wide effort to study, identify, obtain, and manage serials that publishers supply to us in electronic formats (eSerials). Although the project currently focuses on the mandatory deposit provisions under the law (i.e., the provisions requiring publishers to deposit copies of certain works with the Library of Congress within three months of publication), it serves as a test bed for the intake of works by the Library through other mechanisms, including the registration system. The Copyright Office administers the mandatory deposit provisions of the law and is currently working with other Library service units to develop an agency-wide accommodation for eSerials. We expect the initial phase of that project to be completed in September of 2011.

### **Legal and Policy Activities**

The Office is never without complex work on the domestic and international policy fronts.

#### *On-Line Piracy*

Throughout the past several weeks, the Office has been conducting meetings with interested stakeholders in order to explore the current state of on-line infringement of copyright law and sale of counterfeit goods via so-called “rogue websites” and possible mechanisms by which to combat such piracy and widespread counterfeiting. The Judiciary Committees of both the House and Senate of the 112<sup>th</sup> Congress are focused on this issue and we are engaged in comprehensive fact gathering and research on a variety of complex issues in support of the Committees’ work.

#### *Technical Clarifications*

At the end of fiscal 2010, the Office advised the Judiciary Committees of the need for legislation amending certain provisions of the Copyright Act to clarify the law, permit the Office to perform certain functions more efficiently by relying on electronic resources, and make technical corrections. The Copyright Cleanup, Clarifications, and Correction Act of 2010, based upon the Office’s recommendations, was signed into law on December 9, 2010.

### *Termination of Transfers and Licenses by Authors*

During fiscal 2011, the Office provided Congress with an analysis of the situation with respect to so-called “gap grants” under the termination provisions of Title 17; specifically, the analysis concerned grants entered into before January 1, 1978 for works that were not created until January 1, 1978 or later and discussed certain possible clarifications. The Office led an extensive public consultation process that included holding a public comment process on its preliminary proposals related to the outcome of the report, as well as a related regulatory process for which it expects to issue a final rule in fiscal 2012. The law requires that authors record the notices they serve on licensees with the Copyright Office (pursuant to certain deadlines) as a condition of termination.

### *Digital Millennium Copyright Act (DMCA)*

In fiscal 2010, the Office concluded its fourth rulemaking on exemptions from the prohibition on circumvention of technological measures that control access to copyrighted works, as provided in 17 U.S.C. § 1201. The law requires that every three years the Copyright Office make recommendations to the Librarian of Congress regarding works that should be exempt from the statutory prohibition on the circumvention of access control mechanisms, provided the circumvention takes place in order to engage in noninfringing uses of copyrighted works.

In the most recent iteration issued in July of 2010, the Librarian announced six classes of works that are entitled to exemption. Notable exemptions include motion pictures on DVD, if the circumvention takes place for purposes of using short portions for the purpose of criticism or comment; software on mobile phones if circumvention is performed for the purpose of making the phone interoperable with other applications; and literary works distributed in eBook format for the benefit of the blind and visually impaired, provided that existing eBook versions of the title prevent access to the “read-aloud” function or to screen readers.

Other recent regulatory actions would allow the Library to demand the electronic deposit of published works available only on-line and allow the Copyright Office to accommodate on on-line submission of applications for group registrations involving photographs.

### *Report on Statutory Licenses*

The Copyright Office worked closely with the staff of the House and Senate Judiciary Committees as well as the Congressional Budget Office in addressing issues relating to passage of the Satellite Television Extension and Localism Act (STELA), which reauthorized the statutory license for satellite carriers to carry certain over-the-air broadcast signals. In that legislation, Congress assigned the Copyright Office the task of preparing a comprehensive report to identify and explore marketplace alternatives to the statutory licenses in the law that allow for retransmission of over-the-air broadcast signals. To date, we have held a number of meetings with stakeholders and published a notice of inquiry seeking public comments. We expect to submit our Report by the August 29, 2011 deadline. This is a significant study because, although Congress has asked us on several occasions to study the cable and satellite statutory licenses for

television programming, and we have on several occasions recommended the eventual phasing out of the those studies, this marks the first time Congress has expressly asked us to make recommendations on *how* to phase out those licenses.

#### *Report on Pre-1972 Sound Recordings*

The Office is also in the midst of its study on the copyright treatment of pre-1972 sound recordings, which was mandated in the Omnibus Appropriations Act of 2009. Specifically, the Office has been directed to study the desirability of, and means for, bringing sound recordings fixed before February 15, 1972 into the federal statutory copyright regime. Currently, state law governs such pre-1972 sound recordings, which in many cases is not well defined. Federal copyright law allows states to protect these pre-1972 sound recordings until February 15, 2067. Although behind schedule for this report, the Office began its preparatory work last year, including publishing a notice of inquiry for which we have received over fifty comments thus far. We will follow up in the spring of 2011 with hearings or roundtables, and expects to prepare its analysis and recommendations in the summer and fall. We are grateful for the Committee's agreement to extend the deadline for our report from March 11, 2011 to December 31, 2011.

#### *Litigation*

As in previous years, the Office assisted the Justice Department in a number of court cases involving copyright issues, including the preparation of an amicus brief filed with the Supreme Court in *Costco Wholesale Corp. v. Omega S.A.*, a case concerning the first sale doctrine and the exclusive importation right that was affirmed by an equally divided court; and *Golan v. Holder*, a defense against a constitutional challenge to the "copyright restoration" provision of the Uruguay Round Agreements Act.

The Office continued to spend significant time evaluating the legal and business implications of the ongoing Google Book Search litigation and proposed settlement agreement, including the broader implications of the proposed settlement on the mass digitization of books and the treatment of "orphan" works – works for which rights holders are unknown or cannot be located. The Office is still awaiting a decision from the fairness hearing on the proposed settlement held on February 18, 2010; it will continue to monitor the progress of this case.

#### *Accessible Works for the Blind and Individuals with Print Disabilities*

Copyright Office attorneys continued to spend considerable time in fiscal 2011 examining the ways in which the United States provides copyrighted works in accessible formats to the blind, visually impaired and print-disabled, as well as similar issues involving cross-border access to copyrighted works in the context of national exceptions for the blind, visually impaired, and print-disabled and international copyright treaty obligations. The Office has worked diligently with other U.S. Government agencies in preparing for and attending meetings of the World Intellectual Property Organization's (WIPO) Standing Committee on Copyright and Related Rights, which has this issue on its agenda.

In fiscal 2010, in partnership with WIPO, we organized and hosted a week-long training for developing countries and countries in transition, the focus of which was accessibility and standard for protection under copyright laws worldwide. The Office is currently working with the Library's National Library Service for the Blind, as well as with advocates for the blind and other stakeholders, to explore ways to improve standards, resources and responsible cross border movement of works in accessible formats, including through participation in a voluntary WIPO Stakeholders' Platform pilot project for the cross-border transfer of accessible works.

Both the Library and the Office are working with the Department of Education and other federal government agencies as part of a statutorily mandated commission on issues involving access to copyright works for the visually impaired in the context of higher education. I am the chairperson of the legal subcommittee of the Commission, which will deliver a report to Congress before the end of fiscal 2012.

#### *Other International Developments*

Finally, we assisted federal government agencies with many multilateral, regional and bilateral negotiations and served on many U.S. delegations, including negotiations regarding the Anti-Counterfeiting Trade Agreement, the proposed Trans Pacific Partnership, and the Joint Commission on Commerce and Trade with China in addition to negotiations and meetings relating to the implementation of intellectual property provisions of existing Free Trade Agreements and Trade Promotion Agreements.

We also participated as part of the U.S. delegation at various WIPO meetings that addressed copyright issues, and participated on the interagency committee charged with preparing the annual Special 301 report issued by the United States Trade Representative.

The Office requested funds in fiscal 2011 to organize and host another international copyright training for developing countries, the intended focus of which is collective licensing and other innovative means of making copyrighted works available in the marketplace.

#### **Conclusion**

Mr. Chairman, I want to thank you for your consideration of our budget request today and for the committee's past support of the U.S. Copyright Office. Thank you in particular for considering the funding we require to sustain a first-rate staff and meet necessary expenses, enabling us to perform our core duties under the law.