

**Statement of Karyn A. Temple
United States Register of Copyrights**

**Before the
Subcommittee on Intellectual Property
Committee on the Judiciary
United States Senate
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Chairman Tillis, Ranking Member Coons, and Members of the Subcommittee,

Thank you for the opportunity to appear before you today to provide important updates on the operational and policy activities of the United States Copyright Office.

The Copyright Office’s legal, policy, and regulatory activities support a copyright ecosystem that is critical to our cultural and economic well-being. As recognized by the U.S. Supreme Court, copyright is intended to be the “engine of free expression,”¹ and the United States copyright law ably fulfills that intent. Congress developed a thoughtful balance of rights, exceptions, and limitations, which promotes the progress of our nation’s culture, from traditional creative industries to the flourishing tech landscape. With its robust framework of rights and limitations, it is not surprising then that the United States leads the world in *both* entertainment and technology. Indeed, according to recent estimates, core copyright industries represent nearly seven percent of the total U.S. economy and add more than a trillion dollars to the U.S. annual gross domestic product.² The Copyright Office is honored to be a critical part of this copyright ecosystem.

The years since the Copyright Office last appeared before the Senate Committee on the Judiciary have been a time of significant and exciting change for the Office. These changes have not only affected the way the Copyright Office conducts its business internally, but also have impacted the way that the communities we serve interact with the Office.

Internal changes at the Copyright Office include the addition of significant new positions to more effectively handle the increasing complexity of our work, such as the creation of the

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

² In 2017, core copyright industries added more than \$1.3 trillion to the U.S. gross domestic product, or 6.85 percent of the U.S. economy. STEPHEN E. SIWEK, *prepared for INT’L INTELLECTUAL PROP. ALL., COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY: THE 2018 REPORT* 3 (2018). Core copyright industries also employed almost 5.7 million workers, who were paid an average of thirty-nine percent more than the average U.S. annual wage. *Id.* According to statistics released by the Bureau of Economic Analysis, the digital economy is estimated to have accounted for 6.9 percent of the U.S. gross domestic product, or \$1.35 trillion, in 2017. NAT’L TELECOMMS. & INFO. ADMIN. (“NTIA”), *Digital Economy Accounted for 6.9 Percent of GDP in 2017*, NTIA BLOG (Apr. 5, 2019), <https://www.ntia.doc.gov/blog/2019/digital-economy-accounted-69-percent-gdp-2017>.

positions of Chief Financial Officer and Deputy Chief Financial Officer, as well as changes to the Office's structure, including the reorganization of our Office of Public Information and Education and the creation of the Copyright Modernization Office. These changes have been accompanied by an overhaul of many internal Copyright Office workflows and processes to adapt to the digital age. Finally, the Office has made improvements to its management of its human resources, such as adoption of an enhanced telework policy, an increased focus on training and professional development of staff and supervisors, and improved incentive awards for high performance.

The Copyright Office has also focused on making improvements to the core services the Office provides to its users and the public. For example, the Copyright Office focused significant efforts over the last few years to improve registration pendency times, as detailed in our letter to the Subcommittee in May.³ The Copyright Office has taken a multi-pronged approach to the issue, including modernizing registration procedures and updating business practices and regulations,⁴ overhauling the training program for registration specialists, and hiring additional registration examiners to address the effects of past government shutdowns and sequestration on Office staffing levels. As a result, the Copyright Office has accomplished a forty percent improvement in overall average processing times within the past two years, as well as the complete elimination of the Office's "backlog" of workable claims.⁵ In addition, the Copyright Office has worked to improve its core services by offering the public greater insight into the operations of the Office, such as by providing, for the first time, public access to decisions of the Copyright Review Board and the *Compendium of U.S. Copyright Office Practices*.⁶

While much has changed for the Office in the past decade, the fundamentals of how we serve the nation's thriving copyright ecosystem and the broader public remain the same. For nearly 150 years, the Copyright Office has served as the primary federal agency administering the U.S. copyright law.⁷ During that time, the Copyright Office has registered over thirty-eight million claims to copyright representing an even greater number of individual copyrighted works,⁸ and

³ Letter from Karyn A. Temple, Register of Copyrights and Dir., U.S. Copyright Office, to Thom Tillis, Chairman, Subcomm. on Intellectual Prop. of the Comm. on the Judiciary, U.S. Senate, and Christopher A. Coons, Ranking Member, Subcomm. on Intellectual Prop. of the Comm. on the Judiciary, U.S. Senate (May 31, 2019), *available at* <https://www.copyright.gov/laws/hearings/response-to-march-14-2019-senate-letter.pdf>.

⁴ A list of all of the recent regulatory rulemakings can be found on the Copyright Office's website at <https://www.copyright.gov/rulemaking/>.

⁵ Letter from Karyn A. Temple, Register of Copyrights and Dir., U.S. Copyright Office, to Thom Tillis, Chairman, Subcomm. on Intellectual Prop. of the Comm. on the Judiciary, U.S. Senate, and Christopher A. Coons, Ranking Member, Subcomm. on Intellectual Prop. of the Comm. on the Judiciary, U.S. Senate (May 31, 2019), *available at* <https://www.copyright.gov/laws/hearings/response-to-march-14-2019-senate-letter.pdf>.

⁶ The *Compendium* is the administrative manual used by the Copyright Office for examination of claims for registration, recordation of documents, and other activities.

⁷ 17 U.S.C. § 101 *et seq.*

⁸ The Copyright Office's group registration option allows registration of multiple works in one "claim." *See generally* 37 C.F.R. §§ 202.3(b)(5)–(6), (9), 202.4 (2018).

now has the largest compilation of registered works and copyright ownership information in the world. As an additional benefit of the copyright registration system, the Copyright Office has transferred billions of dollars' worth of published works to the collections of the Library of Congress for the benefit of the Library and the public.⁹ The Copyright Office also continues to provide crucial advice on copyright law to Congress, executive agencies, and the courts,¹⁰ and to engage in a wide variety of educational and outreach programs, answering almost 200,000 public inquiries just last year, including more than 2,000 walk-in requests.

None of this work would be possible without the dedicated staff of the U.S. Copyright Office. During my tenure heading the Copyright Office over the past two and a half years, I have been amazed and inspired by the continued resilience, flexibility, and support of the Office's talented employees during a time of exciting progress and change. Copyright Office staff routinely work late hours with limited resources to support the Office's mission. I would like to take the opportunity to thank the exceptional Copyright Office staff for their significant contributions to the U.S. copyright system and the American people.

Looking Forward

The coming years will bring with them even more exciting progress and change for the Copyright Office. To guide the Office through this process, the Copyright Office issued a Strategic Plan this spring identifying the Office's strategic framework for the five years covering 2019–2023. The Plan's six focus areas are: (i) Information Technology Modernization; (ii) Optimizing Business Processes; (iii) Organizational Change Management; (iv) Education and Engagement; (v) Impartial Expertise on Copyright Law and Policy; and (vi) Measuring Success.

⁹ For example, in fiscal year 2018 alone, the Copyright Office transferred to the Library's collections more than 736,000 published works worth over \$47.5 million. See U.S. COPYRIGHT OFFICE, ANNUAL REPORT FOR FISCAL 2018, at 14 (2019).

¹⁰ Through its traditional role as the leading advisor to Congress on copyright policy matters, the Copyright Office has participated in every major update to U.S. copyright law, from the development of the comprehensive 1909 and 1976 Acts to the recent landmark Orrin G. Hatch-Bob Goodlatte Music Modernization Act ("MMA"), and has provided Congress with dozens of policy reports and discussion documents on a variety of subjects such as moral rights, software-enabled consumer devices, and visual works. The thirty-four Copyright Law Revision Studies, completed by the Copyright Office between 1955 and 1959 in preparation for drafting the 1976 Act, are available at <https://www.copyright.gov/history/studies/>, while reports and discussion documents prepared by the Office since 1960 can be found on the Office's website at <https://www.copyright.gov/policy/>. Congress has repeatedly recognized this important role for the Copyright Office. 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"). The Copyright Office has likewise provided expertise to executive branch departments and agencies on copyright matters, including but not limited to providing input on the U.S. Trade Representative's Special 301 process and participating in the negotiation of numerous bilateral and multilateral treaties and free trade agreements, and has provided assistance to the judiciary by working with the U.S. Department of Justice to file *amicus curiae* briefs in many of the most significant copyright cases of the past several years. A list of recent copyright-related amicus briefs filed by the United States can be found on the Office's website at <https://www.copyright.gov/rulings-filings/briefs/>.

Along with developing the Strategic Plan focus areas, the Copyright Office updated both its mission statement and its vision statement. The new mission statement clearly reflects the Office’s role in “promot[ing] creativity and free expression by administering the nation’s copyright laws and by providing impartial, expert advice on copyright law and policy, for the benefit of all.”¹¹ Similarly, the Copyright Office adopted a newly articulated vision statement of “[e]nriching the nation’s culture by empowering and connecting the global copyright community.”¹² The vision statement recognizes the increasingly global nature of the copyright ecosystem, the need to ensure a continued robust framework that supports and sustains all of those relying on the system, and the importance of that system to our cultural heritage.

While the Copyright Office is engaging in a wide variety of initiatives, I would like to take an opportunity to provide more detail about several key areas. In particular, given some very recent developments in the legal, regulatory, and policy space, I would like to start with a discussion on those issues, and then turn to important Office-wide work on modernization and budget matters.

Legal and Policy

1. Music Modernization Act Implementation.

In 2018, the Copyright Office provided extensive assistance on copyright legislation, including the landmark Orrin G. Hatch-Bob Goodlatte Music Modernization Act (“MMA”).¹³ Congress recognized the Copyright Office’s extensive preparatory work on music licensing issues by delegating to the Copyright Office the responsibility to implement key features of the legislation and noting 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.”¹⁴

The Copyright Office takes seriously its extensive responsibilities under the MMA. The Copyright Office responded to passage of the MMA immediately, creating a webpage dedicated to the bill literally overnight and promptly initiating the public notices and regulations needed to implement various aspects of the landmark law.¹⁵

¹¹ U.S. COPYRIGHT OFFICE, COPYRIGHT: THE ENGINE OF FREE EXPRESSION, UNITED STATES COPYRIGHT OFFICE STRATEGIC PLAN 2019–2023 (2019) (“STRATEGIC PLAN”), available at <https://www.copyright.gov/reports/strategic-plan/USCO-strategic2019-2023.pdf>.

¹² *Id.*

¹³ Pub. L. No. 115-264, 132 Stat. 3676 (2018).

¹⁴ S. REP. NO. 115-339, at 15 (2018).

¹⁵ A summary of all Copyright Office activity related to implementation of the MMA can be found on our website. See *Orrin G. Hatch-Bob Goodlatte Music Modernization Act*, U.S. COPYRIGHT OFFICE, <https://www.copyright.gov/music-modernization/>.

As of June 2019, the Copyright Office has completed all regulations and other actions necessary to fully implement title II of the MMA. Less than a week after the bill's passage, the Copyright Office issued interim regulations establishing new filing mechanisms to onboard the protection and use of pre-1972 sound recordings into the federal scheme.¹⁶ The Copyright Office also published a final rule regarding a new exception for the noncommercial-use of pre-1972 sound recordings by the statutory deadline of April 9, 2019.¹⁷

With respect to title I of the MMA, in December 2018, the Copyright Office issued interim regulation for the compulsory "mechanical" license under section 115 for making and distributing phonorecords of musical works. These regulations set out requirements for digital music providers to limit their liability during the transition period before the blanket license is available and clarified that the song-by-song licensing system remains available for physical uses.¹⁸ Earlier this month, I designated two entities to serve as the mechanical licensing collective ("MLC") and the digital licensee coordinator ("DLC").¹⁹

The MLC and DLC are crucial to the overall success of the new licensing regime created by the MMA. Accordingly, the Office spent significant time carefully reviewing both MLC applications and subsequently issued a twenty-three page notice in the *Federal Register* setting forth in detail the reasons for our designation.²⁰ As explained in the notice, the Copyright Office based its designation on the statutory criteria required by the MMA, including an analysis of which entity most effectively demonstrated that it was "endorsed by, and enjoys substantial support from, musical work copyright owners that together represent the greatest percentage of the licensor market for uses of such works," and that it will have the administrative and technological capabilities in place to perform the MLC's required functions by the license availability date.²¹ The Copyright Office also took seriously the issues raised by many of the public comments, and in particular was pleased to receive a commitment from the newly-designated MLC to undertake efforts to ensure diversity on its board of directors.

While the Copyright Office ultimately designated the Mechanical Licensing Collective, Inc., as noted in our analysis, the American Music Licensing Collective contributed a number of ideas that merit further consideration, and the Office hopes that the newly-designated MLC will consider whether to incorporate aspects of that proposal into its planning. Now that the

¹⁶ 83 Fed. Reg. 52,150 (Oct. 16, 2018).

¹⁷ 84 Fed. Reg. 14,242 (Apr. 9, 2019) (establishing a final rule in connection with the exception for certain noncommercial uses of pre-1972 sound recordings that are not being commercially exploited).

¹⁸ 84 Fed. Reg. 10,685 (Mar. 22, 2019).

¹⁹ 84 Fed. Reg. 32,274 (July 8, 2019). The DLC represents the interests of digital music services under the MMA's new musical works licensing system, while the MLC is charged with implementing key aspects of the system. For example, the MLC will receive notices and reports regarding usage of musical works from digital music providers, collect and distribute royalties, identify musical works and their owners for payment, and develop and maintain a publicly available database of musical works.

²⁰ 84 Fed. Reg. 32,274 (July 8, 2019).

²¹ 17 U.S.C. § 115(d)(3)(A)(ii).

designation process has been completed, the Office's expectation is that the MLC will fairly represent the interests of all parties, including those who did not previously endorse it, and that interested sides will build upon the cooperative spirit facilitated by the MMA's passage to work together to make the implementation of this historic new licensing scheme a success. Towards this end, the Copyright Office expects the MLC to be flexible in its planning and consider the input of non-voting DLC members who may be joining the MLC's board and operations advisory committee.

The Copyright Office looks forward to working with these entities and other stakeholders as the MMA implementation process continues via a number of activities. These activities include engaging in extensive outreach and educational activities to inform songwriters about how to claim ownership of musical works with the MLC and creating or updating relevant Copyright Office publications to reflect changes to the law. The Copyright Office will also continue its regulatory work to implement provisions of title I of the MMA by conducting further rulemakings regarding the operation of the revamped blanket mechanical license and operation of the MLC. These measures will help to ensure that the proper regulatory procedures are in place prior to the upcoming license availability date of January 2021.²² In addition, as required by the statute, the Copyright Office will be undertaking a policy study regarding best practices that the mechanical licensing collective may implement in order to identify, locate, and pay out royalties to musical work copyright owners with unclaimed accrued royalties held by the collective.

2. *Small Claims.*

I would also like to take the opportunity to discuss one policy issue for which the Copyright Office has provided legislative support over the past few years: the possibility of a small claims tribunal within the Copyright Office. The Copyright Office identified the creation of such a small claims tribunal as a topic worthy of further study as far back as 2006, during its participation in Congress' review of the orphan works problem.²³ As we discussed in our 2013 report, *Copyright Small Claims*, the costs and burdens of federal copyright litigation effectively

²² Pursuant to the statute, the Register of Copyrights must promulgate regulations regarding, inter alia, the form of the notices of license and notice of nonblanket activity, usage reports and adjustments, information to be included in the musical works database, requirements for the usability, interoperability, and usage restrictions of that database, and the disclosure and use of confidential information. See 17 U.S.C. § 115.

²³ See, e.g., *Orphan Works: Proposals for a Legislative Solution: Hearing Before the Subcomm. on Intellectual Prop. of the S. Comm. on the Judiciary*, 109th Cong. 122 (2006) (written statement of Julie Sigall, Associate Register for Policy & International Affairs, U.S. Copyright Office) ("We are sympathetic to the concerns of individual authors about the high cost of litigation and how, in many cases, the individual creator may have little practical recourse in obtaining relief through the court system. We believe that consideration of new procedures to address this situation, such as establishment of a 'small claims' or other inexpensive dispute resolution procedure, would be an important issue for further study by Congress."); *Remedies for Small Copyright Claims: Hearing Before the Subcomm. on Courts, the Internet & Intellectual Prop. of the H. Comm. on the Judiciary*, 109th Cong. 46 (2006) (written statement of Marybeth Peters, Register of Copyrights) ("If the Subcommittee believes it would be helpful, the Office would be pleased to study the [small copyright claims] issue in a way similar to the way in which the Office studied the orphan works problem itself.").

prevent many who do not have extensive resources from bringing suit to enforce their rights or to obtain a declaratory judgment of non-infringement.

In 2017, the median cost to litigate a copyright infringement suit with less than \$1 million at stake was estimated at \$200,000.²⁴ Given the complexity of complying with the Federal Rules of Civil Procedure and Federal Rules of Evidence, as well as the vigorous motion practice typical of infringement cases in district court, few parties would be capable of proceeding without an attorney. However, according to a survey conducted by the American Bar Association's section on intellectual property law, only thirty-two percent of the lawyers surveyed indicated that they would be willing to accept a case with less than \$30,000 at stake, which would exclude many individual artists and creators from representation.²⁵ Federal litigation is also a very time-consuming business, with the median time to trial in the Southern District of New York at 720 days.²⁶

As we found in our study, these hurdles have an appreciable negative impact on small creators of all kinds. The Songwriter's Guild of America, while noting that individual online infringements of their works "may seem unimportant," pointed out that, "taken in the aggregate, they have an effect on the livelihoods of individual creators akin to the infamous torture 'death by a thousand cuts.'"²⁷ As the Copyright Office heard during the course of its study regarding a small claims tribunal, a songwriter, musician, artist, app developer, or author often lacks the ability to enforce their copyright interests against unauthorized uses of their work, even in markedly commercial contexts.²⁸ Similarly, individual creators on YouTube can find their viewership and incomes negatively impacted when their videos are improperly taken down and they are unable to obtain a timely declaration of non-infringement.²⁹

The experiences of individual photographers and other visual artists are particularly compelling. These artists work under a "high volume, low value" business model, and

²⁴ AIPLA, 2017 REPORT OF THE ECONOMIC SURVEY 44 (2017).

²⁵ See American Bar Association Section of Intellectual Property Law, Comments Submitted in Response to U.S. Copyright Office's Aug. 23, 2012, Notice of Inquiry at 6–7 (Oct. 19, 2012).

²⁶ See United States Courts, U.S. District Courts – Combined Civil and Federal Court Management Statistics (Mar. 31, 2019), available at <https://www.uscourts.gov/statistics/table/na/federal-court-management-statistics/2019/03/31-1>.

²⁷ U.S. COPYRIGHT OFFICE, COPYRIGHT SMALL CLAIMS 2 (2013) ("COPYRIGHT SMALL CLAIMS"), available at <https://www.copyright.gov/docs/smallclaims/usco-smallcopyrightclaims.pdf> (quoting Songwriters Guild of America & Nashville Songwriters Association International, Comments Submitted in Response to U.S. Copyright Office's Oct. 27, 2011, Notice of Inquiry at 1 (undated)).

²⁸ See, e.g., Sheana Firth, Comments Submitted in Response to U.S. Copyright Office's Feb. 26, 2013, Notice of Inquiry (undated); Elsa Peterson, Comments Submitted in Response to U.S. Copyright Office's Feb. 26, 2013, Notice of Inquiry (undated); Emily S. Damstra, Comments Submitted in Response to U.S. Copyright Office's Oct. 27, 2011, Notice of Inquiry (Jan. 2012); Morris Rosenthal, Comments Submitted in Response to U.S. Copyright Office's Oct. 27, 2011, Notice of Inquiry (undated); cf. Press Release, ACT|The App Association, ACT|The App Association Supports the Copyright Alternative in Small-Claims Enforcement Act of 2019 (CASE Act) (May 30, 2019).

²⁹ See Michael Michaud, Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015, Notice of Inquiry at 1 (undated); Tr. at 152:15–22 (May 2, 2016) (Rebecca Prince, Becky Boop).

typically earn \$50,000 or less per year from licensing their work at rates of just a few hundred dollars (or less) per use.³⁰ As a result, they are often unable to invest the resources necessary to enforce their copyrights in federal district court. For this reason, many photographers and visual artists strongly support the idea of a copyright small claims tribunal. Jenna Close, a commercial photographer, spoke at a September 2018 hearing of the Committee on the Judiciary of the U.S. House of Representatives about her support for a small claims bill. As part of her testimony, Ms. Close relayed her personal experience of “witness[ing] [her] photos enlarged as the backdrop to a competitor’s tradeshow booth, while [her] paying client was rightfully using the same art work at the same trade show in their own booth.”³¹ Despite this, she did not pursue a claim due to the fact that “[f]ederal court litigation is too burdensome and too expensive.”³² Overall, this means that low-dollar but still valuable copyrighted works are frequently infringed with impunity, and individual creators and small businesses often lacking an effective remedy.

The cost of federal court litigation can likewise be prohibitive for an independent filmmaker that wants to obtain a declaration of non-infringement for their use of copyrighted footage in a documentary, but cannot afford to spend \$200,000 or more on litigation to obtain a declaratory judgement. Such hurdles may be insurmountable, even if the filmmaker has a strong fair use defense or is otherwise using a copyrighted work pursuant to an exception or limitation that allows such use.

For this reason, the Copyright Office strongly supports a small claims tribunal structured along the lines of the proposal detailed in the Copyright Office’s 2013 report. Specifically, such a tribunal should be situated in the Copyright Office, with officers recommended by the Register and appointed by the Librarian of Congress, who should, between them, have a background of representing both copyright owners and users.³³ Unlike federal district court, this would ensure that the individuals hearing a claim have specialized expertise in copyright law, and would promote a balanced tribunal. Likewise, to address constitutional and due process concerns, the Copyright Office strongly believes that participation in such tribunal should be voluntary. After studying the matter, the Copyright Office concluded that either an opt-out or an opt-in system would adequately address these concerns.³⁴

³⁰ See Letter from Karyn A. Temple, Acting Register of Copyrights and Dir., U.S. Copyright Office, to Lindsey Graham, Chairman, Comm. on the Judiciary, U.S. Senate, and Dianne Feinstein, Ranking Member, Comm. on the Judiciary, U.S. Senate, at 19–20 (Jan. 18, 2019), available at <https://www.copyright.gov/policy/visualworks/senate-letter.pdf>.

³¹ *Copyright Alternative in Small-Claims Enforcement Act of 2017: Hearing on H.R. 3945 Before the H. Comm. on the Judiciary*, 115th Cong. 10 (2018) (statement of Jenna Close, commercial photographer, on behalf of the Am. Soc’y of Media Photographers).

³² *Id.*

³³ COPYRIGHT SMALL CLAIMS at 99-101.

³⁴ *Id.* at 97–99.

The Copyright Office is cognizant that some stakeholders have expressed reservations about the concept of a small claims tribunal. One key concern that has been raised is the possibility that such a forum could be weaponized by bad faith litigants or would be utilized to resolve disputes that are outside the competency of the Copyright Claims Officers. The Copyright Office takes these concerns seriously.³⁵ For this reason, I am pleased to note that the legislation that was recently passed out of the full Senate Judiciary Committee contains several provisions to help address these concerns.³⁶ For example, the CASE Act requires that a Copyright Claims Attorney review any claim before it is served on a respondent,³⁷ contains a mechanism for sanctioning parties that engage in bad faith litigation tactics,³⁸ allows the Register to promulgate regulations that limit the maximum number of cases per year that can be filed by a single claimant,³⁹ and allows the Copyright Claims Board (“CCB”) to dismiss claims as unsuitable that exceed either the number of proceedings the CCB can reasonably administer or the subject matter competence of the CCB.⁴⁰ The CASE Act’s experience requirements for the CCB officers would further ensure that all claims are resolved by individuals with a significant understanding of and grounding in federal copyright law. These provisions, combined with the extensive notice requirements and due process safeguards for respondents, would provide important safeguards against the use of the CCB by bad faith claimants to ensure that the CCB remains focused on resolving the larger body of cases involving situations of clear infringements for which the copyright holder is unable to realistically access federal district courts due to the high cost of litigation, or clear instances where a declaration of non-infringement is appropriate.

3. *Felony Streaming.*

On June 18, 2019, this Subcommittee invited the views of the Copyright Office on certain questions related to unauthorized streaming of copyrighted content.⁴¹ This inquiry is particularly timely, as streaming continues to grow as an important method by which consumers access recorded music and video.⁴² But concurrent with the increased use of

³⁵ See the discussion of these and other concerns about a copyright claims tribunal in the Copyright Office’s September 2013 report.

³⁶ Copyright Alternative in Small-Claims Enforcement Act of 2019 (“CASE Act”), S. 1273, 116th Cong. (2019).

³⁷ See *id.* § 1506(f).

³⁸ See *id.* § 1506(y).

³⁹ See *id.* § 1504(g).

⁴⁰ See *id.* § 1506(f)(3).

⁴¹ See Letter from Thom Tillis, Chairman, Subcomm. on Intellectual Prop. of the Comm. on the Judiciary, U.S. Senate, and Christopher A. Coons, Ranking Member, Subcomm. on Intellectual Prop. of the Comm. on the Judiciary, U.S. Senate, to Karyn A. Temple, Register of Copyrights and Dir., U.S. Copyright Office (June 18, 2019), *available at* <https://www.tillis.senate.gov/services/files/AC287665-8CEA-489B-A04D-EDD41AF227B8>.

⁴² Streaming accounted for almost seventy-five percent of U.S. recorded music revenue in 2018. RECORDING INDUS. ASS’N OF AM., MID-YEAR 2018 RIAA MUSIC REVENUES REPORT 2, <https://www.riaa.com/wp-content/uploads/2018/09/RIAA-Mid-Year-2018-Revenue-Report-News-Notes.pdf>.

streaming for legitimate content delivery has been an increased use of streaming for unauthorized dissemination of copyright-protected works. In fact, a newly issued report by NERA Economic Consulting and the U.S. Chamber of Commerce noted that more than eighty percent of piracy can now be attributed to streaming, and streaming piracy costs the U.S. economy over \$29 billion in lost revenue each year.⁴³

Despite the increasingly significant economic impact of illicit streaming, U.S. law has failed to keep up with changes in technology. This is because illegal streaming, while it may also implicate the rights of distribution and reproduction, primarily is an offense against the right of public performance. Although infringement of either the distribution or the reproduction rights can be prosecuted as a felony under current law, even criminal-scale infringement of the right of public performance is limited to misdemeanor prosecution. Under this system, criminal streaming piracy, no matter the dollar amount it involves or the number of works affected, is *de facto* treated as a lesser crime.

For this reason, the Copyright Office long has supported statutory amendments to both the Copyright Act and the U.S. Criminal Code to bring greater parity to penalties for illegal streaming, on the one hand, and reproduction and distribution, on the other.⁴⁴ The Copyright Office continues to maintain this view.⁴⁵ Should this Subcommittee desire to work on proposed legislation to achieve this result, the Copyright Office stands ready to assist.

4. *Additional Legal and Policy Work.*

In addition to the significant activities outlined above, the Copyright Office is working on a number of other important legal and policy matters. For example, the Copyright Office is working towards the completion of its study of the notice-and-takedown provisions in section 512 of title 17, a study for which the Office has received over 90,000 public comments and hosted three roundtables. The Copyright Office also continues to provide advice and assistance to the executive branch agencies about copyright developments around the world, and participates each year in the United States Trade Representative's Special 301 process. Further, the Copyright Office has a busy litigation docket, participating in the formulation and articulation of the U.S. government's position in a number of Supreme Court and circuit court cases,⁴⁶ advising district courts with respect to issues of registrability of copyright claims

⁴³ See DAVID BLACKBURN ET AL., *prepared for NERA ECON. CONSULTING & U.S. CHAMBER OF COMMERCE GLOB. INNOVATION POLICY CTR., IMPACTS OF DIGITAL VIDEO PIRACY ON THE U.S. ECONOMY* at ii (2019).

⁴⁴ See *Promoting Investment and Protecting Commerce Online: The ART Act, the NET Act and Illegal Streaming: Hearing Before the Subcomm. on Intellectual Prop., Competition, & the Internet of the H. Comm. on the Judiciary*, 112th Cong. 19–22 (2011) (written statement of Maria A. Pallante, Acting Register of Copyrights, U.S. Copyright Office).

⁴⁵ See Letter from Karyn A. Temple, Register of Copyrights and Dir., U.S. Copyright Office, to Thom Tillis, Chairman, Subcomm. on Intellectual Prop. of the Comm. on the Judiciary, U.S. Senate, and Christopher A. Coons, Ranking Member, Subcomm. on Intellectual Prop. of the Comm. on the Judiciary, U.S. Senate (July 18, 2019), *available at* <https://www.copyright.gov/laws/hearings/letter-to-senators-tillis-and-coons-on-felony-streaming.pdf>.

⁴⁶ See, e.g., *Rimini Street, Inc. v. Oracle USA, Inc.*, 139 S. Ct. 873 (2019); *Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881 (2019).

pursuant to section 411, as well as providing assistance related to the defense of multiple sections of the copyright law challenged in pending cases brought against the U.S. government.

The Office also recently recommended, in a letter to the House Judiciary Committee, that Congress let expire the compulsory license for satellite carriage of distant signals under section 119 of title 17.⁴⁷ This temporary compulsory license was created by Congress more than thirty years ago to help prop up a nascent satellite industry trying to compete against an established cable industry. The Copyright Office maintains its longstanding belief that, as a result of changes and maturation within the market, the section 119 license is no longer needed by satellite carriers—a judgment reaffirmed by the dramatic drop in the license’s use. Between the first reporting period of 2014 and the same period of 2018, royalties reported under section 119 plummeted between 85% and 99.5%.

On the regulatory side, the Copyright Office continues to complete rulemakings on a number of topics, including group registration of albums and short online literary works; registration of secure tests; a new fee schedule; reporting practices for the cable license; mandatory deposit of electronic-only books; and document recordation modernization. Overall, the Copyright Office has adopted fourteen final rules since the beginning of fiscal year 2018, and has eight open rulemakings and two open notices of inquiry. Next year, the Copyright Office will begin work on the eighth triennial section 1201 proceeding.⁴⁸ The proceeding will use the same streamlined process debuted during last year’s section 1201 rulemaking, during which the Copyright Office recommended, and the Librarian of Congress adopted, the renewal of exemptions for all twenty-two types of uses covered by the 2015 rulemaking. The Copyright Office also supported the expansion of seven of those earlier exemptions and the adoption of two new exemptions.

The Copyright Office also remains ready to advise and assist Congress with implementation of any updates it may be interested in making to title 17. Perhaps of particular interest, over the past several years the Copyright Office has offered policy recommendations to Congress on a number of important topics, including updating the exceptions for libraries, archives, and museums in section 108;⁴⁹ adopting a public performance right for sound recordings;⁵⁰

⁴⁷ See Letter from Karyn A. Temple, Register of Copyrights, U.S. Copyright Office, to Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, and Doug Collins, Ranking Member, Comm. on Judiciary, U.S. House of Representatives (Jun. 3, 2019), *available at* <https://www.copyright.gov/laws/hearings/views-concerning-section-119-compulsory-license.pdf>.

⁴⁸ Section 1201 of title 17 directs the Librarian of Congress, upon the recommendation of the Register of Copyrights following a rulemaking proceeding, to determine whether any prohibitions on the circumvention of technological measures used to prevent unauthorized access to copyrighted works are having, or are likely to have, an adverse effect on users’ ability to make noninfringing uses of particular classes of copyrighted works. Through the section 1201 rulemaking process, the Register can recommend, for adoption by the Librarian, certain limited temporary exemptions waiving the general prohibition against circumvention for such users for the ensuing three-year period.

⁴⁹ See *generally* U.S. COPYRIGHT OFFICE, SECTION 108 OF TITLE 17 (2017).

⁵⁰ See U.S. COPYRIGHT OFFICE, COPYRIGHT AND THE MUSIC MARKETPLACE 138–39 (2015).

improvements to copyright enforcement mechanisms; potential legislative changes to section 1201 or its rulemaking process;⁵¹ and consideration of a resale royalty right for visual artists.⁵²

Office Modernization

Perhaps the most significant operational undertaking the Copyright Office faces in the near term is modernizing its antiquated IT systems and improving its complementary work processes. Modernization is a sweeping, multi-year, Copyright Office-wide initiative, the end result of which will be to re-imagine and reengineer how the public interacts with the Office, from submitting registration applications, to recording ownership and licensing information, to accessing Office data and records. The goal is to provide the copyright ecosystem with improved services that are more efficient and responsive to user needs. As currently envisioned, modernization will have the Copyright Office undertaking activity on several different fronts, all of which will dramatically reshape the Office and how we serve the public.

As described in more detail below, the next few years will be particularly important for progress on Copyright Office modernization. In fiscal year 2020, the Office anticipates launching a limited pilot for a new, digital recordation system, and work will commence on the registration and public record replacement systems.

1. Developing an Enterprise Copyright System.

The Copyright Office requires a robust and modern enterprise copyright system (“ECS”) to carry out its duties and to serve the copyright ecosystem as a whole. The new ECS will integrate and improve currently disparate Office systems and functions by: (i) replacing the aging eCO registration system with a new, state-of-the-art registration system; (ii) developing a new, integrated electronic recordation system; (iii) improving access to Office records through digitization; and (iv) developing a robust, stable system for filing, processing, and searching data related to statutory licensing royalties that the Copyright Office manages on behalf of copyright owners.

As directed by Congress, the Copyright Office has extensively engaged with the Library’s Office of the Chief Information Officer (“OCIO”) “to achieve efficiencies in shared services, while allowing for mission specific modernization to be the responsibility of the Copyright Office.”⁵³ In January 2018 the Office created the CMO, which is tasked with analyzing and documenting the Copyright Office’s modernization needs and serving as the Office liaison to inform OCIO’s development activities.⁵⁴ As part of the Library’s IT centralization initiative, the Copyright

⁵¹ See generally U.S. COPYRIGHT OFFICE, SECTION 1201 OF TITLE 17 (2017).

⁵² See generally U.S. COPYRIGHT OFFICE, RESALE ROYALTIES: AN UPDATED ANALYSIS (2013).

⁵³ S. REP. NO. 115-274, at 43 (2018). See also H.R. REP. NO. 115-696, at 18 (2018).

Office has transferred the bulk of the fiscal year 2019 IT modernization funding it received to OCIO through an intra-agency agreement, to enable OCIO to administer related development activities and contracts.

The Copyright Office and OCIO are poised to make progress on several IT development activities related to modernization, including development work on the new registration, recordation, and public records catalog systems. Based on extensive third-party user research, the Copyright Office designed wireframes for an early version of the new registration public user-interface. To assist with the process, the Copyright Office issued a Notice of Inquiry soliciting public input on a broad range of topics related to registration modernization, to which it received fifty-four comments; conducted sixty-eight in-depth interviews with copyright registration stakeholders and the public in four cities; and launched an extensive online survey. Likewise, the Copyright Office and OCIO continue development of a new, electronic recordation system to replace the Copyright Office's current paper-based system. OCIO projects that it will be able to launch a limited pilot of the new recordation system by spring 2020. In support of its work, the Copyright Office conducted in-depth interviews with copyright recordation stakeholders and the public during the four-city tour, conducted twelve usability sessions with users of varying experience levels, and reviewed 207 survey responses from frequent users. Public feedback is contributing to the design of an intuitive and easy-to-use interface as well as dashboards for both Recordation Section staff examiners and supervisors. Further development work is also scheduled for the public records catalog, as discussed in more detail below.

The Copyright Office takes seriously the request by the House Committee on Appropriations to investigate innovative contracting methods, including possible no-cost contracting solutions, for modernization and development of the ECS. The Copyright Office, in coordination with OCIO, issued 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. The Copyright Office also engaged General Services Administration's ("GSA") 18F for guidance on best practices in contracting for agile projects. As a follow-on to the RFI and the 18F engagement, the Copyright Office and OCIO are planning to work with GSA to leverage its IT contracting experts for future modernization contracting activities, and to have GSA coordinate new public requests for proposals for the development of the ECS.

The Copyright Office is committed to engaging with the entire copyright community, whether individual artists and creators, major corporations, or general users of the system to ensure that its modernization efforts accurately reflect the needs of the digital age. The Copyright Office has created a dedicated modernization webpage that is kept up-to-date with the current status of modernization efforts, and at the beginning of the year launched a new bimonthly webinar

⁵⁴ This follows the Library's centralization of all IT services, and is in accordance with the *Modified IT Plan* issued by the Office in 2017. See U.S. COPYRIGHT OFFICE, MODIFIED U.S. COPYRIGHT OFFICE PROVISIONAL IT MODERNIZATION PLAN: ANALYSIS OF SHARED SERVICES, SUPPORT REQUIREMENTS, AND MODERNIZATION EFFORTS 4-5 (2017), available at <https://www.copyright.gov/reports/itplan/modified-modernization-plan.pdf>.

series to inform the public and highlight progress related to modernization. The Copyright Office has so far held four webinars, the most recent one last week. The webinars have been well-received, with the first webinar attracting more than 200 participants. The Copyright Office will also continue to meet regularly with stakeholders and conduct presentations for both internal Office audiences and external audiences to provide updates on modernization activities.

While still at the nascent stages of IT modernization, the Copyright Office is excited to continue this essential work.

2. Improving Access to Public Records.

The Copyright Office is continuing its efforts to digitize and provide public access to all of our registration and recordation data, including data housed within legacy systems and historical records that are not currently online. Earlier this year, the Copyright Office released version 3 of its Virtual Card Catalog (“VCC”). The release marks the completion of a multi-year digitization process for *all* Copyright Card Catalog entries, beginning with the time copyright registration was centralized at the Library of Congress. Forty-one million images of these records from 1870 to 1977 are now accessible on the Copyright Office’s website, and additional development work on enhanced browsing and filtering capabilities for these records is ongoing. In addition, the Copyright Office has contracted with a third party to convert the extensive, paper-based pre-1978 entries from the Copyright Office Record Books into digital format, including the capture of related metadata and data perfection to facilitate online searching. Ultimately, a single, publicly accessible interface will include all of these historical records.

3. Data Management Initiative.

Modernization also includes data management, and the Copyright Office will continue work on its data management plan, which started in fiscal year 2018. The plan will serve all in the copyright community—from creators to users to the public at large—allowing them to reap additional benefits from Copyright Office data and information that will be authoritative, easily found, well described, high quality, secure, 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.

4. Organization, Business Processes, and Culture.

As the Copyright Office overhauls its technological systems, it is important that we also evaluate and optimize the organizational structures and human resources that utilize these systems. Full modernization requires a multi-pronged approach to review and evaluate not only current processes and workflows in each division, but also the current organizational structure and culture of the Copyright Office itself. The Copyright Office has brought in

outside experts to assist with these activities, and will continue to do so as modernization progresses.

In fiscal year 2018, the Copyright Office engaged the Office of Personnel Management's ("OPM") Human Resources Solutions division to conduct an organizational analysis and redesign. This process, which should be completed in early fiscal year 2020, will provide detailed findings and recommendations on how to achieve more effective operations, including recommendations for staffing levels, position management improvements, and organization restructuring options. The Copyright Office intends to use the resulting analysis to better align the Office with newly automated processes resulting from modernization. Going forward, this work will be helpful in building annual staffing plans, in justifying budget requests for staffing, and with succession planning.⁵⁵

The Copyright Office will also contract with outside consultants to: (i) document current processes and workflows in each division, working with managers and staff to think creatively about how processes can be improved and shifted from the "as is" to the "to be"; and (ii) assist with developing and replicating an organizational change management process to help communication and staff buy-in for major modernization initiatives. The end goal is an engaged, results-oriented professional workforce that has the tools it needs and is organizationally empowered to provide efficient, high-quality services to stakeholders and the public.

Other Operational Initiatives

1. *Registration.*

The Copyright Office recently provided the Subcommittee with a comprehensive analysis and discussion of the Registration program and the steps that the Office has taken to improve registration processing times.⁵⁶ Registration processing times have always been important for the copyright community, and are even more so now because of the Supreme Court's recent decision in *Fourth Estate Public Benefit Corp. v. Wall-Street.com*. *Fourth Estate* confirmed that Copyright Office action on an application for registration must be complete before the owner of a U.S. work can seek redress for infringement of their rights in court.⁵⁷ It is important to note, however, that efforts to improve registration processing times must balance efficiency with the need to maintain the accuracy and quality of the examination process. The Copyright Office's

⁵⁵ The latter is especially important in light of the fact that nearly one-third of Copyright Office employees have at least twenty years of federal service, and are thus eligible for retirement over the next several years.

⁵⁶ Letter from Karyn A. Temple, Register of Copyrights and Dir., U.S. Copyright Office, to Thom Tillis, Chairman, Subcomm. on Intellectual Prop. of the Comm. on the Judiciary, U.S. Senate, and Christopher A. Coons, Ranking Member, Subcomm. on Intellectual Prop. of the Comm. on the Judiciary, U.S. Senate (May 31, 2019), available at <https://www.copyright.gov/laws/hearings/response-to-march-14-2019-senate-letter.pdf>.

⁵⁷ *Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881, 892 (2019).

examination process has a number of beneficial externalities, including facilitating predictability for private transactions and promoting efficiency in our judicial system.

As discussed in our letter to the Subcommittee, long before *Fourth Estate*, the Copyright Office took extensive steps to address the registration backlog that developed as a result of legal and logistical changes over the previous several decades. These efforts include, with Congress' support, increasing the number of registration examiners by approximately thirty percent since 2014. The Copyright Office also engaged the services of the Smithsonian Organization and Audience Research ("SOAR") group to review registration workflows and processes and to provide recommendations for improvements, many of which have been implemented. These efforts, combined with the extensive review and overhaul of registration regulations and processes that the Copyright Office has undertaken in the past several years, have shown tremendous results. Since October 2017, we have reduced our overall average processing time for reviewing copyright claims from eight months to five—a decrease of almost forty percent within two years.⁵⁸ From January 2018 to May 2019, the Copyright Office reduced the number of applications pending for more than one year by ninety-six percent. And since the beginning of fiscal year 2018, the Copyright Office reduced the number of workable claims by fifty-nine percent.⁵⁹ Of note, these numbers represent nearly 120,000 more claims closed by the Copyright Office in fiscal year 2018 than in fiscal year 2017.⁶⁰

The Copyright Office will continue its focus on improving the Registration Program. By the end of fiscal year 2019, we anticipate a return to 2010 pre-sequestration staffing levels of about 125 examiners. These talented individuals come from a wide variety of backgrounds, including lawyers, writers, teachers, musicians, journalists, and librarians. The musical talent in the group of recently-hired examiners includes a former professional viola player, a trombone player who taught music history and theory, a classical guitarist singer-songwriter, and an oboe player who received a Bachelor's of Music degree in music history. The Copyright Office is extremely proud of the multi-faceted talents of its registration workforce and is committed to developing their long-term professional growth to quickly evolve with the ever-changing copyright landscape.

⁵⁸ The average processing time for the seventy-three percent of claims that are received through the electronic registration system and do not require correspondence is even lower—four months, down from seven. And the average processing time for literary works has been reduced to three months.

⁵⁹ The current number of workable claims is currently well under 150,000, which historically has been the threshold for determining the existence of a backlog.

⁶⁰ The number is particularly noteworthy because the Office examined the 520,086 claims it received in fiscal year 2018 with 118 registration examiners. In contrast, in fiscal year 2018 the U.S. Patent and Trademark Office had 579 trademark examining attorneys to examine the 468,926 trademark applications it received, and the average time between filing of a trademark application and the "examiner's first action" was 3.4 months, with 9.6 months as the average time for registration. See U.S. PATENT & TRADEMARK OFFICE, FY 2018 PERFORMANCE AND ACCOUNTABILITY REPORT 193, 205 (2019), available at <https://www.uspto.gov/sites/default/files/documents/USPTOFY18PAR.pdf>.

2. *Recordation.*

As mentioned above, the Copyright Office and OCIO are developing a new recordation system to digitize the currently paper-based process. Concurrently, the Copyright Office is evaluating and updating its related business processes and workflows to ensure that the Office of Public Records and Recordation (“PRR”) is well-positioned to take advantage of the capabilities of the new system. As with the Registration Program, the Copyright Office has contracted with SOAR to review current recordation workflows and processes and provide recommendations for improvements.

In addition to recording documents related to use and chain of title for copyrighted works, PRR also manages the database of registered agents for receipt of DMCA notices and the schedules of pre-1972 sound recordings under title II of the Music Modernization Act. Since the launch of the new directory in December 2016, over 20,500 service providers have designated a DMCA agent with the Copyright Office, which includes over 303,000 alternative names used by these providers. As of today, the Copyright Office has received schedules listing more than 15,000 individual pre-1972 sound recordings.

3. *Outreach and Education.*

In addition to its outreach activities related to Copyright Office modernization and the MMA, the Office has committed additional resources to improve its overall public outreach and education activities. The Copyright Office recently appointed a new Associate Register and Director of Public Information and Education (“PIE”), restructured the department to add a new section for Outreach and Education, and added a number of staff, including public affairs specialists and a manager of Office communications. The Copyright Office plans to hire three additional staff members for PIE in fiscal year 2019, including a graphic design specialist, a writer/editor, and an attorney. PIE is currently revamping many of the Copyright Office’s communication functions, including by increasing the resources devoted to the Office’s social media channels, as well as creating new videos for the general public on topics such as *What is Copyright?*, *Copyright and the Internet*, and *Searching the Public Record*.

Update on Budget Matters and Fees

The Copyright Office performs its important work on a relatively modest budget. As the Supreme Court noted earlier this year, 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.”⁶¹

The Copyright Office greatly appreciates congressional support in fiscal year 2019, including support for its priority initiatives such as working towards fulfilling the *Modified IT Plan* goals, providing the public with online access to historical copyright records, and reducing

⁶¹ *Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881, 892 (2019).

registration and recordation processing times. As a result of Congress' support, the Copyright Office's staff levels have remained relatively steady between 416 and 433 full-time employees from fiscal year 2017 through the beginning of fiscal year 2019.⁶²

As the fiscal year 2019 enacted budgets included recurring annual funding for several of the Copyright Office's most important ongoing initiatives, the Copyright Office's fiscal year 2020 request included only the mandatory pay-related and price level adjustments necessary to maintain the same level of funding support to continue the progress underway. With the loss of certain fees resulting from passage of the MMA, combined with the new statutory responsibilities for the Copyright Office pursuant to that legislation,⁶³ the Copyright Office will need to undertake greater responsibilities with fewer resources and will likely require additional funding resources from Congress in the coming years.

More Flexible Fee Authority.

As the Copyright Office continues to maximize its limited resources, it would benefit significantly from greater flexibility in the use of its prior-year unobligated fee balances. Such a change would allow the Copyright Office to continue providing 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 Copyright Office anticipates including in a future budget request a change in appropriations language to allow for twenty percent 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.

Fee Study.

The Copyright Office is nearing completion of its latest fee study. Fees for services outlined under section 708(a) are set forth in a proposed schedule that is sent to Congress 120 days before the adjusted fees can take effect. Before proposing new fees via the first mechanism, the Register must conduct a study of the Copyright Office's costs for registering claims, recording documents, and providing other services, and must consider the timing of any fee adjustments and the Office's authority to use the fees consistent with the Office's budget. 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 Copyright Office's fees are "fair and

⁶² Fluctuations during the period can largely be attributed to attrition and hiring associated with the budget requests for additional positions ("NEPRs").

⁶³ See H.R. 1551, 115th Cong. § 102(e) (2018) (as engrossed by the House of Representatives and Senate) (mandating that the "Register of Copyrights shall engage in public outreach and educational activities").

equitable and give due consideration to the objectives of the copyright system,"⁶⁴ the Office conducts regular studies of its operating costs and fee structure. For its current fee proposal, the Copyright Office engaged a consulting firm for the first time in decades to formally and 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 Copyright Office issued a Notice of Proposed Rulemaking in May 2018, providing 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 issuing a proposed fee structure to Congress in fiscal year 2019, intending that it will enter into force in fiscal year 2020.

* * *

In closing, I wish to once again thank the dedicated employees of the Copyright Office for all that they do on behalf of the nation's copyright creators, owners, and users. The Copyright Office likewise appreciates the Subcommittee's continued support as we continue to modernize both Office technology and services, and work to improve operation of the copyright system overall.

⁶⁴ 17 U.S.C. § 708(b)(4).

Appendix

Copyright Office by the Numbers

Fiscal Year 2018 at a Glance	
520,086	Claims to copyright received
643,518	Claims to copyright closed
560,013	Claims to copyright registered
252,235	Literary works
136,399	Performing arts
93,651	Visual arts
77,216	Sound recordings
512	Other
661	Number of preregistration applications received
21,668	Documents recorded containing titles of more than 757,400 works
195,750	Phone, email, and mail inquiries answered
2,100	In-person visitors assisted
\$221 million	Royalty fees collected for statutory licenses
\$2 million	Filing fees collected for statutory licenses
\$102 million	Fiduciary assets distributed to copyright owners for statutory licenses
\$1.3 billion	Statutory license fiduciary assets managed by the Office
17.5 million*	Number of records from 1955–77 made available through the VCC
	<small>* 24 million additional card images, covering 1870–1954, were added to the VCC in March 2019, bringing the total of all images to over 41 million.</small>
>736,800	Copies of works added to the Library’s collections
\$47.5 million	Value of works added to the Library’s collections
9	Number of rulemakings initiated
2	Number of interim rules issued
4	Number of final rules issued