

**Statement of Karyn Temple Claggett
Acting United States Register of Copyrights
Before the
Subcommittee on the Legislative Branch
Committee on Appropriations
United States Senate
Fiscal 2018 Budget Request
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Mister Chairman, Ranking Member Murphy, and Members of the Subcommittee:

Thank you for the opportunity to submit the United States Copyright Office's fiscal 2018 budget request.

As this Committee has recognized, technology continues to transform and expand the role of copyright and the Copyright Office in the nation's economy.¹ According to some statistics, in 2015 core copyright industries added more than \$1.2 trillion to the U.S. gross domestic product, accounting for 6.88% of the U.S. economy.² These industries employed over 5.5 million workers, accounting for 3.87% of the entire U.S. workforce.³ Against this backdrop, the Office maintains key aspects of the nation's copyright system, which benefits content creators, technology companies, and the public at large.

The Copyright Office manages the nation's copyright registration and recordation systems, each year reviewing hundreds of thousands of claims for copyright and thousands of copyright transfer statements. The Office also administers statutory licensing royalties and distributes hundreds of millions of dollars annually in royalty payments. Office staff process assorted public inquiries on nearly every aspect of copyright law; search and provide certified copies of Office records; transfer hundreds of thousands of new materials to the Library of Congress; and provide expert legal and policy advice to federal agencies, courts, and Congress.

¹ "The Committee recognizes that the digital revolution has transformed the copyright marketplace and, as a result, the role of the Copyright Office in our economy." S. REP. NO. 114-258, at 39 (2017).

² STEPHEN E. SIWEK, COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY: THE 2016 REPORT 2 (2016) (prepared for the International Intellectual Property Alliance).

³ *Id.* Additionally, the Department of Commerce's Internet Policy Task Force has explained the importance of the copyright industries, noting in 2013 that "[t]he industries that rely on copyright law are today an integral part of our economy, accounting for 5.1 million U.S. jobs in 2010—a figure that has grown dramatically over the past two decades. In that same year, these industries contributed 4.4 percent of U.S. GDP, or approximately \$641 billion. And the demand for content produced by our creators contributes to the development of the broader Internet economy, spurring the creation and adoption of innovative distribution technologies." DEPARTMENT OF COMMERCE INTERNET POLICY TASK FORCE, COPYRIGHT POLICY, CREATIVITY, AND INNOVATION IN THE DIGITAL ECONOMY 5 (2013) (citations omitted).

In fiscal 2016 alone, the Copyright Office registered approximately 414,000 claims to copyright and recorded almost 11,000 ownership-related documents pertaining to nearly 162,000 copyrighted works. The Office collected over \$242 million in royalty payments from statutory licenses and provided certified copies of Office records generating over \$600,000 in fees. In addition, the Office answered over 37,000 electronic filing inquiries; 6,500 phone calls; 6,000 email inquiries per month; and assisted nearly 2,000 in-person visitors.

The Copyright Office also engaged in important and complex legal and policy issues in furtherance of the Copyright Act. Consistent with its statutory mandate, the Office advised Congress on a host of informal legislative inquiries and responded to several formal congressional requests to study a number of copyright issues. Office attorneys also assisted the Department of Justice on various copyright-related matters, including briefing in the Supreme Court. For example, in fiscal 2016, the Office participated in briefing the Supreme Court in *Star Athletica LLC v. Varsity Brands, Inc.* and *Kirtsaeng v. John Wiley & Sons, Inc.* In the past year and a half, the Office published two comprehensive policy reports, *The Making Available Right in the United States* in February 2016, and *Software-Enabled Consumer Products* in December 2016. The Office also continued ongoing studies on the impact and effectiveness of the safe harbor provisions of section 512 of Title 17 and on the anti-circumvention provisions of section 1201 of Title 17. The Office held a series of public hearings in San Francisco, New York, and Washington D.C., and analyzed nearly 100,000 public comments submitted in connection with these studies.

In fiscal 2017, the Copyright Office has issued multiple publications in the Federal Register. To date, the Office has issued seven final rules, and six proposed rules are pending. For example, the Office published Notices of Proposed Rulemaking on technical clarifications to regulations under Title 17, as well as proposals on supplementary registration and group registration practices. It also issued Final Rules regarding the designation of agents to receive notifications of claimed infringement and removal of personally identifying information from the Office's records, and a Notice of Inquiry initiating a study on the moral rights of attribution and integrity. In anticipation of modernization, the Office also has proposed omnibus revisions to current recordation regulations governing transfers and terminations of copyright ownership. These rules contemplate the development of an online recordation system through which remitters can submit materials electronically, which will replace the current paper-based system. The Office further anticipates an overhaul or update of registration and licensing regulations to accommodate modernization, adjust to technological enhancements, and align with developing business practices. In addition, the Office preliminarily has identified the need to review all regulations, many of which date back to 1978.

Finally, the Copyright Office engaged in numerous international initiatives, including serving on intergovernmental delegations to the World Intellectual Property Organization (WIPO) and supporting executive branch agencies in analyzing copyright legislation in other countries. For example, the Office provided the interagency with copyright-related advice on dozens of World Trade Organization (WTO) trade policy reviews and two country accessions to the WTO. In

partnership with WIPO, in June 2016 the Office hosted its biennial International Copyright Institute training program for senior copyright officials from twenty-two developing countries.

FUNDING AND OVERALL FISCAL YEAR 2018 BUDGET REQUEST

To conduct its statutorily mandated work, the Copyright Office requests a budget that will enable it to continue to provide high-quality services to the public, Congress, and other federal agencies. This request specifically seeks funding to continue the Office's IT modernization efforts, which the Committee has previously supported, within the context of the Library's broader IT centralization model. It also focuses on targeted staffing needs to maintain and improve efficiencies in registration, public records, public information services, and legal review. With these funds, the Office can better serve the American public at large and continue to support the nation's copyright system.

The Copyright Office administers funds from three separate budgets or program areas: (1) *Basic Budget*, which funds most of the Office's core operations, including the majority of payroll-related expenses. Historically the basic budget has been provided through a combination of appropriated dollars and authority to spend fee revenue, with fees constituting a majority of this funding (generally in the range of 58% to 67%); (2) *Licensing Budget*, which is derived completely from licensing royalty collections otherwise payable to copyright owners and filing fees paid by cable and satellite licensees pursuant to statutory licenses administered by the Office; and (3) *Copyright Royalty Judges Budget*, which funds the Copyright Royalty Board ("CRB")—although the CRB is not a part of the Office, the Office administers its budget on behalf of the Library of Congress.

For fiscal year 2018, the Copyright Office requests a combined total of \$72.0 million in funding and 488 FTEs, of which \$43.6 million would be funded through authority to expend fees collected in fiscal year 2018 and in prior years.

Specifically, the Office's requests are:

- *Basic Budget*: \$64.7 million and the authority to have 458 FTEs. \$6.1 million and 22 FTEs of this request are for new initiatives, including funding important IT stabilization and modernization efforts, and staffing to address ongoing operations described further below. As in past years, the Office asks that Congress provide budget authority through a combination of annual appropriations and authority to offset fee revenue. The Office requests that \$35.2 million be provided through authority to expend fiscal year 2018 fee revenue and that \$2.3 million come through use of unobligated revenue balances of prior years. The Office requests that the remaining \$27.2 million come from appropriated dollars.

Initiatives to be funded through this request include:

- \$3.6 million devoted to Office IT modernization, which would be covered completely by fees collected in FY 2018 or prior fiscal years; and
 - \$2.5 million devoted to staffing for the Office to conduct registration activities; legal analysis; and administer the Office’s public records, repositories, and public information functions.
- *Licensing Division Budget*: \$5.7 million, all of which is funded via fees and royalties. The requested increase includes mandatory pay-related and price level increases of \$.149 million.
 - *Copyright Royalty Judges Budget*: \$1.67 million in total, with \$.08 million to support mandatory pay-related and price level increases. \$.41 million (for non-personnel-related expenses) of the total request is offset by royalties. The remainder, \$1.26 million in appropriated dollars, is to cover the personnel-related expenses of the Judges and their staff.

FOCUS OF FUNDING REQUEST

The Copyright Office’s funding request focuses on two key areas: (1) increased funding for IT modernization efforts; and (2) staffing for the Office’s registration, public information, and legal services.

Copyright IT Modernization

The Copyright Office has dedicated itself to modernizing its systems and its administration of the nation’s copyright laws. Starting in 2011, the Office began a series of comprehensive and targeted efforts to understand and analyze its IT needs. The Office issued its *Priorities and Special Projects of the United States Copyright Office (October 2011-October 2013)*, which highlighted the need for technological upgrades. Following that kick-off, the Office undertook a comprehensive study of its technological capabilities and needs, which included extensive stakeholder feedback. The resultant 2015 *Report and Recommendations of the Technical Upgrades Special Project Team* acknowledged challenges with the current user experience and access to the public record, and offered recommendations for improvement. Then, based on congressional direction, the Office followed the initial report with a more detailed plan, 2016’s *Provisional Information Technology Modernization Plan and Cost Analysis (“Provisional IT Plan”)*, which provided concrete ideas about how to move the Office into the modern era.

Subsequent to the *Provisional IT Plan*, the Copyright Office and the Library engaged in extensive, collaborative efforts to identify resource-sharing opportunities that may be achievable through use of the Library’s existing or planned future technology resources and support services. Significant progress has been made by both sides in assessing how capabilities can be leveraged to produce the most advantageous and cost effective results, and these collaborative efforts will be reflected in the Office’s revised IT plan, which will be

submitted later this summer in response to the Committee's request. To ensure the revised plan is as comprehensive as possible, the Office and the Library's Office of the Chief Information Officer (OCIO) have partnered in assembling a team of experts to identify gaps and opportunities in available technologies, shared services, and mutually-supportive strategies. The revised IT modernization plan will be a forward-thinking document that provides an enhanced roadmap for overall modernization efforts.

Currently, the Library is centralizing the IT functions of the business units, including the Office's IT functions. The Office is requesting fiscal 2018 funds that were developed in coordination with the Library's Chief Information Officer to ensure alignment with the Library's overall IT strategy. The planning for a Library-led strategy for Office IT modernization is ongoing and is expected to result in additional funding requests in future years as these efforts progress. Since responsibilities will be bifurcated between the Library's OCIO, which has primary responsibility for infrastructure, project management, and other aspects of IT management, and the Office, which provides subject-matter expertise and manages mission-critical applications, future funding requests related to Office modernization will come from both the Library and the Office.

At the same time, the Copyright Office has been developing a comprehensive plan to modernize its recordation system, and has now reached the final year of planning and analysis activities to bring its recordation systems online. The Office has undertaken significant planning, releasing the Office's Kaminstein Scholar's 2015 report *Transforming Document Recordation at the United States Copyright Office*. By the close of the current fiscal year, the Office will have completed documenting business and technical requirements and related documentation needed for a future-state IT system to accommodate online filing and processing of copyright-related documents. Under the shared services protocol, the Office plans to deliver the completed package of planning documentation to the OCIO later this year so that development of the future-state system can begin in fiscal 2018.

To significantly advance modernization goals, the Copyright Office is requesting \$3.6 million, comprised of fees and one-time budget requests, as referenced above. In addition to continued development of a recordation system, these additional funds will allow the Office to launch the first phase of development of a next-generation copyright registration system through a thorough, comprehensive analysis of business requirements. This phase will include requirements gathering, requirements validation, and system design sessions with various copyright industry and user group partners, as well as with Office staff, to ensure that the unique needs and specific requirements of the widest array of user groups are documented and ultimately incorporated into the new registration system. Moreover, the funding is necessary to mitigate identified risks and to ensure that the Office's existing legacy systems remain available and operational until functionality can be more permanently addressed through the Office's and Library's joint modernization efforts. The requested funding also would allow for system monitoring to reduce the risk of system intrusion, proactively identify system issues before they occur, and provide for security enhancements that would evaluate the technical and non-

technical security features of existing systems to ensure the systems meet mandated security requirements. The activities in this request are early-phase projects to be undertaken by the Office in what will be a multi-year modernization effort. As the Office and the Library work to deliver these improved technologies on behalf of customers and stakeholders, it is expected that additional requests for funding will be generated.

Copyright Office Staffing

The Copyright Office operates on a very modest budget while providing valuable services to the public at large, copyright owners, technology companies, and the Library itself. For quite some time, the Office has conducted this important work with very limited staff. The Office believes that additional staffing is critical in several core areas to address the expansion in the use of the nation's copyright system, including the need for additional examination capacity and increased services to copyright stakeholders, and to address increasingly complex policy issues regarding Copyright Act interpretation and administration.

The staffing requests span several areas of the Copyright Office. *First*, the request seeks to add much-needed registration specialists. While the Office has hired specialists in recent years, they must undergo complex, extensive training in the legal examination of copyright applications to properly fulfill their job responsibilities. Thus, adding new registration specialists does not immediately result in reducing application processing times and, in fact, can appear to provide an increase in processing times due to existing specialists taking on training roles for the new employees instead of devoting all of their time to reviewing incoming claims. The Office's request thus seeks fifteen additional registration specialists to provide necessary capacity to reduce turnaround times in the future, while providing for the ongoing training and quality control necessary to better manage workload spikes.

Second, the Copyright Office's request also aims to enhance other areas that support the administration of the copyright system. Specifically, the request would provide additional staff to the Office's small group of legal specialists, who must handle a steadily increasing workload as the copyright landscape evolves in both complexity and volume. Additional staff also would work in the Office's Public Information and Education division, allowing the Office to provide expanded service hours for its large community of West Coast customers.

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The Copyright Office greatly appreciates the Committee's consideration of this request and ongoing support for the success of the Office and for the national copyright system.