



## COPYRIGHT OFFICE

**D**URING FISCAL YEAR 2002, the Copyright Office continued to administer the U.S. copyright laws and to provide legal and policy assistance for Congress and the executive branch to ensure that the nation maintained a strong and effective copyright system—one that serves both owners and users of copyrighted works. The office continued major initiatives to reengineer its core business processes and to develop information technology that would increase its efficiency and the timeliness of public services.

### U.S. POSTAL DELAYS

**I**n October 2001, anthrax-contaminated envelopes arrived in the Hart Senate Office Building. Capitol Hill buildings, including the U.S. Copyright Office, were closed for one week and mail deliveries were severely disrupted from October 18, 2001, to March 4, 2002. As the single largest recipient of mail in the Library of Congress, the Copyright Office was significantly affected by the anthrax attacks. Postal mail, rerouted to special facilities, received irradiation to destroy any possible anthrax contamination. Delivery of delayed mail increased significantly in late April and was completed by the end of July. By the end of fiscal 2002, the office had processed all of the six months' worth of delayed mail. The processing of this mail, however, affected the office's processing of current incoming mail.

In December 2001, the Copyright Office adopted interim regulations to address the effect of the general disruption of postal services on the Copyright Office's receipt of deposits, applications, fees, and other materials, and it made procedural decisions about assigning a receipt date to such materials.

Irradiation at high temperatures delayed mail and subjected some photographs, videotapes, audiocassette tapes, and compact discs to unreconstructible damage. The office established a "triage" area to deal with damaged items and to take appropriate action.

This chapter is excerpted from a fuller report that the Register of Copyrights sends annually to Congress.



*A visual arts deposit that was damaged by irradiation is handled by a Copyright Office employee wearing safety gloves. (Photo by Charles Gibbons)*

The Copyright Office's Web site notified the public of the disruption and suggested the use of private carriers. Private carrier deliveries doubled as a result, becoming the primary method of mail receipt during the period of disruption.

In January 2002, Congress responded to the September 11, 2001 (9/11), terrorist attacks and anthrax incidents by authorizing security-related supplemental funding to various agencies. The Copyright Office requested \$187,386 from this special security fund to pay overtime expenses of processing mail and to purchase protective masks and gloves for mail handlers.

The Copyright Office obtains about two-thirds of its budget from fees for services. The mail disruption, therefore, not only hurt service to users but also decreased the flow of receipts to the office. On the basis of seriously reduced first-quarter fee receipts, the office estimated a \$7.5 million shortfall in fee receipts for the fiscal year, about one-third of its total yearly receipts. Congress approved supplemental funding to cover this shortfall in receipts.

## COPYRIGHT LAW ADMINISTRATION

During the year, the Copyright Office received 526,138 claims to copyright covering more than 800,000 works; of those, it registered 521,041 claims. The number of unexamined claims decreased by 75 percent since the fiscal 2001 initiation of a project to reduce the number of such claims. The number of registrations awaiting cataloging decreased by 57 percent during fiscal 2002. The Copyright Office Electronic Registration, Recordation, and Deposit System (CORDS) processed 22,900 full electronic claims in textual works and music. CORDS was upgraded to handle additional classes of electronic submissions and to interact with new versions of the office's information technology systems. The office recorded 10,506 documents covering 218,000 titles, and the online public record grew with the cataloging of an additional 578,658 registrations.

The Copyright Office forwarded 896,504 copies of works, having a net worth of \$31,302,048, to the Library of Congress for its collections and exchange programs, including 390,150 pieces that were received from publishers under the mandatory deposit provisions of the copyright law. The office also examined 19,879 filings from cable operators, satellite carriers, and manufacturers or importers of digital audio recording devices and media, and it processed claims to the various royalty pools. The Licensing Division collected \$206,811,232 in royalty fees (more than 90 percent received through electronic funds transfer) and distributed royalties totaling \$110,002,156. The remainder of those funds will be distributed in future royalty proceedings.

Revised fees for certain Copyright Office services went into effect on July 1, 2002. Fees that changed include those to renew a registration, record a document, provide an additional certificate, register a vessel hull design, or obtain special handling. The office eliminated the fee to inspect a registered work.

The Copyright Office responded to 358,604 requests for direct reference services. Correspondence by e-mail increased by more than 150 percent from the previous year (from 22,467 to 57,263 messages) because of the anthrax-related disruption of postal mail, increased public comments on rulemakings, and easier e-mail access by using the Copyright Office's Web site. The Web site continued to play a key role in disseminating information to the copyright community and the general public, logging 13 million hits to key pages during the year, which was an 8 percent increase over the previous year. In April 2002, the Copyright Office launched a redesigned Web site at <[www.copyright.gov](http://www.copyright.gov)>. The redesign provides an enhanced access to frequently requested pages, a new way to search the office's public records, a step-by-step guide to registration, and a streamlined look that makes locating information easier and faster. The office electronically published thirty-

nine issues of *NewsNet*, a source of news about the office and copyright, thus increasing the number of subscribers to 5,797, which was a 13 percent increase over last year. During August 2002, the office supplied the Library of Congress with representative registered works relating to the events of 9/11 from which the Library chose several for inclusion in its exhibition *Witness and Response: September 11 Acquisitions at the Library of Congress*.

In February 2002, the office published a new strategic plan covering the years 2002 through 2006. The report, which is available online at <[www.copyright.gov/reports/s\\_plan.html](http://www.copyright.gov/reports/s_plan.html)>, outlines the office's priorities and future direction. The office's mission "to promote creativity by administering and sustaining an effective national copyright system" is supported by a series of goals keyed to three strategic areas and management: copyright law administration, policy assistance, and litigation; public information and education; and management support, with its overarching initiatives to reengineer the office's business processes and information technology.

#### REGULATORY ACTIVITY

The Copyright Office issued a number of final, interim, or proposed rules during this period. Those rules addressed (1) disruption of postal mail, including a waiver of the regulation for filing claims for cable, satellite, and Digital Audio Recording Technology (DART) royalty fees; (2) changes to fees for copyright services; (3) notification of a request to retract prior filings of Notices of Intent to Enforce Restored Copyrights; (4) group reg-



*Register of Copyrights Marybeth Peters (right) and Director of the U.S. Patent and Trademark Office James Rogan (left) testify before the Senate Committee on the Judiciary regarding the Intellectual Property Protection Restoration Act (S.1611). (Photo by Charles Gibbons)*

istration of contributions to periodicals; (5) the mechanical and digital phonorecord delivery compulsory license; and (6) requirements for notice and recordkeeping for use of sound recordings under statutory licenses.

## LEGISLATION AND OTHER LEGAL ACTIVITY

During the year, the Register of Copyrights testified at three congressional hearings. The Senate Committee on the Judiciary heard testimony on the Intellectual Property Protection Restoration Act (S.1611). The other two hearings were before the House Subcommittee on Courts, the Internet, and Intellectual Property and dealt with the Copyright Office's Digital Millennium Copyright Act (DMCA) section 104 report and of the Copyright Arbitration Royalty Panel (CARP) reform.

### *State Sovereign Immunity and the Intellectual Property Protection Restoration Act*

The Register testified on February 27, 2002, in support of the Intellectual Property Protection Restoration Act (S.1611), a bill to address issues raised by two 1999 rulings in which the Supreme Court determined that the doctrine of sovereign immunity prevents states from being held liable for damages for violations of federal intellectual property laws even though states enjoy the full protection of those laws. Copyright owners are unable to obtain monetary relief under the Copyright Act against a state, state entity, or state employee unless the state waives its immunity. The office worked closely with congressional staff members on the effect of state sovereign immunity on copyright. The bill would provide incentives to the states to waive their immunity voluntarily. At the request of congressional staff members, the Copyright Office moderated negotiations between intellectual property owners and public universities regarding the proposed legislation.

### *Digital Millennium Copyright Act Section 104 Report*

In December 2001, the Register testified before the House Subcommittee on Courts, the Internet, and Intellectual Property during two days of hearings on the August 2001 report prepared by the office as required by section 104 of the DMCA. The Copyright Office's report made three recommendations: (1) Digital first-sale doctrine (section 109 of the Copyright Act) permits a person who lawfully owns a copy of a work to sell or dispose of that copy as he or she chooses. The Register noted that section 109 already applies to tangible copies of work in digital form and that expansion of the section to permit retransmission of such works could do harm. (2) "Buffer" copies are created incidentally as part of the process of streaming. Such copies exist only for a brief time and only as a

portion of the entire work. The Register noted that the making of a buffer copy in the course of licensed streaming should be considered a fair use of the work, and she recommended legislation of a narrow exemption for such incidental or buffer copies. (3) Section 117 of the Copyright Act permits users to create archival copies of computer programs that they legally own. The Register found that making an archival copy of other types of works should be considered a fair use. However, the Register observed that section 109 permits the owner of a particular copy that was lawfully made to distribute that copy without the copyright owner's permission. This current wording would appear to permit the user to sell or otherwise dispose of the archival copies, which would harm the copyright owner. The Register recommended that Congress close this gap.

#### *Copyright Arbitration Royalty Panel Reform*

A CARP is a temporary body composed of hired arbitrators who set or adjust royalty rates and adjust royalty distributions. Panels have been operating under the auspices of the Copyright Office and the Library of Congress since Congress eliminated the Copyright Royalty Tribunal (CRT) in 1993. The purpose of the June 13 hearing was to consider how effective the CARP process has been thus far and ways in which it can be improved. The Register addressed a report on CARP reform that the office had prepared in 1998 at the subcommittee's request and commented on proposed legislation. She noted the office's willingness to work with the subcommittee and the parties to produce a better system that

would address four critical elements: (1) hiring of full-time employees who are well versed and experienced in the pertinent fields, (2) ensuring that there are no periods of inactivity as there were with the CRT, (3) ensuring that during the process the Register will play a substantive role to address important policy and substantive matters that might arise, and (4) funding in the absence of a royalty pool.

#### *Distance Education*

The Technology, Education, and Copyright Harmonization (TEACH) Act was passed by the Senate in June 2001 and placed on the House of Representatives calendar late in fiscal 2002 as part of the

Department of Justice Appropriations Authorization. The TEACH Act promotes digital distance education by implementing the recommendations in the Register's report to Congress in May 1999 titled *Report on Copyright and Digital Distance Education*. At the request of the Senate Judiciary Committee, the Copyright Office played a key role in bringing about the compromise reflected in the law as it facilitated negotiations between

*The TEACH Act  
promotes digital distance  
education by  
implementing the  
recommendations in  
the Register's report  
to Congress*

the affected parties. The TEACH Act expands the coverage of rights in section 110(2) to allow the delivery of authorized performances and displays through digital technologies, it expands the categories of works exempted from the performance right but limits the amount that may be used in those additional categories to “reasonable and limited portions,” and it emphasizes the concept of “mediated instruction” to ensure that the exemption is limited to what is tantamount to a live classroom setting.

### *Other Legal Activities*

The Copyright Office continued to respond to requests for assistance from the Department of Justice or the Solicitor General’s Office in prosecuting copyright litigation. The most visible copyright case during this period challenged the constitutionality of the Sonny Bono Copyright Term Extension Act of 1998, which extended the copyright term for another twenty years. In *Eldred v. Ashcroft*, a case filed in 1999 as *Eldred v. Reno*, users of copyrighted works that would have entered the public domain challenged the law. Both the district and appellate courts found the law constitutional. The Supreme Court agreed to hear the case. The office assisted the Solicitor General’s Office in drafting the respondent’s brief to the Supreme Court and was consulted in preparation for oral argument.

The Copyright Office continued to review all copyright cases that had been filed and in which the Register or Librarian of Congress is a party, plus cases where the Register has the right to intervene. The Register chose to intervene in one case where registration had been refused, *Morelli v. Tiffany*. By doing so, the Register defended the office’s decision not to register eighteen pieces of jewelry, thereby upholding the office’s practices and procedures regarding such registration.

### *Copyright Arbitration Royalty Panels*

The Copyright Office administered eight CARP proceedings. Five of the eight involved setting rates and terms of payment for three statutory licenses pertaining to (1) the digital transmission of sound recordings, (2) the making of ephemeral recordings, and (3) the use of copyrighted works by noncommercial educational broadcasters. Three proceedings dealt with distributing royalty fees collected under the Audio Home Recording Act of 1992 and under cable compulsory license, section 111 of the Copyright Act. In a widely publicized proceeding, the Librarian, on May 21, rejected in part a CARP’s recommendation setting a per performance rate for the transmission of sound recordings over the Internet. On June 20, the Librarian published his final order in which he announced his decision to accept the recommendation of the Register of Copyrights and to halve the CARP-proposed rates applicable to Internet-only transmissions made by Webcasters and commercial

broadcasters, while accepting the CARP-proposed rates for Internet retransmissions of radio broadcasts made by those same services. At year's end, the rates, as well as other parts of the Librarian's decision, were the subject of a number of appeals pending before the U.S. Court of Appeals for the District of Columbia Circuit.

## INTERNATIONAL ACTIVITIES

Protection against unauthorized use of a copyrighted work in a country depends primarily on the national laws of that country. Most countries offer protection to foreign works under the aegis of international copyright treaties and conventions. The Copyright Office continued to work in tandem with executive branch agencies on international matters, particularly with the U.S. Trade Representative, the Patent and Trademark Office (PTO), and the Departments of State and Commerce.

Staff members participated in numerous multilateral, regional, and bilateral negotiations in fiscal 2002. Copyright Office staff members were part of the U.S. delegation in meetings of the World Intellectual Property Organization (WIPO) Standing Committee on Copyright and Related Rights, which considered issues relating to a possible treaty on the protection of broadcasting organizations. In cooperation with the PTO, staff members prepared a proposed treaty text to present at the next Standing Committee meeting. The Copyright Office also participated in the December 2001 and June 2002 meetings of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore.

Copyright Office staff members served as part of the U.S. delegation in the quarterly meetings of the World Trade Organization Council on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The TRIPS Council is responsible for monitoring the operation of the TRIPS Agreement and, in particular, for monitoring how members comply with their obligations under it. The council reviews the intellectual property laws of member countries for compliance with TRIPS obligations.

Staff members were also part of the U.S. delegation at two meetings of the Intellectual Property (IP) Negotiating Group of the Free Trade Area of the Americas and were instrumental in preparations such as redrafting U.S. treaty proposals. The goal of the negotiating group is to prepare and finalize an IP chapter for a Free Trade Area of the Americas Agreement. The overall agreement should be completed by 2005.

Staff members participated in the drafting and the negotiation of the intellectual property provisions of bilateral free trade agreements with Chile and Singapore, including the drafting of proposed text. They have also taken part in preliminary discussions

concerning a possible bilateral agreement with Morocco and multilateral agreements with groups of nations in Central America and southern Africa.

The Copyright Office was represented on the interagency Special 301 Committee, which evaluates the adequacy and effectiveness of intellectual property protection and enforcement throughout the world. This annual process, established under U.S. trade law, is one of the tools used by the U.S. government to improve global protection for U.S. authors, inventors, and other holders of intellectual property rights.

In conjunction with WIPO, the International Copyright Institute (ICI) of the Copyright Office held an “International Symposium on the Effect of Technology on Copyright and Related Rights” on November 13–16, 2001, for nineteen copyright experts and government officials from around the world. The ICI is designed to further international understanding and support of strong copyright protection, including the development of effective copyright laws and enforcement overseas.

## REENGINEERING ACTIVITIES

The Copyright Office continued its extensive multiyear effort to reengineer its principal public services. The reengineering program has involved more than 200 Copyright Office staff members and has required the cooperation of staff members from other areas in the Library. Those efforts ensured that actual implementation will take place between fiscal 2003 and fiscal 2005.

The reengineering work proceeded on four fronts: process, organization, facilities, and information technology (IT). New processes being developed are registering claims, recording documents, acquiring deposited works for the Library, answering public requests, receiving mail, and maintaining accounts. In fiscal 2002, all six process teams completed their work by defining their tasks at the operational level and by drafting procedures manuals. Because changed processes affect organization and job structure, organization teams for each process proposed organizational and job role changes. A high-level training plan identified likely training needs for Copyright Office staff members for each new process. The changes in process and organization will necessitate a reconfiguration of space. In fiscal 2002, the Copyright Office accomplished several key steps toward redesigning facilities by completing an assessment of current space in February and a furniture and furnishings inventory in September.

The use of IT is critical to delivery of the office’s public services within the redesigned processes, organization, and facilities. Work on an IT requirements analysis began in October 2001 as the first step in the process of building IT systems to support

the reengineered business processes and to allow the office to provide more services electronically. Major accomplishments on the IT front during the fiscal year included the completion of (1) an assessment of the needs of processes not included in reengineering, (2) a report of options and recommendations for logical system components, (3) functional specifications for logical system components, and (4) a report on recommended hardware and software. Those products formed the basis for initial sequence planning while preparing to contract for the purchase or development of system components and their integration into a single electronic system to support Copyright Office services.



*Launched in April 2002, ReNews provides information about the Copyright Office's business process reengineering effort. (Graphic by Charles Gibbons)*

The Copyright Office strengthened communications about the business process reengineering implementation through a new monthly reengineering newsletter, *ReNews*, which was first published in April 2002. During the year, the Copyright Office and Library Services formed Joint Issue Groups, comprising representatives from both service units. They discussed and presented recommendations for cooperation in five areas of interaction between the two organizations: serials processing, labeling, cataloging, selection, and the Library's opening of the National Audio-Visual Conservation Center in Culpeper, Virginia. The Labeling Group completed its work and recommended significant changes in how works are identified.

The fiscal year ended with the formation of a reengineering program organization within the Copyright Office to manage business process reengineering and information technology under an Integrated Implementation Plan. A Library of Congress Advisory Committee was formed to offer advice on implementation issues. In addition, the office developed plans to form an Information Technology Technical Review Board, which is composed of six members with IT expertise from government and from private industry, to provide outside perspectives and experiences concerning large-scale, complex IT implementations.