



Annual Report of the Register of Copyrights

FISCAL YEAR ENDING SEPTEMBER 30, 2012

Copyright
United States Copyright Office

“My vision for
the U.S. Copyright Office is to
position it to be highly efficient
and effective over the next
several decades.”

— MARIA A. PALLANTE, REGISTER OF COPYRIGHTS

MESSAGE FROM THE REGISTER



This report highlights the Copyright Office's many accomplishments in fiscal 2012. We made major progress during the year toward achieving the goals I outlined in *Priorities and Special Projects of the United States Copyright Office, October 2011–October 2013*. At the same time, we responded to challenges of all kinds—from questions of resources to questions of policy.

The Office continued to assist Congress, providing testimony on online piracy and other matters. In addition, staff researched congressionally mandated reports on ways to resolve small copyright claims outside the federal courts, extension of federal protection to pre-1972 sound recordings, and a potential federal resale royalty right.

For two cases before the U.S. Supreme Court, *Golan v. Holder* and *Kirtsaeng v. John Wiley and Sons*, the Office assisted the U.S. Department of Justice.

Internationally, staff represented the United States as part of a delegation that negotiated the conclusion of the first multilateral copyright treaty adopted by the World Intellectual Property Organization since 1996. Staff also participated in a U.S. interagency process related to free trade agreements signed into law with Colombia, Korea, and Panama and served on U.S. delegations and negotiating teams for the proposed Trans-Pacific Partnership trade agreement.

Staff at all levels of the organization contributed to special projects in fiscal 2012, including revision of the Office's *Compendium of Copyright Office Practices*, upgrades to the Office's technical processing systems, reengineering of documents recordation, digitization of the Office's historical records, and development of the Office's public outreach and copyright education program.

As always, the Office administered the copyright law by conducting rulemakings, implementing regulations, registering hundreds of thousands of copyright claims, managing statutory licenses, and carrying out other responsibilities under the law.

We succeeded in all these achievements and others thanks to the dedication and enthusiasm of our staff and the participation of the copyright community. It is a great privilege to head the U.S. Copyright Office and an even greater privilege to work with so many talented and committed individuals and groups. I look forward to continuing our work together as we build the 21st-century Copyright Office.

A handwritten signature in black ink that reads "Maria A. Pallante". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Maria A. Pallante
Register of Copyrights

“Throughout its history, the Copyright Office has provided invaluable assistance to congressional efforts to advance the interests of both authors and the public.”

—REPRESENTATIVE BOB GOODLATTE



“Copyright law is an engine of free expression and a major building block in the world economy.”

—MARIA PALLANTE, REGISTER OF COPYRIGHTS

THE UNITED STATES COPYRIGHT OFFICE

The United States Copyright Office is the principal advisor to Congress on national and international copyright matters. The Office provides leadership and impartial expertise on copyright law and policy, and administers the national copyright system as set forth in the Copyright Act.

The Office was founded in 1870, when Congress removed copyright registration from the district courts and centralized it in the Library of Congress. Today, the Office's registration system and its companion recordation system constitute the world's largest database of copyrighted works and copyright ownership information. In addition, works deposited with copyright registrations and acquired through the mandatory deposit provision of the copyright law have helped to make the Library of Congress the largest Library in the world. In fiscal 2012, the Office forwarded more than 636,000 copies of works with a net value of \$30.5 million to the Library. The acquisition of these works was fairly evenly split between the registration system and mandatory deposit.

Fiscal 2012 presented considerable budgetary and staffing challenges for the Office, as the number of employees dropped below 400 for the first time in many years. Despite these reductions, the Office processed more than 560,000 claims for registration, and recorded 8,687 documents containing titles of more than 170,000 works. The Office also provided other critical law and policy functions, including domestic and international policy analysis; litigation activities; support for the courts and executive branch agencies (including significant efforts on trade and antipiracy initiatives); participation on U.S. delegations in meetings with foreign governments and private parties; attendance and participation at intergovernmental meetings and other international events; and public information and education. Office staff answered 237,777 inquiries by phone and email, retrieved and copied 3,873 copyright deposit records for parties involved in litigation, and assisted 9,583 in-person visitors.

The Copyright Office also administers certain statutory licenses set forth in the copyright law, collecting, managing and dispersing royalty fees paid by cable and satellite television systems, and certain providers of digital audio recording technology. In fiscal 2012, the Office collected \$312 million in royalty fees, and distributed more than \$800 million from prior years to copyright owners whose works were used under these licenses.

In all its work, the Office has promoted and sustained the copyright system as set forth in the law and directives of the federal government.

Two-Year Plan

Maria A. Pallante, Register of Copyrights and Director of the U.S. Copyright Office, announced an ambitious two-year work plan in October 2011 in *Priorities and Special Projects of the United States Copyright Office 2011–2013*, available at www.copyright.gov/docs/priorities.pdf. The document articulates the Office's goals in copyright policy and administrative practice and describes 10 special projects to improve the quality and efficiency of the Office's services in the 21st century. The Office made important progress in fiscal 2012 toward achieving the goals the Register outlined, as described in this annual report. As the initiatives proceed, dialogues with stakeholders continue to inform their direction. Findings and recommendations from the projects will inform future strategic plans.

Studies and Analyses

The Copyright Office frequently studies and reports on important matters of domestic and international copyright policy, often at the request of members of Congress. In fiscal 2012, the Office issued reports on, or commenced studies of, the following topics:

Small Copyright Claims

Early in the fiscal year, Congress directed the Copyright Office to study ways to resolve small copyright claims outside federal courts. Copyright owners whose works are used without their authorization can file infringement actions in federal district courts. But the high cost of doing so deters owners with limited resources from pursuing claims that are likely to involve small monetary awards. The Office published two notices of inquiry soliciting comments in fiscal 2012 and scheduled public hearings in Los Angeles and New York. Details are available at www.copyright.gov/docs/smallclaims.

Pre-1972 Sound Recordings

The Copyright Office recommended in a December 2011 report that Congress bring pre-1972 sound recordings under federal copyright protection. Under current law, sound recordings made on or after February 15, 1972, enjoy federal protection, but those made earlier do not. Pre-1972 sound recordings—as distinct from the musical or literary works embodied in them—are the only kind of creative work fixed in a tangible form that are still protected by state or “common law” copyright instead of federal copyright. Congress directed the

Office to prepare a report in the Omnibus Appropriations Act of 2009. The Office engaged in months of study and extensive consultation with stakeholders, including a two-day public roundtable, to prepare the report, available at www.copyright.gov/docs/sound. It explores the advantages and disadvantages of providing federal coverage, how such coverage might be enacted, its effect on preservation of pre-1972 sound recordings and public access to them, and financial and other consequences for rights holders.

Mass Book Digitization

The Office published a discussion document in October 2011 on mass book digitization.

The document seeks to establish a framework for analyzing issues raised by projects that involve scanning large quantities of copyrighted works. It does so in the context of the March 2011 rejection by a federal court of a class-action settlement in the highly publicized Google book-scanning case, *Authors Guild v. Google Inc.* The document explores several licensing models that have been proposed to clear rights in projects scanning copyright works, including orphan works, or works whose owners cannot be identified or found for the purpose of requesting permission. Besides licensing options, the report considers what aspects of digitization are or should be covered by fair use or library exceptions under copyright law. The Office will use the analysis as the basis for future research and policy discussions on mass digitization. The document is available at www.copyright.gov/docs/massdigitization.

Resale Royalty Right for Artists

An artist resale royalty right, known as a *droit de suite* in Europe, provides artists with an opportunity to benefit from the increased value of their works over time by granting them a percentage of the proceeds from the resale of their original works of art. The royalty is in general practice throughout Europe but is not part of U.S. copyright law. At the request of Congress, the Copyright Office initiated an inquiry in September 2012 into how visual artists exploit their works under existing copyright law and the issues and obstacles that may be encountered when considering a federal resale royalty right in the United States. For details, go to www.copyright.gov/docs/resaleroyalty.

Legislative Work

On November 16, 2011, Register Pallante testified before the House Judiciary Committee on H.R. 3261, the Stop Online Piracy Act. The bill proposed new copyright enforcement mechanisms to address increased levels of infringement made possible by the global reach of the Internet. The Register noted that a key question for Congress to determine is what kind of tools are needed to respond to 21st century infringers to ensure that the exclusive rights of copyright owners are adequately protected in the digital age. She also underscored the importance of ensuring due process protections for alleged infringers.

On April 18, 2012, the Register testified in a hearing of Library of Congress directors entitled “Library of Congress: Ensuring Continuity and Efficiency During Leadership Transitions” before the House Committee

on Administration’s Subcommittee on Oversight. She addressed the current and future priorities of the Copyright Office.

The Register submitted written testimony to both the House and Senate Committees on Appropriations concerning the Office’s budget requests for fiscal 2013.

Trade and Foreign Relations

Lawyers in the Copyright Office’s policy and international affairs group are experts in foreign copyright law and the copyright treaty obligations of the United States. They regularly participate in conferences sponsored by the World Intellectual Property Organization (WIPO), and they serve on U.S. government delegations for bilateral and regional trade and copyright treaty negotiations between the United States and other countries.

246,735:
books, newspapers, magazines, and other
nondramatic literary works registered

74,349:
sound recordings registered

72,803:
visual arts works registered, including fine,
graphic, and applied art, photographs, and
sculptures

“Intellectual property protection is vital to my craft.”

—CINEMATOGRAPHER STEVEN POSTER,
“COPYRIGHT MATTERS,” APRIL 26, 2012



In June 2012, Register of Copyrights Maria Pallante and Associate Register Karyn Temple Claggett were part of the United States delegation in China that negotiated the conclusion of the Beijing Audiovisual Performances Treaty, the first multilateral copyright treaty adopted by WIPO since 1996.

Office staff participated in other WIPO initiatives on access to copyrighted works by those who are blind, visually impaired, or otherwise print-disabled; exceptions to copyright law for libraries and archives; protection of broadcast signals; and intellectual property rights in genetic resources, traditional knowledge, and folklore.

For free trade agreements with Colombia, Korea, and Panama signed into law in fiscal 2012, the Office participated in a U.S. interagency process that involved review of the three countries' copyright laws and practices.

The Office also continued to assist the Office of the United States Trade Representative and other executive branch agencies in fiscal 2012 by serving on official

delegations and negotiating teams for the proposed Trans-Pacific Partnership trade agreement.

Litigation Activities

Throughout fiscal 2012, the Copyright Office assisted the U.S. Department of Justice in several important court cases. Of particular significance were two cases before the Supreme Court, *Golan v. Holder* and *Kirtsaeng v. John Wiley and Sons*.

In *Golan*, the Supreme Court ruled in January 2012 that Congress acted “comfortably within” its constitutional authority in enacting a 1994 law extending U.S. copyright protection to certain foreign works. The affected works were in the public domain in the United States but still protected by copyright in their countries of origin before the 1994 law took effect. The Copyright Office assisted the Department of Justice in drafting the government’s brief defending the constitutionality of the “restoration” provision and

in preparing the U.S. Solicitor General for argument before the Court.

The Copyright Office also assisted the Department of Justice in drafting the government brief in *Kirtsaeng v. John Wiley and Sons*. The case involves importation of textbooks from Thailand to the United States for resale at less than the books' U.S. listed prices.

Arguments in the case center on the relationship of the first sale doctrine in the copyright law, which permits the owner of a copy or phonorecord of a work to sell it without permission of the copyright owner, with the prohibition in the law against importing works without the consent of the copyright owner.

A digest of other important cases from fiscal 2012 is included in the appendix.

Administrative Law

Pursuant to the copyright law, the Register of Copyrights conducts rulemakings, implements regulations, and publishes practices related to copyright registration, documents recordation, and administration of statutory licenses.

In October 2012, the Office concluded the fifth triennial rulemaking proceeding under section 1201 of the copyright law. Section 1201 provides that, upon the recommendation of the Register of Copyrights, the Librarian of Congress may designate certain classes of works as exempt from the prohibition against circumventing technological measures that control access to copyrighted works. The final rule, along with the analysis and recommendation of the Register, is available at www.copyright.gov/1201.

Also in fiscal 2012, the Copyright Office announced policy and regulatory changes related to registration of compilations, choreographic works, and automated databases.

In September 2012, the Office launched a pilot project to test online filing of the statements of account and royalty fees that cable and satellite systems must submit to use the statutory licenses in the copyright law that permit retransmission of television broadcast signals. The pilot is part of a larger reengineering effort the Office initiated in 2010 to streamline the processing of statements of account and make them more quickly accessible online.

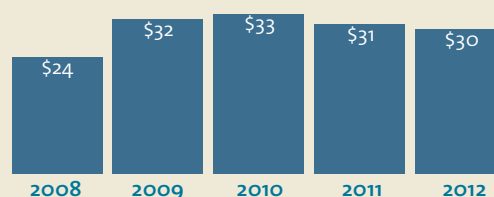
The Office continued in fiscal 2012 to work on other administrative law issues as well: a rulemaking to establish an electronic process for designating agents to

receive notices claiming copyright infringement under the Digital Millennium Copyright Act; review of group copyright registration options; registration of websites and other forms of digital authorship; and recordation of notices of termination of copyright transfers.

Acquisition of Copyright Works

Through the registration and mandatory deposit provisions of the copyright law, the Copyright Office plays a role in the acquisition of published copyrightable works for the collections of the Library of Congress. In fiscal 2012, the Office, in coordination with Library acquisitions staff, transferred more than 636,000 copies and phonorecords of published works to the Library with a net value of more than \$30.5 million. Of these works, more than 325,000 were received from publishers through mandatory deposit.”

Estimated Value of Items Transferred to the Library of Congress (in millions)



Special Projects

Fees and Services

The Copyright Office initiated a study in October 2011 examining the costs it incurs and the fees it charges for copyright registration, documents recordation, and other public services. The Office revisits its fee schedule every three years according to procedures set forth in the copyright law. This fiscal year, the House Appropriations Committee specifically directed the Office to analyze the relationship between copyright registration fees and the costs associated with the registration process. In setting fees, the Office must take into account the needs of all constituents who benefit from copyright services, including the public

Copyright law has protected motion pictures for 100 years: on August 24, 1912, the Townsend Amendment added motion pictures to the categories of works protected by copyright.



and users of copyrighted works. In January 2012, the Office published a notice of inquiry inviting public comment, after which it proposed a new fee schedule for comment.

Compendium of Copyright Office Practices

The Office made major progress in fiscal 2012 in its overhaul of the *Compendium of Copyright Office Practices*. The *Compendium* is the Register's administrative manual and guidebook followed by Copyright Office registration specialists. Copyright owners, legal practitioners, and the courts also consult the *Compendium* as an authoritative source of Office practices. In fiscal 2012, a team updating the *Compendium* developed a structure and framework for the revised version and consulted legal and registration staff to update existing practices or develop new practices to accommodate new forms of authorship and meet the needs of the 21st-century copyright community. The revision process includes opportunities for stakeholder comment.

Technical Upgrades

An evaluation team completed a preliminary review in fiscal 2012 of the Office's current technical processing capability as part of a project to improve the Office's electronic registration and recordation services. The project will address the Office's online registration services, back-end processing, data management, and public records access. Office staff also conferred in fiscal 2012 with business and information technology experts and others to learn available technical solutions and stakeholder expectations.

Reengineering of Documents Recordation

Copyright Office staff held meetings in fiscal 2012 with frequent users of the Office's documents recordation function, including technology experts, librarians, educators, attorneys, consumer groups, and others. The meetings took place as part of the Office's project to reengineer documents recordation and introduce electronic processing of documents. Each year, authors, heirs, and other copyright owners submit documents to the Office for public recordation, including copyright

assignments, licenses, and other records related to chain of title. Participants in fiscal 2012 meetings discussed options for searching recorded documents, the feasibility of filing documents online, ways for users to update recorded documents, and the potential to connect to privately held records and databases.

Public Access to Historical Records

The Office continued a multiyear project to make historical copyright records created between 1870 and 1977 accessible online. Post-1978 records are already searchable on the Office's website. In fiscal 2012, the Office digitized 10.5 million catalog cards for copyright registrations and assignments from 1955 to 1977, bringing the total cards scanned to nearly 23 million out of an estimated 40 million. The Office also completed scanning of the *Catalog of Copyright Entries*, a 667-volume index to copyright registrations and renewals published from 1891 through 1977. To engage copyright constituents on issues of records digitization and access, the Office published a blog in December 2012 titled, "Copyright Matters: Digitization and Public Access."

Public Outreach and Copyright Education

The rise of digital communications and entertainment platforms means that many more people—including new kinds of creators, publishers, producers, aggregators, and other users of copyrighted works—want help understanding and navigating the law. In support of its role as a primary source of authoritative information about copyright law and policy, the Copyright Office began in fiscal 2012 to identify innovative ways to reach these new audiences.

Skills Training

The Copyright Office launched the Copyright Academy in fiscal 2012, a training program for Office

staff. The first course offered, "Introductory Copyright Basics," covered major provisions of the law and important copyright concepts, procedures, and court cases. Participants also studied the Office's goals and mission and learned about the needs of its constituents. To help staff understand the practical implications of copyright law, the Register of Copyrights initiated a lecture series titled "Copyright Matters" in fiscal 2012 in which industry experts discussed the craft and business of creative expression.

On related fronts, the Office began refreshing and reorganizing its public website and began to establish partnerships with the creative community.

Staffing

The Register continued building a leadership team, as two senior staff members left the Copyright Office during 2012. David O. Carson retired from his position as general counsel, which he had held since 1997. Michele Woods, associate Register for policy and international affairs, became the director of the Copyright Law Division for the Culture and Creative Industries Sector of the World Intellectual Property Organization.

Jacqueline C. Charlesworth became senior counsel to the Register in May 2012. Charlesworth had worked for several years in private practice at New York City law firms, including Morrison & Foerster, LLP, where she represented copyright owners and users of copyrighted works in litigation, regulatory, and transactional matters. Karyn Temple Claggett filled a leadership role in the Policy and International Affairs Office, serving as senior counsel. Immediately prior to joining the Copyright Office, Temple Claggett served as senior counsel to the deputy attorney general of the United States.

\$213.9

million: royalty fees deposited by cable television systems

A robust
public record of
copyright ownership and
copyright status is essential to
facilitating marketplace
transactions.

REGISTRATION AND RECORDATION

The Copyright Office registers creative works and records copyright-related documents for the benefit of owners and users of copyrighted works. It does so under provisions of U.S. copyright law and according to Office regulations.

Registration

The Copyright Office's Registration Program is made up of the Literary, Performing Arts, and Visual Arts Divisions. Staff in these divisions examine creative works of authorship to determine whether they are copyrightable and whether claimants have complied with copyright law and regulations.¹

The Registration Program closed 562,587 claims in fiscal 2012. The year started with 183,676 open claims on hand in the online registration system; 89,970 of those awaited additional information from applicants before staff could finish examining them. The year ended with 194,689 claims on hand in the system, 83,410 of which required more information from applicants.

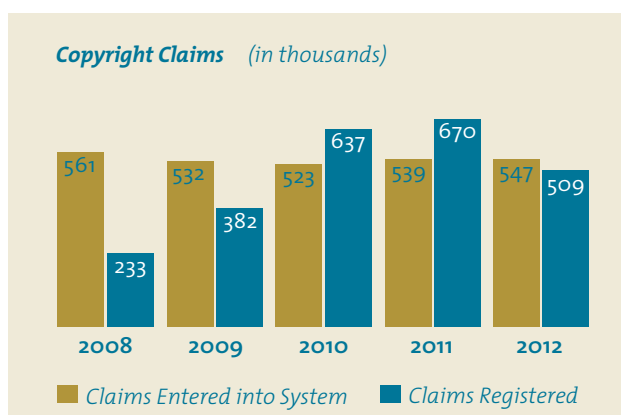
Some group registrations had to be processed outside the online system, because it does not yet accommodate all group registration options. Fiscal 2012 began with 1,301 such claims awaiting examining and 24,652 requiring cataloging. At year's end, 3,639 claims awaited examining, and 18,160 required cataloging.

Claims on hand increased slightly over the year because of changes in staffing levels.

The Office continued in fiscal 2012 to expand online registration and improve electronic processing of claims. In September, following a pilot project, online registration of groups of serials opened to the public with an option to submit electronic or physical deposits. Two other pilot projects continued, one testing online registration of groups of published photographs, the other testing online registration of automated databases consisting predominantly of photographs. Planning for another pilot project to test direct digital deposit of television shows is ongoing.

Refusals to Register

The Copyright Office is required to refuse to register a claim to copyright when it determines that the



1. Under the law, the Office also registers claims in mask works and vessel designs. In fiscal 2012, the Office registered 203 mask works and 39 vessel designs.

material submitted does not constitute copyrightable subject matter or for other legal or procedural reasons. In fiscal 2012, it rejected 8,442 claims.

Appeals

Applicants whose claims for registration are rejected can seek two levels of appeal. Senior staff in the Registration Program consider first appeals. If a refusal is upheld, the applicant can bring a request for second consideration to the Copyright Office Review Board, made up of the Register of Copyrights, the General Counsel, and the Associate Register for Registration, or their designees.

In fiscal 2012, the Office received requests for first reconsideration of 471 claims rejected for registration. The Office sustained rejections for 403 and reversed and approved the remaining 68. First requests affecting 168 claims were pending at year's end.

The Copyright Office Review Board decided on second requests involving 36 claims of which the board upheld 32; reversed 1; partially reversed 2; and dismissed 1 for failure to respond.

Recordation

Each year, authors, heirs, copyright owners, and others submit thousands of documents to the Copyright Office for public recordation. The documents contain information about copyright assignments, licenses, and other transactions related to chain of title. In fiscal 2012, the Office recorded 8,687 documents containing titles of more than 170,000 works.

Online Service Provider Designations of Agent

Congress amended the copyright law in 1998 to limit potential liability of service providers for copyright infringement for certain activities carried out on their systems or networks. A service provider must file a statement identifying an agent to receive notification of claims of infringement and also post the information on its publicly accessible website. The Office processes these online service provider designations of agents and makes them available on its website. In fiscal 2012, the Office posted 2,311 agent designations on the directory.



Pre-1972 sound recordings encompass every conceivable sound, from one person talking to music played by orchestras of over 100 pieces.

The Copyright Office
collects over \$300 million annually
from users of statutory licenses
set forth in the law.

STATUTORY LICENSING

The Copyright Office administers copyright statutory licenses, several of which require the Office to manage and disperse private monies. The Office's Licensing Division collects royalty fees from cable operators, satellite carriers, and importers and manufacturers of digital audio recording devices, investing the fees in interest-bearing securities with the U.S. Treasury. The fees, less reasonable operating costs, are distributed to copyright owners. The division also handles other matters related to administration of the statutory licenses.

Since 2005, the Copyright Royalty Board, an independent and separate unit of the Library of Congress, has set royalty rates and determined terms and conditions for use of the licenses. The board also rules on royalty allocations among copyright owners.

Royalty Collections and Distributions

In fiscal 2012, the Licensing Division collected \$312 million in royalties from users of copyright statutory licenses. Nearly 70 percent of the fees collected came from cable television companies, which rely on one of the statutory licenses to clear rights to content they retransmit to viewers. Satellite carriers and importers and manufacturers of digital recording devices submitted the remainder.

In accordance with rulings of the Copyright Royalty Board, the Office made seven separate distributions in fiscal 2012 totaling more than \$835 million collected in previous years. The amount distributed was higher than usual because of an agreement settling disputed issues affecting cable and satellite royalties for 2004 through 2009.

The law requires the Copyright Office to compile and audit financial statements for royalty fees on a calendar-year basis. The total royalty receipts and distributions shown in calendar-year statements vary from fiscal year totals. The appendices to this report include calendar year 2011 financial statements; calendar year 2012 statements will appear in the fiscal 2013 report.

Licensing Reengineering

The Copyright Office is reengineering the Licensing Division to improve efficiency and public access to licensing records. The project involves building a new electronic system for the filing, processing, searching, and archiving of statements of account.

In fiscal 2012, the division launched a pilot version of an electronic cable royalty statement and invited cable systems and copyright owners to participate in testing. Findings from the pilot will inform the final system design.

The division also solicited comments from stakeholders about other aspects of reengineering in fiscal 2012 and conferred with Copyright Office legal staff about potential regulatory changes or additions necessitated by reengineering. In addition, the division made significant progress in securing off-site hosting for the new electronic system.

Copyright
owners, users, and courts
throughout the world rely on the
information in Copyright
Office records.

INFORMATION AND EDUCATION

The Copyright Office disseminates information about the copyright law and copyright services, educates the public, and responds to requests for information.

Copyright Office Website

The Copyright Office's website supports the Office's mission to improve public understanding of copyright and copyright law. Through *copyright.gov*, the public and the copyright community can learn about copyright law and the Office's services and search copyright records. The website is also the portal to the Office's electronic filing system through which users can register claims and upload copies of their works. Compared with fiscal 2011, use of the website increased by 29 percent, with 6.3 million visits.

Public Information

The Office accommodated 237,777 requests from the public for direct reference services in fiscal 2012 and assisted more than 9,500 public visitors.

The Office distributed 33 issues of *NewsNet*, an electronic news service covering legislative and regulatory developments and general Copyright Office news, to more than 22,000 subscribers in fiscal 2012. The Office also supported publication of 23 issues of *CRB News*, the electronic newsletter of the Copyright Royalty Board.

Outreach

The Register of Copyrights made presentations and served as the keynote speaker at multiple domestic and international events and symposia; she and other Copyright Office officials also spoke at law schools and annual law and trade association meetings. In addition, senior policy and legal staff delivered presentations in the United States and abroad on topics including copyright and digital technology, collective licensing, orphan works and mass digitization, and copyright in traditional cultural expressions. Office staff welcomed international visitors throughout fiscal 2012, speaking to them about U.S. copyright law and policy. Visitors came from Argentina, China, Japan, Iraq, Malaysia, Republic of Georgia, and South Korea.

Nineteen senior-level copyright officials from developing countries and countries with economies in transition came to the Library of Congress in March for a five-day international symposium titled "Emerging Issues in Copyright and Related Rights." The Copyright Office cosponsored the international training with the World Intellectual Property Organization.

A photograph of Paul Williams, an older man with grey hair, glasses, and a goatee, wearing a grey blazer over a blue and white checkered shirt. He is holding a microphone in his right hand and gesturing with his left hand. In the background, a woman with dark hair is partially visible, smiling. The background is a plain, light-colored wall.

“Copyright has
allowed me
to make a
living and
raise a family.”

—SINGER-SONGWRITER PAUL WILLIAMS,
“COPYRIGHT MATTERS,” APRIL 26, 2012

APPENDICES

Litigation

Pages 8–9 of this report cite two U.S. Supreme Court cases—*Golan v. Holder* and *Kirtsaeng v. John Wiley and Sons*—for which the Copyright Office assisted the U.S. Justice Department. The following is a digest of other important cases from 2012.

Capitol Records v. Thomas-Rasset

This case is a suit for infringement of the copyrights to 24 sound recordings by a participant in a peer-to-peer file-sharing network. The Office assisted the U.S. Department of Justice in defending the constitutionality of the statutory damages provision of the Copyright Act, which the defendant attacked in pre- and post-trial motions in district court and before the U.S. Court of Appeals for the Eighth Circuit.

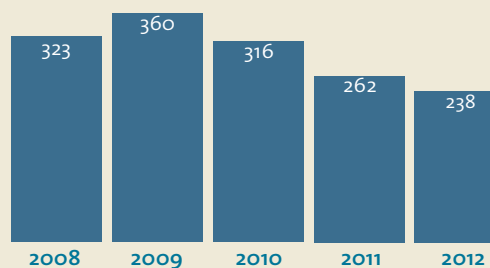
In 2007, a jury found the defendant liable for willful infringement and awarded \$222,000 in statutory damages—\$9,250 for each of the sound recordings at issue. Two years later, a second jury also found against the defendant, ordering her to pay \$1.92 million, or \$80,000 for each recording. A third jury awarded statutory damages of \$1.5 million. The defendant asked the district court to reduce this amount to zero, contending that the verdict was unconstitutional under the Due Process Clause because it bore no reasonable relationship to the actual damages the defendant caused. The district court agreed and reduced the award to \$54,000, or \$2,250 for each infringed recording.

Both the plaintiff and the defendant appealed aspects of the district court's decision. The U.S. Solicitor General submitted a brief defending the constitutionality of the statutory damages provision and participated in the oral argument before the appellate court. On September 11, 2012, the Eighth Circuit ruled in favor of the plaintiff, holding that the original damage award of \$222,000 was constitutional and that the district court erred by reducing that award on due process grounds.

Sony BMG Music Entertainment v. Tenenbaum

This case is another peer-to-peer file-sharing suit. In 2009, a jury found that the defendant willfully infringed the copyright in 30 sound recordings and rendered a verdict of \$675,000 in statutory damages, or \$22,500 for each recording. The next year, the district court concluded that the jury's award was unconstitutionally excessive and violated the Due Process Clause. The court reduced the award to \$67,500, or \$2,250 for each infringed work, three times the statutory minimum. The United States, which had intervened in the case in the district court to defend the constitutionality of the statutory damages provision of the

Non-Fee Reference Services (in thousands)



Copyright Act, joined in an appeal to the U.S. Court of Appeals for the First Circuit. The Copyright Office assisted the U.S. Department of Justice in preparing its brief. The First Circuit agreed with the United States that the district court had improperly reached the constitutional issue. The appeals court reinstated the original award of \$675,000 and remanded the case to the district court to determine whether to reduce the award based on common law remittitur. On remand, the district court held there was no need to reduce the original award, because the jury had ample reason to conclude that the defendant had willfully infringed. The defendant filed a notice of appeal on September 17, 2012.

Intercollegiate Broadcast System v. Copyright Royalty Board

Plaintiffs in this case challenged the constitutionality of chapter 8 of the Copyright Act, alleging that the appointment of the Copyright Royalty Board (CRB) by the Librarian of Congress violates the constitutional Appointments Clause. The U.S. Department of Justice represented the CRB in this proceeding in consultation with the Copyright Office and the Library of Congress.

The CRB is made up of three judges who set the rates that broadcasters such as Intercollegiate Broadcasting System (IBS) have to pay for copyright licenses. IBS is an association of noncommercial webcasters who transmit music over the Internet for use on high school and college campuses. It argued that the appointment of the CRB by the Librarian of Congress was unconstitutional. The CRB is comprised of “principal” officers, it stated, who must be appointed by the president and confirmed by the Senate, because they exercise significant rate-making authority without any effective means of control by a superior.

The U.S. Court of Appeals for the District of Columbia Circuit agreed. It found that the CRB is comprised of principal officers, because they exercise considerable authority in setting rates that affect entire industries and are not directly removable by the Librarian except in limited circumstances.

Rather than invalidate chapter 8 of the Copyright Act, the D.C. Circuit struck section 802(h)(i), which allowed the Librarian to remove the CRB only for “misconduct, neglect of duty, or any disqualifying or mental disability.” Removing this provision from the statute gives the Librarian “unfettered” power to directly supervise and exercise some control over the CRB’s decisions, which makes them “inferior officers” who may lawfully be appointed by the Librarian, rather than the president.

Proline Tools Inc. v. Dennis

In July 2012, the Office was made aware that the U.S. District Court for the Southern District of California had issued an order compelling the Register of Copyrights to register the copyright to sculptures used to manufacture concrete stamps. Earlier, the Office had refused registration on grounds that the works are useful articles and have minimal creative authorship. The Office worked with the U.S. Attorney’s Office in San Diego to draft a motion allowing the Register to intervene in the case.

The plaintiff notified the Office in 2008 of its suit alleging infringement of the sculptures despite the fact that registration had been refused, an action allowed under section 411(a) of the Copyright Act. The Office declined to enter the case then, reasoning that a court would not likely find the works to be registrable. Without the Office’s knowledge, the plaintiff later filed a motion to compel registration. It was the court’s granting of this motion that caused the Office to pursue the case.

The Office sought to intervene for two reasons. First, neither the court nor the plaintiff notified the Register that she was, in effect, being made party to the case by the motion to compel registration. The Register believes she should be allowed to explain why the registration was rejected and to note that the plaintiff presented information to the court that differs from the information in its application to the Copyright Office. Second, the Register seeks to clarify whether a district court has authority to compel registration, a remedy she believes the Copyright Act does not provide. A hearing on the motion to intervene has been scheduled.

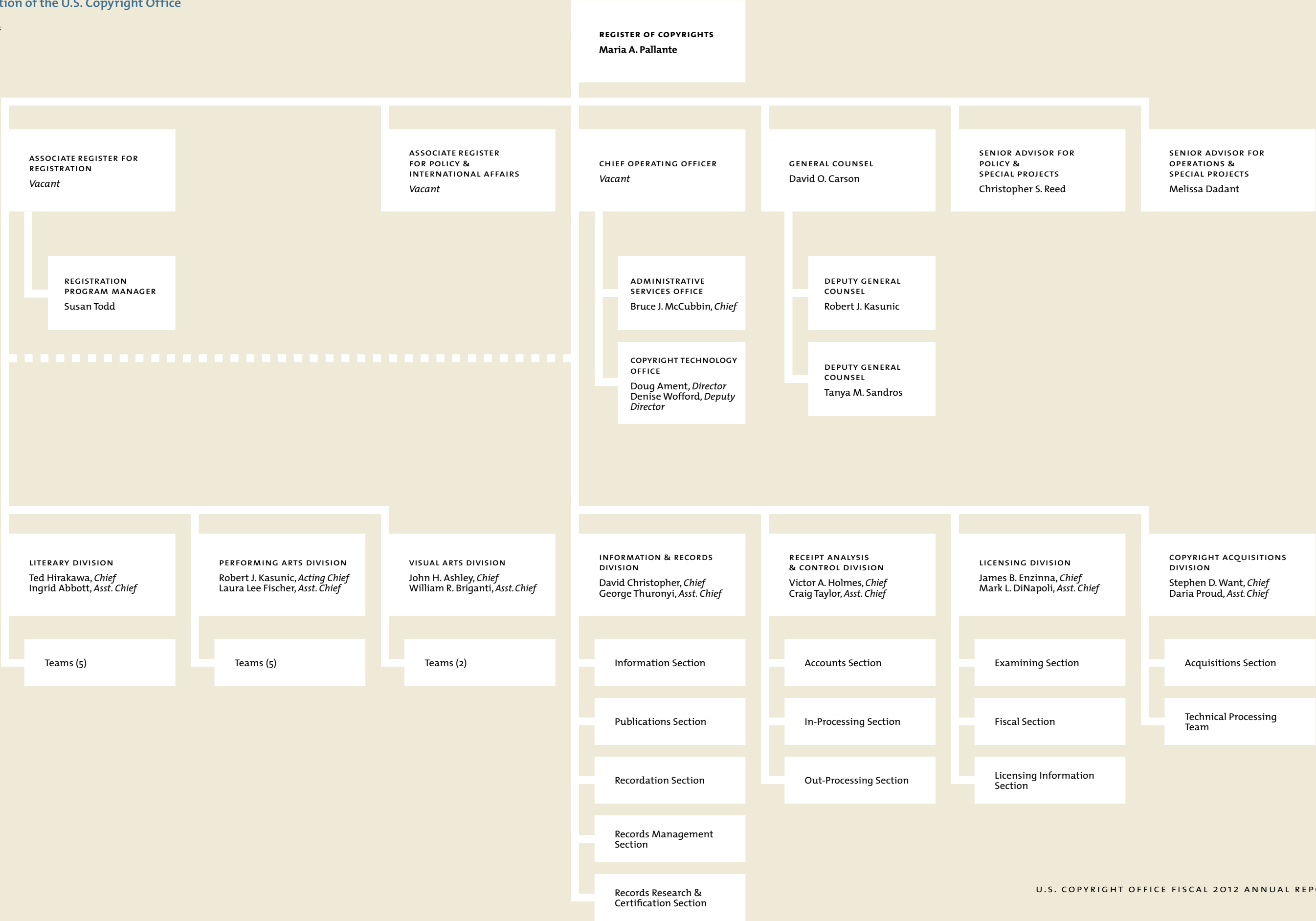
Funding

About 65 percent of the Copyright Office’s annual budget comes from fees for services, collected by the Office on a partial cost-recovery basis. Each year, Congress determines what portion of the Office’s income the Office can spend or reinvest. The Office receives the remainder of its funding from federal appropriations.

The Office’s total basic appropriation for fiscal 2012 was \$45 million; it derived from two revenue sources: net appropriations from the U.S. Treasury in the amount of \$15 million and authority to spend user fees and prior-year reserves in the amount of \$30 million. The Office’s Licensing Division was fully funded from user fees withdrawn from royalty pools in the amount of \$5.1 million.

Organization of the U.S. Copyright Office

July 26, 2012



Tables

Registrations, 1790–2012

<i>Date</i>	<i>Total</i>	<i>Date</i>	<i>Total</i>	<i>Date</i>	<i>Total</i>	<i>Date</i>	<i>Total</i>
1790–1869	150,000 ¹	1906	118,799	1943	160,789	1979	429,004
1870	5,600	1907	124,814	1944	169,269	1980	464,743
1871	12,688	1908	120,657	1945	178,848	1981	471,178
1872	14,164	1909	121,141	1946	202,144	1982	468,149
1873	15,352	1910	109,309	1947	230,215	1983	488,256
1874	16,283	1911	115,955	1948	238,121	1984	502,628
1875	16,194	1912	121,824	1949	201,190	1985	540,081 ³
1876	15,392	1913	120,413	1950	210,564	1986	561,208 ³
1877	16,082	1914	124,213	1951	200,354	1987	582,239 ³
1878	16,290	1915	116,276	1952	203,705	1988	565,801
1879	18,528	1916	117,202	1953	218,506	1989	619,543 ⁴
1880	20,993	1917	112,561	1954	222,665	1990	643,602
1881	21,256	1918	107,436	1955	224,732	1991	663,684
1882	23,141	1919	113,771	1956	224,908	1992	606,253
1883	25,892	1920	127,342	1957	225,807	1993	604,894
1884	27,727	1921	136,765	1958	238,935	1994	530,332
1885	28,748	1922	140,734	1959	241,735	1995	609,195
1886	31,638	1923	151,087	1960	243,926	1996	550,422
1887	35,467	1924	164,710	1961	247,014	1997	569,226
1888	38,907	1925	167,863	1962	254,776	1998	558,645
1889	41,297	1926	180,179	1963	264,845	1999	594,501
1890	43,098	1927	186,856	1964	278,987	2000	515,612
1891	49,197	1928	196,715	1965	293,617	2001	601,659
1892	54,741	1929	164,666	1966	286,866	2002	521,041
1893	58,957	1930	175,125	1967	294,406	2003	534,122
1894	62,764	1931	167,107	1968	303,451	2004	661,469
1895	67,578	1932	153,710	1969	301,258	2005	531,720
1896	72,482	1933	139,361	1970	316,466	2006	520,906
1897	75,035	1934	141,217	1971	329,696	2007	526,378
1898	75,634	1935	144,439	1972	344,574	2008	232,907 ⁵
1899	81,416	1936	159,268	1973	353,648	2009	382,086
1900	95,573	1937	156,930	1974	372,832	2010	636,527
1901	93,299	1938	168,663	1975	401,274	2011	670,044
1902	93,891	1939	175,450	1976	410,969 ²	2012	509,112
1903	99,122	1940	179,467	1976	108,762 ²	Total	35,470,173
1904	104,431	1941	180,647	1977	452,702		
1905	114,747	1942	182,232	1978	331,942		

¹ Estimated registrations made in the offices of the clerks of the district courts (Source: Pamphlet entitled *Records in the Copyright Office Deposited by the United States District Courts Covering the Period 1790–1870*, by Martin A. Roberts, Chief Assistant Librarian, Library of Congress, 1939).

² Registrations made July 1, 1976, through September 30, 1976, reported separately owing to the statutory change making the fiscal years run from October 1 through September 30 instead of July 1 through June 30.

³ The totals for 1985–87 were corrected as of the fiscal 2004 annual report to include mask works registrations.

⁴ The total for 1989 was corrected as of the fiscal 2004 annual report to be consistent with the fiscal 1989 table of “Number of Registrations by Subject Matter.”

⁵ Implementation of reengineering resulted in a larger than normal number of claims in process, temporarily reducing the total claims completed and registered.

Number of Registrations by Subject Matter, Fiscal 2012

Category of Material	Published	Unpublished	Total
Nondramatic literary works:			
<i>Monographs and computer-related works</i>	141,735	56,780	198,515
Serials:			
<i>Serials (nongroup)</i>	35,395	–	35,395
<i>Group daily newspapers</i>	1,891	–	1,891
<i>Group serials</i>	10,934	–	10,934
Total Literary Works	189,955	56,780	246,735
Works of the performing arts, including musical works, dramatic works, choreography and pantomimes, and motion pictures and filmstrips	54,504	60,277	114,781
Works of the visual arts, including two-dimensional works of fine and graphic art, sculptural works, technical drawings and models, photographs, cartographic works, commercial prints and labels, and works of applied arts	41,068	31,735	72,803
Sound recordings	23,034	51,315	74,349
Total Basic Registrations	308,561	200,107	508,668
Renewals	202		202
Mask work registrations	203		203
Vessel design registrations	39		39
Grand Total All Registrations			509,112
Preregistrations			1,052
Documents Recorded			8,687

Financial information published in this table is unaudited.

Fee Receipts and Interest, Fiscal 2012

<i>Fees</i>	<i>Receipts Recorded¹</i>
Copyright registration	\$20,801,150
Mask works registration	\$9,590
Vessel design registration	\$9,200
Renewal registration	\$13,220
Subtotal	\$20,833,160
Recordation of documents	\$3,059,573
Certifications	\$588,188
Searches	\$92,586
Special handling/expedited services	\$1,620,360
Preregistrations	\$140,650
Other services	\$580,925
Subtotal	\$6,082,281
Total Receipts Recorded	\$26,915,442
Fee Receipts Applied to the Appropriation	\$26,794,484
Interest Earned on Deposit Accounts	\$2,506
Fee Receipts and Interest Applied to the Appropriation²	\$26,796,990

¹ "Receipts Recorded" are fee receipts entered into the Copyright Office's systems.

² "Fee Receipts and Interest Applied to the Appropriation" are income from fees and deposit account interest that were fully cleared for deposit to the Copyright Office appropriation account within the fiscal year. The amount of "Fee Receipts Applied to the Appropriation" during the fiscal year does not equal the "Total Receipts Recorded," because some receipts recorded at the end of a year are applied in the next fiscal year.

Estimated Value of Materials Transferred to the Library of Congress, Fiscal 2012

	<i>Registered works transferred to other Library departments</i>	<i>Nonregistered works transferred to other Library departments</i>	<i>Total works transferred to other Library departments</i>	<i>Average Unit Price</i>	<i>Total value of works transferred to other Library departments</i>
Books^{1,2}	191,929	107,651	299,580		\$14,288,334
Hardbound	92,701	26,603	119,304	\$87.15	\$10,397,344
Softbound	78,535	21,222	99,757	\$35.09	\$3,500,473
eBooks (ProQuest)	20,693	59,826	80,519	\$4.85	\$390,517
Serials^{1,3}	63,611	211,204	274,815		\$7,929,713
Periodicals ⁴	63,556	201,844	265,400	\$49.76	\$7,923,782
Newspapers ¹	55	9,360	9,415	\$1.05	\$5,931
Microforms	26	2,728	2,754		\$358,805
Microfilm	0	2,728	2,728	\$131.47	\$358,650
Microfiche	26	0	26	\$5.95	\$155
Motion pictures	11,645	26	11,671		\$6,557,017
Film—35mm/70mm/IMAX ¹	427	21	448	\$11,914.97	\$5,337,907
Film—16mm	4	0	4	\$1,500.00	\$6,000
Videotape	11,214	5	11,219	\$108.13	\$1,213,110
CD/DVDs	40,841	1,995	42,836	\$25.00	\$1,070,900
Printed music	2,310	1,233	3,543	\$56.32	\$199,542
Maps	411	114	525	\$44.11	\$23,158
Prints, posters, photographs, and works of art	633	73	706	\$35.77	\$25,254
Total	311,406	325,024	636,430		\$30,452,723

¹ With 2010, categories have been changed to match format codes in the Copyright Office's eCO system. "Newspapers" and "Film-35mm/70mm/MAX" show substantially fewer works than in previous years where an arithmetical calculation was used. Books and serials show an increase, partly due to counting published "Dramas" under "Books," as well as increased productivity.

² 60 percent of "Books" are selected for the collections; 40 percent are used for the Library's exchange program.

³ 60 percent of "Serials" are selected for the collections, except for "Microfilm Newspapers" (100 percent of which are selected).

⁴ The figure for nonregistered "Periodicals" includes: (1) an estimate based on average loads in hampers delivered to Library processing and custodial divisions and (2) a count of serials issues checked in through the Copyright Acquisitions Division. For the estimated portion, there was an earlier change in physical method of delivery, which decreased the average amount per hamper. The figures above reflect a reasonable estimate of current receipts per hamper and will be reviewed on a regular basis.

Nonfee Information Services to Public, Fiscal 2012

Information and Records Division Direct Reference Services

In person	9,583
By correspondence	18,813
By email	35,163
By telephone	93,084

Total **156,643**

Office of the General Counsel Direct Reference Services

By correspondence	548
By telephone	532

Total **1,080**

Receipt Analysis and Control Division Services

By correspondence	8,433
By email	10,362
By telephone	10,161

Total **18,594**

Licensing Division Direct Reference Services¹

By correspondence or email	652
By telephone	2,083

Total **2,735**

Acquisition Division Direct Reference Services

By correspondence or email	21
By telephone	51

Total **72**

eCO Service Help Desk

By email	14,175
By telephone	47,213

Total **61,388**

Grand Total Direct Reference Services

237,777

¹ As of fiscal 2005, the Licensing Division figures do not include correspondence and telephone contacts initiated by licensing examiners.

Financial information published in this table is unaudited.

**Financial Statement of Royalty Fees for Compulsory Licenses
for Secondary Transmission by Cable Systems for Calendar Year 2011**

Royalty fees deposited	\$213,966,521.82
Interest income	\$4,564,416.83
Gain on matured securities	\$14,979.33
Transfers in	\$1,793.14
Copyright Royalty Judges' filing fees	\$1,200.00
Total	\$218,548,911.12

Less:	
Licensing operating costs	\$4,621,826.15
Refunds issued	\$546,672.49
Cost of investments	\$208,811,519.55
Cost of initial investments	\$4,403,011.33
Copyright Royalty Judges' operating costs	\$126,066.29
Copyright Royalty Judges' Filing Fees	\$1,200.00
Transfers out	\$25,776.85
Total	\$218,536,072.66

Balance as of September 30, 2012	\$12,838.46
Plus: Face amount of securities due	\$208,828,574.58

Cable Royalty Fees for Calendar Year 2011 Available for Distribution by the Library of Congress	\$208,841,413.04
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Financial information published in this table is unaudited.

**Financial Statement of Royalty Fees for Statutory Obligations for
Distribution of Digital Audio Recording Equipment and Media for
Calendar Year 2011**

Royalty fees deposited	\$2,374,268.20
Interest income	\$13,992.20
Gain on matured securities	\$534.24
Transfers in	\$1,564.13
Total	\$2,390,358.77

Less:	
Licensing operating costs	\$274,199.48
Refund	\$1,363.09
Cost of investments	\$1,954,994.03
Cost of initial investments	\$13,562.82
Copyright Royalty Judge operating costs	\$1,987.88
Distribution of fees	52,130.13
Transfers out	\$92,111.34
Total	\$2,390,348.77

Balance as of September 30, 2012	\$10.00
Plus: Face amount of securities due	\$1,955,079.56

Audio Home Recording Act Royalty Fees for Calendar Year 2011	
Available for Distribution by the Library of Congress	\$1,955,089.56

Financial information published in this table is unaudited.

**Financial Statement of Royalty Fees for Statutory Licenses for
Secondary Transmission by Satellite Carriers for Calendar Year 2011**

Royalty fees deposited	\$93,902,149.05
Interest income	\$541,162.97
Gain on matured securities	\$10,201.64
Total	\$94,453,513.66

Less:	
Licensing operating costs	\$303,054.37
Cost of investments	\$93,685,227.46
Cost of initial investments	\$400,178.00
Copyright Royalty Judge Operating Costs	\$64,943.83
Transfer out	\$100.00
Total	\$94,453,503.66

Balance as of September 30, 2012	\$10.00
Plus: Face amount of securities due	\$93,692,879.36

Satellite Carrier Royalty Fees for Calendar Year 2011 Available for Distribution by the Library of Congress	\$93,692,889.36
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Copyright Office Contact Information

U. S. Copyright Office
Library of Congress
Copyright Office–COPUBS
101 Independence Avenue, SE
Washington, DC 20559

Website • www.copyright.gov

Public Information Office • (202) 707-3000 or 1-877-476-0778 (toll free)

Staff members are on duty to answer questions by phone from 8:30 AM to 5:00 PM, eastern time, Monday through Friday, except federal holidays. Recorded information is available 24 hours a day.

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