

# OVERSIGHT OF THE U.S. COPYRIGHT OFFICE

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## HEARING

BEFORE THE

SUBCOMMITTEE ON COURTS, INTELLECTUAL  
PROPERTY, AND THE INTERNET

OF THE

COMMITTEE ON THE JUDICIARY  
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

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# OVERSIGHT OF THE U.S. COPYRIGHT OFFICE

Wednesday, September 27, 2023

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, AND  
THE INTERNET

COMMITTEE ON THE JUDICIARY

*Washington, DC*

The Committee met, pursuant to notice, at 10:04 a.m., in Room 2141, Rayburn House Office Building, the Hon. Darrell Issa [Chair of the Subcommittee] presiding.

*Members present:* Representatives Issa, Jordan, Fitzgerald, Cline, Kiley, Moran, Lee, Fry, Johnson of Georgia, Lieu, Ross, Schiff, Lofgren, Dean, and Ivey.

Mr. ISSA. [Presiding.] Good morning. The Subcommittee will come to order.

Without objection, the Chair is authorized to declare a recess at any time.

We want to welcome everyone here today, and particularly note that there are conferences going on, and that a number of members have been delayed, but will attend. So, please, it is not you; it is the busyness of this week that causes a little bit of a delay for some people being here.

I will now recognize myself for the joy of an opening statement, which I will abbreviate.

As we all know, the Copyright Office plays a critical role in our economy. Strong copyright protection, the incentives that our creators, our Constitutional creators, bestowed, if you will, not for the benefit of the creators, producers, or innovators, but for the benefit of our society. The Constitution itself confers a responsibility on Congress to promote the progress of science and useful arts by securing for limited times for authors and inventors the exclusive right to their respective writings and discoveries.

We take that role seriously, and for more than 200 years, have continued to debate what promotes. Most laws and most things conferred in the Constitution are fairly static. They go back their original intent. When the intent is, in fact, a mandate to promote, we must from time to time review whether or not that promotion is fair and appropriate. Too much, in fact, we deny the public the opportunity to also share in those creations. Too little, and those creations do not happen.

As the Copyright Office carries out a wide range of responsibilities, it, too, must change with the time. When the Copyright Office made the decision that, in fact, full AI-produced had no right to a copyright, they did us all an appropriate favor, because, in fact, we know that pushing a button and letting that run for days, weeks, months, or years is not, in fact, continuous innovation.

In fact, today, one of our discussions will be on the intersection of artificial intelligence and copyrights, because we do not want to limit AI from participating in the further promotion of intellectual property that is useful in not only copyright, but also in patent. We must make sure that this is, in fact, an incentive, and not simply a reward for the first to turn on a machine.

We recently held hearings on music modernization, mechanical licensing, with the Copyright Office, and we look forward to the potential renewal in 2025.

We also examined issues of the right to repair, including examining the Copyright Office's Section 1201—hotly debated, but necessary.

At each turn, we have been reminded that the importance of the Copyright Office in all these areas cannot be overstated, which is why I am pleased that the Register of Copyrights accepted our invitation to appear at this hearing, so that we can go straight to the source and explore the issues she faces, in fact, whether there are appropriate intersections for us to join in legislative changes.

I want to thank the Register, and I want to appreciate her time.

So, with that, we will have an opening statement from Mr. Johnson, and then, go right to our witness.

With that, I recognize the Ranking Member, Mr. Johnson of Georgia.

Mr. JOHNSON of Georgia. Thank you, Mr. Chair, for hosting and holding this hearing.

Thank you, Register Perlmutter, for your appearance today.

What does it mean for human beings to create? In a very real way, this question is the subject of our hearing today. This is not just a philosophical or academic query; it has real-world implications for countless American families and American businesses, and as such, our answer to this question must be reflected in our laws.

For well over 100 years, our Copyright Office has protected Americans' intellectual property, and by doing so, has protected American creativity and innovation. That is no easy task.

As technology evolves, intellectual property evolves with it. Artists, entertainers, writers, musicians, coders, and creators adapt to a changing world, and unfortunately, so do those who seek to profit by stealing intellectual property or by undermining copyright protections that are a cornerstone of our free enterprise system and a driver of both art and commerce.

This Committee has deep experience in examining new technologies and determining how our laws must change to acknowledge the role new methods of innovation play in the world. Internet connectivity changed the way writing and art is created and shared. So, in 1998, Congress passed the Digital Millennium Copyright Act to change the way we protect creators.

When music streaming began, it disrupted our thriving music community of artists, songwriters, publishers, and record labels. Instead of letting it flounder, the Music Modernization Act created new ways to ensure that songwriters are paid for their work.

For creators, for the Copyright Office, and for this Committee, the rise of artificial intelligence, or AI, might pose the greatest challenge yet. AI models, trained on copyrighted data, pose serious intellectual property questions regarding licensing and credit for final products.

I'm glad the Copyright Office addressed the question of whether AI—or excuse me. I'm glad that the Copyright Office addressed the question of whether AI in their creations can claim copyright protections and found that artists can only seek copyright for their human contribution.

We all, however, know that this is just the beginning. The European Union is considering finalizing legislation to regulate the use of AI, and it includes regulations governing so-called trustworthy or ethical AI. Other individual Nations have also begun to take steps to say how they want AI to impact their citizens' work, play—or how their citizens work, play, and create.

The United States, the leader in AI development, stands alone in its silence thus far. We cannot afford to ignore the very real challenges AI presents, even as we enjoy its very real benefits. Missing the moment would set our Nation back and it would harm the artists who call America home.

I'm proud to represent the State of Georgia, also known as the “Hollywood of the South,” where actors, screenwriters, directors, and others live their dream. Georgia is also home to a thriving music industry, where artists, songwriters, and record labels live, work, and play.

Their work and the work of the ecosystem of creation that encircles television and filmmaking, as well as music, from the crew to the studios boosts the GDP in Georgia and keeps our State strong.

I was glad to see the writers and the studios come to the table and find common ground on many issues, including AI. It is time for Congress to do the same.

Just before his death, Robert Kennedy told a crowd that,

You cannot measure a Nation just by its wealth. The Gross National Product, measures neither our wit nor our courage; neither our wisdom . . . nor our devotion to our country; it measures everything, in short, except that which makes life worthwhile.

The Copyright Office protects many intangibles that make life worthwhile, and I sincerely hope that Congress has the courage to protect creators as new technologies disrupt their fields.

I would like to thank Chair Issa for calling this hearing once again.

Once again, I would like to thank Director or Register Perlmutter for being here. I look forward to hearing from you about your agency's work.

Thank you.

Mr. ISSA. I thank the gentleman.

I am now pleased to recognize the Ranking Member of the Full Committee, Mr. Nadler, for his opening statement.

Mr. NADLER. Thank you, Mr. Chair.

Mr. Chair, I would like to begin by thanking Ms. Perlmutter, the Register of Copyrights, for being here today.

The Copyright Office bears responsibility for registering copyrights, examining copyright claims, and administering statutory licenses—not to mention advising Congress on new and emerging issues of copyright policy, among other responsibilities.

As the Committee with jurisdiction over the matters related to the American judicial system, including intellectual property law, we have the responsibility to provide oversight of this critical office.

Professional and amateur artists, authors, and coders rely on copyright protection to put their creations out into the world. These ownership rights promise that, with hard work and a lot of luck, it is possible to make a living from one's artistic and intellectual abilities.

Our intellectual property laws foster creativity in the arts, as well as productivity and innovation. As such, the Copyright Office serves a dual role in American culture; it is protective of both the future and the past.

While giving our hits the space to age gracefully into classics and for our visual artists the time to gain appreciation, the Copyright Office must also wrestle with integrating the newest artistic mediums and addressing philosophical questions about the use of technology in human creations.

What we determine holds value, and how we choose to protect it, demonstrates to the world what we believe is important in this country. It is often the men and women in the Copyright Office who make those important determinations.

Today, much of our conversation will focus on the future. Artificial intelligence, or AI, has changed and will continue to change the way Americans create. We cannot escape the novel difficult questions posed by the integration of AI models into our work.

How should American creators interact with generative AI tools? What regulations will guide our innovations as a Nation? I was glad to see the Copyright Office address these questions this year in its March guidance and August Notice of Inquiry on the impact of generative AI. I look forward to hearing more about the results of the Copyright Office's examination of how AI will impact artists and intellectual property holders.

The Music Modernization Act, which this Committee led efforts to enact in 2018, is an example of what can happen when an entire industry agrees to work together to protect creators. When streaming services arrived on the scene roughly a decade earlier, they disrupted the music industry's normal way of doing business. America's teenagers stopped waiting outside stores for the latest star's album to drop. Instead, the listening public moved online, where unlimited songs were available at their fingertips, and unfortunately, where there was no structure to ensure that songwriters could get paid.

By creating the Music Licensing Corporation, or MLC, to ensure that songwriters receive the royalties they are due, we in Congress made clear that, no matter how the music industry evolves—and evolve it will—the people who write the songs deserve to be paid for their work.



I'm looking forward to hearing from the Copyright Office, as the entity responsible for the administration of the MLC, on how it believes the MLC is accomplishing its goals.

Some protections simply never existed in the first place. The United States is the only democratic Nation in the world that does not pay its performing artists when their songs are played on terrestrial radio. There is no reason not to pay our creators for their work.

That is why I am proud to join Chair Issa in leading the American Music Fairness Act, which would require broadcasters to pay artists when their songs are played on the radio. Our actions should match our values, and paying artists when their songs are broadcast on AM and FM radio would take a vital step toward that ideal.

The Copyright Office's jurisdiction is broad. Today will be an opportunity to expand beyond AI and music. I am also looking forward to hearing from Ms. Perlmutter about the status of the implementation of the CASE Act; how the Copyright Office is modernizing its outdated IT systems to better serve artists, and what changes, if any, need to be made to Section 1201 of the DMCA.

Thank you, Mr. Chair, for holding this hearing, and I yield back the remainder of my time.

Mr. ISSA. I thank the gentleman.

I now recognize—oh, sorry. Without objection, all other opening statements will be included in the record.

It is now my honor to introduce our sole and important witness. Ms. Perlmutter is the Register of Copyrights and Director of the Copyright Office. She was appointed in October 2020. Prior to her appointment, she served as the Chief Policy Officer and Director of International Affairs for the United States Patent and Trademark Office.

We welcome our witness today and thank her for appearing.

I would ask that you please rise to take the oath.

Do you solemnly swear or affirm, under penalty of perjury, that the testimony you are about to give will be the truth and correct to the best of your knowledge, information, and beliefs, so help you God?

Ms. PERLMUTTER. I do.

Mr. ISSA. Thank you. Please be seated.

Let the record indicate the witness answered in the affirmative.

Since you are the sole witness and the reason we are here today, we won't hold you strictly to the five-minutes, but the sooner we get to questions, the happier people here on this other part of this very cold room will be.

I'm noting that because we asked to have it warmed up and we will do our best.

Thank you, and you are recognized for your statement.

We will turn the mic on. I know it is a little cold this morning, too.

#### **STATEMENT OF THE HON. SHIRA PERLMUTTER**

Ms. PERLMUTTER. There we go.

Mr. ISSA. OK, and then, get it a little closer, and we will all be happy. Thank you.

Ms. PERLMUTTER. Good morning, Chair Issa, Ranking Member Johnson, and Members of the Subcommittee.

Thank you for the opportunity to update you today on the recent accomplishments and current projects of the Copyright Office.

The past year has been very productive on multiple fronts. We have substantially improved processing times, while making significant progress on IT modernization.

We've launched work on artificial intelligence; marked a full year of operations of our new small claims tribunal; produced a number of policy studies; developed an economic research agenda, and engaged in rulemakings under the Music Modernization Act, as well as commencing the next Section 1201 rulemaking.

The Office's law and policy activities have been wide-ranging. Most notably, we have moved quickly to address the copyright implications of artificial intelligence. Early this year, we announced a broad AI initiative, and in March, issued guidance on how to apply to register works that incorporate AI-generated content.

That guidance reaffirmed our longstanding position that human authorship is required for copyright protection—a position that was recently upheld by the District Court for the District of Columbia.

Over the past six months, we've held a series of public listening sessions and webinars and have met with a diverse range of interested parties.

We, then, published a Notice of Inquiry at the end of August seeking public comment on a full range of copyright-related issues, including the legal treatment of the ingestion of copyrighted works for machine learning; the copyright-ability of the output, and the imitation of the likeness and style of human creators.

As of the first anniversary of the small claims tribunal, the Copyright Claims Board that was established by the CASE Act, nearly 500 claims have been filed—with about 10 percent of them so far in active proceedings. We've seen a steady influx involving a wide range of types of works with strong participation by individuals appearing pro se.

Over the past year, the Office has responded to congressional inquiries on a number of issues, including studies on deferred examination of registration applications; on electronic deposits and the best edition requirement; and on standard technical measures, as defined in the Digital Millennium Copyright Act.

We are currently completing a study on non-fungible tokens and intellectual property jointly with the Patent and Trademark Office.

In our role administering the Copyright Act, the Office registered over 484,000 claims to copyright for millions of works in fiscal 2022.

Processing times are at a historic low. The average for all copyright claims now stands 2.1 months. For fully electronic claims that don't require correspondence, the average is just over 1 month.

We also recorded more than 14,000 documents containing titles of over a million works. A major milestone was reached last year with the opening of our online recordation pilot to the public. Almost 80 percent of all basic recordation documents are now submitted online, and processing times are measured in weeks rather than months.

We've completed the consolidation of deposit materials from several facilities into a single modern warehouse to enable faster location services that are tracking and improved security.

We're also implementing a new multichannel contact center to enhance communications with the public.

Modernization remains a top priority. The planned Enterprise Copyright System, or ECS, will update and connect all our services, making them more efficient and easier to use. The first public releases were the online recordation system and a pilot of our new Copyright Public Records System.

Development of a new and improved registration system is now well underway, and we've made considerable progress in digitizing pre-1978 records and making them available online.

As the ECS becomes fully operational, we will focus on continuous development with regular maintenance and updating to avoid repeated overhauls of legacy systems.

Finally, we've expanded our outreach through a greater range of educational materials and events offered to more audiences to further our goal of copyright for all.

So, let me close by thanking the Subcommittee for your support of the Office's work to foster creativity and promote a thriving copyright system.

[The prepared statement of the Hon. Perlmutter follows:]

**Statement of  
Shira Perlmutter  
Register of Copyrights and Director, U.S. Copyright Office**

**Oversight Hearing of the U.S. Copyright Office  
Before the  
Subcommittee on Courts, Intellectual Property, and the Internet  
Committee on the Judiciary  
U.S. House of Representatives**

**September 27, 2023**

Chairman Issa, Ranking Member Johnson, and Members of the Subcommittee:

Thank you for the opportunity to appear before you today to report on the many accomplishments and current projects of the Copyright Office.

To summarize the highlights, we have substantially improved processing times for both registration and recordation services while making significant progress on our new Enterprise Copyright System. We've launched an initiative on artificial intelligence, celebrated the first full year of operations of our new small claims tribunal, produced a number of studies responding to Congressional requests, and engaged in regulatory work, including commencing the ninth section 1201 triennial rulemaking. And we have seen public engagement with the Office break records through stakeholder events and targeted outreach around the country.

The Copyright Office is tasked with overseeing the national copyright registration and recordation systems, advising Congress on copyright policy and legislation, working with the Department of Justice and other federal agencies on copyright litigation and international copyright matters, conducting administrative and regulatory activity including with respect to statutory licenses, and educating the public about copyright. As of August 31, 2023, the Office has 444 full-time employees, with minority representation of 51.4%, and women comprising nearly 60%.

**Administering the Copyright Act**

**Registration:** The Office continues to efficiently examine registration claims while moving forward with IT modernization. In fiscal 2022, we registered over 484,000 copyright claims involving millions of works. We were able to eliminate the backlog of electronic filings over three years ago, and the backup of physical deposits over a year ago. We have also brought registration processing times to historic lows: the average time for examining all copyright claims stands at 2.1 months for the first half of fiscal 2023. For fully electronic claims

that do not require correspondence, the average processing time is down to just over one month (1.2 months).<sup>1</sup> While the pandemic temporarily impacted processing times for electronic applications with physical deposits as well as paper applications, we have reduced these timeframes sharply (to an average of 2.7 months and 4.3 months, respectively).

**Recordation:** We have made great strides in modernizing recordation, which involves filing and indexing documents relating to copyright into our public records.<sup>2</sup> In April 2020, we launched a pilot of a new online recordation system for basic (section 205) recordation documents; this represented a major improvement to our historic paper-based process. On August 1, 2022, we opened the pilot to all members of the public,<sup>3</sup> and we have received very positive feedback. The average time from electronic submission of basic recordation documents to generation of the public record is now measured in weeks rather than months.<sup>4</sup> In our first year of online recordation operation, 75 percent of all recorded documents were submitted through the online system, constituting over 8,000 documents containing over 350,000 works. We are currently building functionality to process notices of termination online as well.

**Licensing:** The Office maintained our effective stewardship of over \$1.2 billion in statutory licensing funds as of the end of fiscal 2022.<sup>5</sup> For the fifth consecutive year, we received an unmodified or “clean” audit opinion of the statutory licensing fiduciary asset financial statements.<sup>6</sup> In addition, on July 1, 2022, the Licensing Section moved to a single Electronic Funds Transfer (EFT) method for payment of current, past, and future royalty and filing fees.

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<sup>1</sup> Registration processing times are posted on our website at <https://copyright.gov/registration/docs/processing-times-faqs.pdf>. For the October 1, 2022, to March 30, 2023, timeframe, 82% of all registration claims were eService claims (online claims with electronic deposits); about 15% were deposit ticket claims (online claims with separately mailed physical deposit materials); and about 2% were mail claims (paper claim forms with physical deposits).

<sup>2</sup> There are three types of documents that may be submitted for recordation: transfers of copyright ownership, other documents pertaining to a copyright, and notices of termination. The pilot and newly released system currently cover only the first category (section 205 documents).

<sup>3</sup> See U.S. Copyright Office, NewsNet 955, Copyright Office Expands Recordation System Access to the Public (Aug. 1, 2022), <https://www.copyright.gov/newsnet/2022/975.html>; U.S. Copyright Office, NewsNet 1015, Copyright Online Recordation System Marks One-Year Anniversary (Aug. 1, 2023), <https://copyright.gov/newsnet/2023/1015.html>.

<sup>4</sup> Recordation processing times are posted on our website at <https://copyright.gov/recordation/>. The Office of Copyright Records is currently processing papers submissions of basic (section 205) recordation filings from September 2021 through April 2023 for notices of termination. Regardless of the processing time, the effective date of recordation is the date the Copyright Office receives the complete submission in acceptable form.

<sup>5</sup> The Licensing Section is responsible for helping to administer various statutory licenses and similar provisions, including: secondary transmissions of radio and television programs by cable and satellite systems; making and distributing phonorecords of nondramatic musical works; and importing, manufacturing, and distributing digital audio recording devices or media.

<sup>6</sup> U.S. Copyright Office, NewsNet 972, Library of Congress Publishes Results of an Independent Audit of the Fiscal Year 2021 Fiduciary Financial Statements (Jul. 5, 2022), <https://copyright.gov/newsnet/2022/972.html>.

**The Copyright Claims Board:** The groundbreaking small claims tribunal, the Copyright Claims Board (CCB), opened its doors to the public on June 16, 2022.<sup>7</sup> Within the tight time frame established by the Copyright Alternative in Small-Claims Enforcement Act of 2020 (CASE Act), we published fifteen Federal Register notices; hired the CCB Officers and full staff; and collaborated with other Library service units to prepare an electronic filing and case management system (eCCB), virtual hearing facilities, and office space. We launched a new dedicated website, [ccb.gov](http://ccb.gov), which links to eCCB, a service agent directory, and pro bono resources, along with other helpful information for both claimants and respondents.

At its first anniversary, the CCB had received 485 claims from forty-three states and twenty-four countries,<sup>8</sup> and forty-six of those claims were in active proceedings. Those numbers continue to grow; we have now received over 575 claims. This past year the Office completed several rulemakings to improve processes and operations for claimants. Finally, we continue active efforts to inform and educate the public. The CCB and other Office staff have participated in scores of public events to discuss and promote the use of the CCB, and have reached audiences in-person and virtually from every geographic area of the United States and a dozen countries.

#### **Information Technology Modernization and Continuous Development**

Our ongoing modernization initiative continues to be a top priority as well as a strategic goal. The Office has completed the fourth year of Congress' appropriated five-year funding (fiscal 2019–2023) for modernization of our existing IT systems. We are committed to ongoing updates and improvements so as to avoid repeating the experience of having to overhaul severely outdated legacy systems. The Office's fiscal 2024 funding request (discussed below) seeks the resources necessary to implement our strategic goals, including providing continuous development as well as enhancing the use of data in our ongoing work.

In the past two years, the Office has seen the benefits of continuous development to meet the evolving changes in technology, provide secure and interconnected systems, and manage contract cost increases. Under the Library of Congress's centralized IT structure, the Office works closely with the Office of the Chief Information Officer (OCIO) to provide the business information needed for IT development. OCIO and the Office have transitioned to an agile development model, with an emphasis on rapid design and delivery of new functions and features that optimize stakeholders' experience. The planned Enterprise Copyright System (ECS) includes workstreams on recordation, public records, registration, and licensing.

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<sup>7</sup> U.S. Copyright Office, NewsNet 969, Copyright Office Announces Claims Board Is Open for Filing (Jun. 15, 2022), <https://www.copyright.gov/newsnet/2022/969.html>.

<sup>8</sup> U.S. Copyright Office, NewsNet 1009, U.S. Copyright Office Celebrates First Year of the Copyright Claims Board (Jun. 26, 2023), <https://www.copyright.gov/newsnet/2023/1009.html>.

**Recordation:** Our new online recordation system was the first ECS component to be released to the public, enabling recordation of documents under section 205 of title 17. As noted above, in August 2022, full online access was provided to all members of the public. We are now incorporating user feedback to make iterative improvements as well as to build new functionality to process notices of termination. We anticipate the recordation component will move into continuous development in fiscal 2024.

**Public Records:** Our second ECS application to be publicly released was a pilot for the new Copyright Public Records System (CPRS). This system provides an improved interface for our public records (which includes post-1978 registration and recordation records), along with advanced search functionality. It will eventually replace the existing Copyright Office Online Public Catalog. We anticipate that this component also will move into continuous development in fiscal 2024.

**Registration:** Registration is the most complex of the Office's services and the focus of the greatest public attention. During the initial ECS development work, we have made considerable progress on both the external (public) and internal (staff) components of the new registration application. We have also established an eDeposit development team to develop enhanced upload and rendering capabilities, including for large numbers of files and very large files well above the current 500 MB limit. With continued support, we plan to conduct stakeholder and staff testing of these capabilities by the end of calendar 2024. Assuming success with the initial phases of user testing for eDeposits, we plan to begin developing group registration workflows and ultimately retire the legacy eCO Registration system by the end of calendar 2026.

**Licensing:** Over the past two years, the Office has been developing user experience design and initial automated workflows to replace outdated licensing processes. Development is focusing on migrating the statement of account examination processes to ECS and migrating all royalty accounting processes onto the Legislative Branch Financial Management System to streamline them and eliminate duplication. The new licensing processes will move into continuous development in spring 2024.

**Historical Public Records:** As part of the Office's commitment to the preservation of and access to our historical records, we are digitizing print and microfilm records and making them available online. This includes the card catalog,<sup>9</sup> the Catalog of Copyright Entries (CCEs), and the record books. Digitization is the first step, to be followed by metadata capture to enhance searchability, with all records eventually available through the new CPRS. Great

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<sup>9</sup> The Office already digitized and made available online our physical card catalog, which is available in the Virtual Card Catalog (VCC), as well as the CCEs. See <https://copyright.gov/vcc/>. The VCC Proof of Concept represents card records from 1870 to 1977, displayed in JPEG images, from the U.S. Copyright Card Catalog collection. The images are presented in a similar filing order as found in the physical card catalog. Initial work is underway to capture metadata on these cards.

progress has been made this year to digitize and make publicly available the Office's 26,000 record books, which contain well over 26 million pages of records between 1870 and 1977. The first 500 books were published on the Library's website in February 2022,<sup>10</sup> and now over 9,000 books are available online. Work is being done in reverse chronological order from 1977, with the scanned books being posted in batches.

**Copyright Public Modernization Committee:** In January 2021, the Librarian of Congress appointed a Copyright Public Modernization Committee (CPMC) to enhance communication with external stakeholders about the technology-related aspects of the Office's modernization initiative.<sup>11</sup> The CPMC is made up of thirteen members from the publishing, music, and photography sectors, libraries and archives, and other fields.<sup>12</sup> To date, five public meetings have taken place (most recently in August 2023); there also have been several informal briefings for CPMC members.

**Warehouse Consolidation:** The Office has finished consolidating copyright deposit materials and other stored records from several geographically dispersed storage facilities into a single, modern facility. The collaborative warehouse construction project between the Library, the Copyright Office, and the Architect of the Capitol was completed ahead of schedule. We moved into our new facility in Landover, Maryland, in November 2020, and vacated the last of our three external storage facilities this summer. This consolidation of copyright materials into one facility will allow the Office to provide faster location services, better tracking, and improved security for copyright deposits.

**Contact Center:** The Office's work to modernize call routing and reporting is moving forward. Working with the GSA Centers of Excellence program, we obtained a roadmap to plan for a new high-performing, multi-channel contact center to enhance our communications with the public. We successfully implemented the first phase in spring 2023, and teams across the Office are now using a best-in-class software system to receive, track, and route calls and emails.

### **Law and Policy**

The Office continued its longstanding roles of providing advice to Congress and the courts, and information to the public.

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<sup>10</sup> See U.S. Copyright, NewsNet 947, Copyright Office Launches Digitized Copyright Historical Record Books Collection (Feb. 7, 2022), <https://www.copyright.gov/newsnet/2022/947.html>. The scans are posted at <https://www.loc.gov/collections/copyright-historical-record-books-1870-to-1977/about-this-collection/>.

<sup>11</sup> Library of Congress, Announcement of Copyright Public Modernization Committee, 86 Fed. Reg. 8044 (Feb. 3, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-02-03/pdf/2021-02194.pdf>.

<sup>12</sup> U.S. Copyright Office, NewsNet, Library of Congress Announces Copyright Public Modernization Committee (Jun. 22, 2021), <https://www.copyright.gov/newsnet/2021/898.html>.



**Artificial Intelligence:** The Copyright Office has moved quickly in addressing the copyright implications of artificial intelligence (AI). Earlier this year, we launched a broad AI Initiative. In March 2023, we published a dedicated webpage, [www.copyright.gov/ai](http://www.copyright.gov/ai), providing information to the public on developments in this area, and issued guidance on how to apply to register works that incorporate AI-generated content.<sup>13</sup> Over the past six months, we have held dozens of meetings with stakeholders, academics, and technology companies, as well as four public listening sessions and two webinars (one on our registration guidance and the second on international issues).<sup>14</sup> At the end of August, we published a notice of inquiry seeking public comment on a wide range of issues focusing on: (1) the use of copyrighted works to train AI models; (2) the copyrightability of material generated using AI systems; (3) potential liability for infringing works generated using AI systems; and (4) the treatment of generative AI outputs that imitate the identity or style of performing artists.<sup>15</sup>

The Office also continues to evaluate registration claims that involve AI-generated material. Recently a federal district court upheld our refusal to register a work that the applicant claimed was made “without any creative input or intervention from a human author.” The court agreed that “statutory text, judicial precedent, and longstanding Copyright Office practice” all require human authorship as a condition of copyrightability.<sup>16</sup>

**Music and the MMA:** The Office is engaged in a number of complex music-related legal matters, including the ongoing implementation of the Music Modernization Act (MMA). As anticipated by the statute, the Office exercises oversight responsibility over the Mechanical Licensing Collective (MLC), to ensure that it continues to make progress and fulfills its duties under the statute. To our knowledge, the MLC is administering the statutory blanket license as required and is performing its duties in line with the statute and our regulations. We hold periodic meetings separately with the MLC, with the Digital Licensee Coordinator, and with songwriter groups to ensure that we hear feedback on the MLC’s operations and how the MMA is working.

As part of our work, the Office promulgates rules related to the MMA. This year we issued an interpretative rule on fees for late royalty payments<sup>17</sup> and have an open rulemaking related to the effect of copyright termination on the blanket license. As required by the MMA, we plan to initiate the periodic review of the MLC’s designation in January 2024. Finally, the

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<sup>13</sup> U.S. Copyright Office, Copyright Registration Guidance: Works Containing Materials Generated by Artificial Intelligence, 88 Fed. Reg. 16190 (Mar. 16, 2023).

<sup>14</sup> U.S. Copyright Office, “Our Summer of Artificial Intelligence: Copyright Offices Hosts Two Webinars on Copyright and AI” (Aug. 23, 2023), <https://blogs.loc.gov/copyright/2023/08/our-summer-of-artificial-intelligence-copyright-office-hosts-two-webinars-on-copyright-and-ai/>. These webinars broke Office outreach attendance records, reaching thousands.

<sup>15</sup> U.S. Copyright Office, Artificial Intelligence and Copyright, 88 Fed. Reg. 59942 (Aug. 30, 2023).

<sup>16</sup> Mem. Op., *Thaler v. Perlmutter*, No. 22-cv-1564, ECF No. 24 (D.D.C. Aug. 18, 2023).

<sup>17</sup> U.S. Copyright Office, Fees for Late Royalty Payments under the Music Modernization Act, 88 Fed. Reg. 60587 (Sep. 5, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-09-05/pdf/2023-18609.pdf>.

Office continues to actively engage in education and outreach efforts to help ensure that publishers and songwriters, especially independent songwriters, understand they can register their works and claim royalties with the MLC. This includes appearing at SXSW and other music industry festivals and events, and producing popular educational materials that are tailored to this audience and available for free.

We also have specific, but limited, responsibilities related to the Library's Copyright Royalty Board (CRB). In November 2022, the Office responded to a congressional inquiry about increasing opportunities for participation in proceedings before the Copyright Royalty Judges (CRJ).<sup>18</sup> The Office concluded that the CRJs possess authority under current law to provide a greater opportunity for public involvement in rate-setting proceedings, but legislation may be necessary for more sweeping change.

**Section 1201 Triennial Rulemaking:** In June, the Office launched its ninth triennial section 1201 rulemaking.<sup>19</sup> The goal of this proceeding is to determine whether there are particular classes of works as to which users are, or are likely to be in the next three years, adversely affected in their ability to make noninfringing uses due to the law's prohibition on circumventing access controls. When such classes are identified, the Register provides recommendations for the Librarian to consider when she promulgates regulations exempting the relevant uses from the prohibition for the succeeding three-year period. For this proceeding, the Office is again using a streamlined procedure for the renewal of exemptions that were granted during the previous eighth triennial rulemaking. We expect to issue a notice of proposed rulemaking in October 2023.

**Additional Studies and Congressional Engagement:** The Office has delivered a number of reports and letters to Congress over the past year, including a study on electronic deposits and the best edition requirement;<sup>20</sup> a report on stakeholder consultations on the voluntary use of technical measures to identify or protect copyrighted works;<sup>21</sup> and a study on standard technical measures as defined in the Digital Millennium Copyright Act (DMCA).<sup>22</sup> Currently, we are in the process of completing a study on non-fungible tokens and intellectual property jointly with the U.S. Patent and Trademark Office (USPTO), having gathered public

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<sup>18</sup> Although the CRB is an independent body within the Library of Congress, and not part of the Copyright Office, the Office advises and assists Congress with questions on title 17, including those portions of the statute governing the CRJs. 17 U.S.C. § 701(b)(1).

<sup>19</sup> U.S. Copyright Office, NewsNet 1008, U.S. Copyright Office Announced Start of Ninth Triennial Rulemaking Proceedings Under Section 1201 (Jun. 8, 2023), <https://www.copyright.gov/newsnet/2023/1008.html>. See more on this proceeding at <https://www.copyright.gov/1201/2024/>.

<sup>20</sup> U.S. Copyright Office, Electronic Deposits and Best Edition, <https://www.copyright.gov/policy/best-edition/>.

<sup>21</sup> U.S. Copyright Office, Technical Measures Consultations, <https://www.copyright.gov/policy/technical-measures/>.

<sup>22</sup> U.S. Copyright Office, Standard Technical Measures and Section 512, <https://www.copyright.gov/policy/stm/>.

comments and held public roundtables earlier this year.<sup>23</sup> We also advise individual Members' offices on questions about pending or proposed legislation.

**Work with Other Agencies on Litigation and IP/Trade:** The Office also provided legal advice and assistance across the government regarding copyright law and policy, including in Supreme Court and appellate litigation and interagency collaboration on international matters and trade. In the last few years, three copyright cases have reached the Supreme Court, and the Office worked with the Department of Justice and the Solicitor General in preparing the U.S. government views presented to the Court.<sup>24</sup> We also continue interagency collaboration on international matters and trade with agencies such as the Office of the U.S. Trade Representative and the U.S. Patent and Trademark Office. This includes working with other countries on copyright law reform; public educational events; and participation in regional intellectual property activities as well as at the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO). In late September 2022, we joined with WIPO to successfully produce our long-standing biennial, week-long International Copyright Institute training event for copyright officials from other countries.<sup>25</sup>

#### **Expanded Outreach and Economic Analysis**

The Office engages in extensive outreach activities to provide clear and accurate information on copyright law. We regularly produce and contribute to events to educate the public and stakeholders about copyright, including to reach music and songwriter communities with information about the MMA, and all copyright creators and users with information about the CCB. In fiscal 2022, we hosted 47 public events and spoke at over 100 more, roughly doubling our level of activity from the prior year. We have likewise been very active in fiscal 2023, fulfilling requests for information, and hosting and speaking at public educational programs around the country and online. For example, two webinars about the CCB reached a total of over 500 people in 49 states – and recordings have been viewed a combined 2,000 times, while our CCB handbook has been downloaded over 9,000 times.

We have expanded our promotional efforts to reach out to new audiences and to create a variety of easily accessible educational resources. These materials provide plain language explanations of copyright law and specific information relating to Office initiatives, including many now available in Spanish. The Office also continues to maintain our Fair Use Index, which contains summaries of more than 200 selected cases involving fair use.<sup>26</sup> In addition,

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<sup>23</sup> U.S. Copyright Office, Non-Fungible Tokens Study, <https://www.copyright.gov/policy/nft-study/>.

<sup>24</sup> Briefs of the U.S. government in copyright cases before the Supreme Court and other federal courts are posted at U.S. Copyright Office, Amicus Brief Archive, at <https://copyright.gov/rulings-filings/briefs/>.

<sup>25</sup> U.S. Copyright Office, International Copyright Institute (2022), <https://www.copyright.gov/international-issues/ici-2022.html>.

<sup>26</sup> U.S. Copyright Office, Fair Use Index, <https://www.copyright.gov/fair-use/>.

decisions of the Copyright Office Review Board, which hears final administrative appeals of refusals of copyright registration, are available online dating back to April 2016.<sup>27</sup>

The Office has also established new capabilities in economic analysis. We hired our first Chief Economist in April 2022, and soon thereafter released a report examining women authors' participation in the U.S. copyright system based on forty-two years of registration data.<sup>28</sup> Thanks to congressional budgetary support, we have recently completed the hiring of two additional economic experts to support building both external and internal economic research agendas. In addition, we have commenced internal work to prepare for our next fee study. As in the past, we anticipate that the fee study will involve policy issues that will benefit from public input, which we plan to request in 2024.

### **Budgetary Support**

The Copyright Office performs all of this work on a relatively modest budget and appreciates the support we have received from Congress in recent fiscal years. For fiscal 2024, the Office has requested an overall budget of \$103.1 million in funding and 481 FTEs, of which \$45.6 million would be funded through offsetting fees collected in fiscal 2022 and prior years.

The Copyright Office's overall budget is composed of three separate budgets or program areas:

- **Basic Budget:** The basic budget proposal is \$93.0 million and 448 FTEs, comprising \$38 million in offsetting fee collections (41%) and \$55 million (59%) in appropriated dollars. This budget funds most of the Office's operations and initiatives, including the majority of payroll-related expenses. Historically, it has been composed of a combination of appropriated dollars and authority to spend fee revenue, with fees constituting close to one half of the total. Our request includes mandatory pay-related and price level increases of \$4.347 million, plus one shared program increase of \$7.220 million for Copyright Office Information Technology Continuous Development.<sup>29</sup> As discussed above, this program increase is a mission-critical need that will provide essential investment and ongoing funding needed to develop, test, and integrate multiple ECS applications with related systems and ensure they are kept up-to-date. Notably, this request is supported through sustained funding and is a minor increase in offsetting collections and prior year authority. It will not require an increase in appropriated funds.

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<sup>27</sup> U.S. Copyright Office, Review Board Opinions, <https://www.copyright.gov/rulings-filings/review-board/>.

<sup>28</sup> U.S. Copyright Office, Women in the Copyright System, <https://www.copyright.gov/policy/women-in-copyright-system/>.

<sup>29</sup> This shared program increase of \$7.220 million includes \$4.323 million and 3 FTEs for the Copyright Office and \$2.897 million and 13 FTEs for OCIO.

- **Licensing Section Budget:** This proposal is \$6.9 million and 26 FTEs, all of which are to be funded from collections of licensing royalties payable to copyright owners and filing fees paid by cable and satellite licensees pursuant to statutory licenses administered by the Office. The requested increase is to cover mandatory pay-related and price level increases of \$0.327 million.
- **Copyright Royalty Judges Budget:** This proposal is \$3.2 million and 7 FTEs, with \$0.2 million to support mandatory pay-related and price level increases. Although the CRJ program is not part of the Copyright Office, we provide it with budget formulation and execution support on behalf of the Library of Congress. Appropriated funding supports payroll and partially funds non-pay expenses that are not supported by fees and royalty payments. Of this total, royalties and participation fees offset \$0.603 million (for non-personnel-related expenses). The remainder, \$2.590 million in appropriated dollars, is to cover the personnel and other related expenses of the three judges and their staff.

In recent years, we have been able to use targeted programmatic requests to implement statutory requirements as well as to support Office services. For example, the Office requested and obtained \$3.2 million in additional fiscal 2022 funding to implement the CASE Act,<sup>30</sup> subsequent to our unfunded fiscal 2021 work, including hiring the CCB staff. For fiscal 2023, the Office obtained a single program increase of \$1.7 million to provide for new positions involving cost analysis, economic analysis, and statistic capabilities as well as software to support valuable new skillsets.<sup>31</sup> And as discussed above, our single request for fiscal 2024 aims at supporting continuous IT development.

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We appreciate the Subcommittee's continued support of our work to promote and improve the copyright system.

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<sup>30</sup> The fiscal 2022 budget for CASE Act implementation included \$1.0 million in one-time costs for office construction and furniture, audiovisual system acquisition, and development of an online case management system; and \$2.2 million in recurring costs (\$1.7 million for salary, benefits, and related costs for the 8 FTEs and \$500,000 for systems operation and maintenance, printing, and other services).

<sup>31</sup> That fiscal 2023 request was fully supported through an increase in offsetting collections authority and did not require an increase in appropriated dollars.

Mr. ISSA. Thank you.

I'm going to forego my questions initially and go to Mr. Fitzgerald.

Mr. FITZGERALD. Thank you, Mr. Chair.

Thank you for being here today.

September 5th, the Copyright Office recently published an interpretative rule in the **Federal Register** relating to when late fees apply under the Music Modernization Act, instead of a proposed rule that would have been subject to public notice and comment. Given the potential commercial impact and the disruption of settled industry practices by this rule, can you speak to why the Associate Register of Copyrights, Suzy Wilson, is listed as the signatory on the rulemaking rather than yourself?

Ms. PERLMUTTER. Suzy Wilson, as you said, "Associate Register and also General Counsel." It is not unusual for the General Counsel to sign regulations that we issue in the **Federal Register**. It had no other substantive significance beyond that.

Mr. FITZGERALD. OK. Very good.

Do you or your office intend to issue further interpretative rules that circumvent public comment periods?

Ms. PERLMUTTER. With that rule, in particular, we had originally asked for comment because we had heard different views expressed on the issue of the late fees. Once we looked at the comments and evaluated the statute further, we concluded that the statute was clear on the late fee issue and that it would be up to the CRB to determine any different treatment of late fees.

Mr. FITZGERALD. Very good.

Music fans, generally, want to listen to their favorite artists and songs regardless of which record label or artist it belongs to, or which PRO has particular rights to any given song. We had a wonderful field hearing in Nashville in which that point was brought up many times by many different individuals.

They made the point; an individual song may have multiple writers who belong to different PROs. So, radio stations and music service providers generally need to license from all PROs, rather than just one or two. This arrangement, as you know, leads to a consistent upward trajectory of royalty rates because, if a PRO, like a GMR, it gets a high rate through contracting with in-demand songwriters, this rate will serve as a benchmark for negotiations with other services for a new, higher rate which can be used by the next PRO to negotiate a new rate, and so on.

Can you talk about what your office is doing to keep the music affordable to customers?

Ms. PERLMUTTER. The Copyright Office is not involved in rate-setting, either through the PROs or in terms of the work of the CRB in setting rates for music. So, we have a defined scope of authority in this area, and there are certain things we are regulating, but the actual amounts of the license fees we do not handle.

Mr. FITZGERALD. So, would it be accurate to say, then, no matter what happens with those rates, that you would not intervene, and you certainly would not get involved in that discussion?

Ms. PERLMUTTER. We would not intervene, although, to the extent that Congress is looking at any legislative changes, we would be happy to offer any kind of technical advice and assistance.

Mr. FITZGERALD. OK. All 10 publishers represented by voting members of the MLC's Board are also represented on the Board of the National Music Publishers' Association. Are you at all concerned that this overlap raises questions about the MLC's independence and the ability to function as a neutral administrator?

Ms. PERLMUTTER. We're aware that some have raised those concerns, and we do think it would be valuable to address those concerns and avoid any perceptions of a lack of balance. So, we would certainly be happy to discuss further any potential solutions. Any change in the board composition, however, would require statutory change.

Mr. FITZGERALD. Just one final question. The other thing we heard on the field hearing was that there were many artists that the MLC was having a difficult time even locating. Have you been involved in that process at all, or do you oversee that in any way?

Ms. PERLMUTTER. Yes, and we did do a study and issue a report about two years ago now with recommendations for the MLC and how to improve matching, to be able to pay out to the appropriate copyright owners.

Mr. FITZGERALD. Do you think that has improved or are you tracking that at all?

Ms. PERLMUTTER. I think it's improving. In terms of the MLC paying out under the new, blanket statutory license, I understand they've reported about a 90 percent match rate at this point. Then, in terms of matching the historical unmatched royalties, we believe that's improving.

We recommended that the MLC not pay out for at least five years, so that there was more time than the statute, the statutory minimum to make, to do as much matching as possible and identify as many copyright owners as possible. It is our understanding that at this point in time the MLC is not planning to pay out the money anytime in the near future.

Mr. FITZGERALD. Very good.

I yield back.

Mr. ISSA. I thank the gentleman.

We now recognize the Ranking Member of the Subcommittee, Mr. Johnson of Georgia.

Mr. JOHNSON of Georgia. Thank you, Mr. Chair.

Register Perlmutter, in its guidance, the Copyright Office argued that both the Constitution and the Copyright Act define an author as "a human entity," excluding nonhuman creations, and noted that this stance is reinforced by various court rulings, and concluded that those using AI in their creations can claim copyright protection only for their human contributions.

How did the Copyright Office make that determination, and how will that bright line help artists and creators survive in fields that will increasingly be filled with AI-generated works?

Ms. PERLMUTTER. Well, I would divide my answer into two parts. So, the first part is the issue of the protectability of the output, the protectability of individual works that are generated using AI. To the extent that humans use AI as a tool, that should not affect the protectability of the work. The human author would still be the creator and the work would be protected by copyright. Using AI as a

tool is not something entirely new. It has been used, in particular, in the music field, for example, for decades in various ways.

The issue that we address because it was squarely put before us, in particular, in the Thaler case, was a situation where the claim was that a work was generated solely by a computer and in that situation, looking at the word author and both the Constitution and the statute, as you have noted, Mr. Johnson, we believe that this term implies human authorship and not that of a machine. That position was borne out by a number of court cases over decades, if not centuries. So, we were pleased to see the District Court and the District of Columbia, as I mentioned, agree with us on that. What we are trying to do is to guide people as to how they can register works that include generative AI outputs. In that context, we said they should just disclaim the portion of the work that was generated by AI and we will issue a registration for the work as a whole where there is some human authorship.

The second part of the question I think really relates to what effect it will have on the ability of human creators to make a living when their works are input into the computer for purpose of machine learning and then the output might compete in the marketplace with their work. That is an issue that we are going to be studying that we have asked for comments on our Notice of Inquiry. We agree, it is a critically important issue for the future. We need to make sure that we do not inhibit the development of very exciting new technology, while at the same time ensuring that human creativity continues to thrive.

Mr. JOHNSON of Georgia. Thank you. Many AI models are trained on copyrighted data, but not all the training data is licensed. Why is it important that copyrighted information used to train AI be licensed?

Ms. PERLMUTTER. One of the issues that is presented both before us and that we have asked questions about in the Notice of Inquiry and also in some of the court cases that are pending is the extent to which any use of copyrighted works in training the AI may qualify as fair use. To the extent it qualifies as fair use, it would not need to be licensed. To the extent there are certain uses that do not qualify as fair use, there would be a need to obtain licenses. Then we have asked the further question of how would that be done as a practical matter? Can it be handled through direct licensing? Should it be handled through collective licensing? Or should Congress consider some sort of new compulsory license system?

So, a lot of open questions still and we will be exploring all those as we review the responses to our Notice of Inquiry.

Mr. JOHNSON of Georgia. Would licensing be sufficient?

Ms. PERLMUTTER. It would certainly deal with the need to have authorization if a use falls within the rights under the Copyright Act and doesn't qualify as fair use. So, it would deal with the authorization element. Presumably, it will also deal with the compensation element and depending on the terms of license, at the license, it could also require credit being given to the creators.

Mr. JOHNSON of Georgia. Thank you. My time is about to expire, so I will yield it back.

Mr. ISSA. I thank you for the six-seconds. We now go to the gentleman from Virginia, Mr. Cline.



Mr. CLINE. Thank you, Mr. Chair. Register Perlmutter, thank you for being here. You do a great job, and your 444 employees are well served.

I want to go back to the subject of a hearing we had back in July with the MCA and Section 1201 and right to repair. The DMCA was introduced back in 1998 to address the evolving relationship between copyright, the internet, and merging technologies. Section 1201, as you know, prohibits the circumvention of technological protection measures designed to safeguard copyrighted works. Your office oversees a triennial rulemaking process pursuant to the DMCA to grant specific exemptions to 1201, balancing copyright protection with technological advancement. Some have called for reform of this process, particularly those who rely on exemptions to enable third-party repair of devices with TPMs.

With respect to those issues, do you believe that Section 1201 should be modified statutorily, or do you think the Copyright Office will make an authority sufficient to address the needs of copyright holders and consenters?

Ms. PERLMUTTER. My answer would really be both. We are able through rulemaking to address the right to repair issue and we have done it in I think in the last three successive rulemakings. On the other hand, that is not the most efficient way to do it. It requires a lot of work from stakeholders and from the Copyright Office every three years. For that reason, in our report on Section 1201 a few years ago, we did recommend a statutory permanent exemptions for the right to repair in appropriate circumstances and we still believe that would be advisable.

Mr. CLINE. Can you talk about what are the most important reasons that led to your office's decision to expand those exemptions in that space?

Ms. PERLMUTTER. We did hear that there were many situations where because copyrighted software is incorporated into devices of various kinds, and because it is protected by encryption or other technological measures, that the MCA's prohibition on circumventing technological measures made it impossible for people to get access for purposes of repair. So, for that reason, in particular contexts which were medical devices, consumer devices, and vehicles, we did put in place, we recommended to the Librarian of Congress, and she put in place, I should say, exemptions allowing circumvention in those situations to make repairs.

We continue to believe that is a valuable tool for people to have and therefore we would support addressing it in a permanent way rather than through a triennial rulemaking.

Mr. CLINE. So, in your view, this expansion could lead to a proliferation of third-party repair shops and emergence of a more competitive and robust repair industry?

Ms. PERLMUTTER. It may, yes.

Mr. CLINE. Now, that you have recently initiated your ninth triennial rulemaking process, we know that petitions for renewing existing exemptions and new exemptions were due August 25th, can you offer any insight into new exemptions that are being requested and how they compared with requests over the past several rulemakings?

Ms. PERLMUTTER. We have had a few new requests, not a deluge of them. We never know until we get them. We will be issuing a Notice of Proposed Rulemaking in October which will set out our recommendations on all the requests, but I don't think anything will be a tremendous surprise. There are a number of requests to renew existing exemptions or expand them and just a few new ones, not a lot.

Mr. CLINE. Talking about TPMs, rights holders argue that aside from protecting IP TPMs, ensure device safety, security, and reliability, what has your office found in terms of whether the increased granting of exemptions weaken IP rights for owners and present security issues for consumers?

Ms. PERLMUTTER. We have not been made aware of any serious problems arising from any of the exemptions that the Librarian has granted. So far, what we have recommended, and the Librarian has adopted, have been very carefully delineated exceptions that are drafted in such a way that we believe avoids negative impacts.

Mr. CLINE. Thank you. I yield back.

Mr. ISSA. I thank the gentleman. We now go to the Ranking Member of the Full Committee, Mr. Nadler, for five minutes.

Mr. NADLER. Thank you, Mr. Chair, and thank you for appearing before the Subcommittee. Unlike most other regulatory agencies, the Copyright Office has taken concrete steps toward studying and guiding the adoption of artificial intelligence with its guidance and Notice of Inquiry. How do you see the Copyright Office's role in AI regulation?

Ms. PERLMUTTER. We have two separate roles. One is our role as the administrator of the Copyright Act and registering applications or registration, accepting applications for registration. There, we are having to make day-to-day decisions looking at specific examples of works created using AI technology and the extent to which there is a human contribution that can be protected by copyright. So, in a way, we are a bit of a natural laboratory for looking at what the dividing line is between human and computer creation.

The second role that we play is as an advisor to this body and also to the courts and to other Executive Branch agencies on copyright law and policy. In our Notice of Inquiry, we are looking at all these issues. We are looking at whether we need to refine in any way the guidance that we issued in March on registration and we are looking at what the policy implications are and whether we would recommend any changes to legislation or regulation.

Mr. NADLER. Well, you may have answered part of my next question. How should intellectual property be considered when Congress or the Executive Branch as a whole decides to regulate AI?

Ms. PERLMUTTER. I am sorry. Can you repeat the question?

Mr. NADLER. How should intellectual property be considered when Congress or the Executive Branch as a whole decides to regulate AI?

Ms. PERLMUTTER. I think as a result of the input that we will get in response to the Notice of Inquiry we will have a better sense of the extent to which any changes to the copyright law are necessary. I know that this overlaps a bit with some of the questions more broadly affecting society from the development, in particular, generative AI dealing with security issues, and dealing with pri-

vacy issues. So, I think it is important to keep an eye on potential overlaps and potential relationships. At the moment, it appears that the copyright issues could be dealt with separately, that we don't yet see any necessary overlap between other initiatives relating to AI, but that may change as we continue to examine and follow what is happening in the space.

Mr. NADLER. Thank you. What are the potential pitfalls of AI adoption in artistic fields like music, visual arts, and writing?

Ms. PERLMUTTER. There have been great concerns expressed by creators and performers about the impact of a proliferation of AI-generated content on their ability to make a living. There are still a lot of unknowns about what the economic effect will be, and we are looking at those issues as well as the legal issues.

In terms of the protectability of AI-generated content, there are a lot of questions about the extent to which it might replace human-generated content, what consumers are going to be interested in seeing, hearing, and listening to. So, all these issues are very much up in the air. We are looking to find out through the Notice of Inquiry all the concerns that people have, and we will take those into account in writing a report once we have had a chance to review the input.

Mr. NADLER. Thank you. A professional portrait artist takes an average of 3–6 months to create a work of art. As they become more popular, their work will often change hands, becoming more valuable with each sale. If the artist will never see a painting of these later sales, does the Copyright Office continue to support the passage of Resale Royalty Scheme for visual artists?

Ms. PERLMUTTER. Yes, we do, for exactly the reason that you mentioned. I think the copyright system for a long time has not served visual artists who create unique works of art as well as it has served other types of creators and having the ability to obtain a share in the money that is made when an original work is resold is one way to allow an artist to continue to benefit from an increased demand.

Mr. NADLER. Thank you. My last question is under the current statutory framework, radio broadcasters do not need to compensate artists when their songs are played on AM/FM radio. What would be the benefits of legislation requiring royalty payments to the broadcast of artists' songs and what resources would the Copyright Office need to distribute those royalties?

Ms. PERLMUTTER. This is an area where the Copyright Office for many years has recommended legislation. The United States is one of very, very few countries in the world that do not provide a full public performance right for sound recordings covering over-the-air broadcasts and we believe it is past time to do so. If we do so, that will mean more money coming into the United States from other countries that provide that right to performers, but only on a reciprocal basis, so they will not pay performers in the United States because the U.S. doesn't have an equivalent rate.

Mr. NADLER. Thank you for supporting Chair Issa and my legislation and with that, I yield back.

Mr. ISSA. Thank you. We now go to the gentleman from Texas, Mr. Moran, for five minutes.

Mr. MORAN. Thank you, Mr. Chair. Director Perlmutter, thank you so much for your time today. I wanted to start out by talking a little bit about what kind of cooperation we have had across the globe with dealing with copyrightability of AI-generated works. Can you tell me what level of cooperation we are currently engaging with other countries across the world with respect to this issue?

Ms. PERLMUTTER. Yes, that is a very important question. Thank you. Of course, we can't only look at the issues within U.S. borders because the technology involved in AI can be international in scale. The databases can include copyrighted works from around the world. The technology is developed by different groups around the world, so we need to think about the international implications.

We are in touch with our counterparts in other countries. I have been to numerous meetings just over the last nine months with copyright policymakers in a plethora of different countries, so we are trying to make sure that we talk to each other, that we understand what is happening and why.

We are also participating in conversations through the World Intellectual Property Organization with other countries as well. The goal really is to say having a certain level of consistency and how we treat this issue and how we address the issue is going to be desirable. We don't need to have identical laws, but we should have consistent laws.

Mr. MORAN. I like the way you put that because we certainly want to contain our sovereignty here and make our own determinations, but consistency certainly provides some benefits to our human artists.

Who is leading on this issue as you have been talking across the globe? I met with some folks from the E.U. Parliament last week. They seemed to be doing a lot in this space to determine what kind of framework should exist in the copyright and AI space. Who would you say is somebody we need to look at for leadership in this world that we need to cooperate with?

Ms. PERLMUTTER. It is interesting because the Copyright Office here has become the leader in looking at the copyrightability issue because of our system of examining works submitted for registration. So, a lot of countries are looking to us on that particular issue.

On other issues, yes, the E.U. has moved forward with The AI Act, which I believe is expected to go into force later this year, and that deals with transparency issues and the question of providing information about what copyrighted works have been input into the machine. Then, we have seen a lot of activity also in other countries, such as, Japan, Korea, and Singapore, for example.

Mr. MORAN. Let me switch gears and talk about the Copyright Claims Board for a moment. At the one-year mark of its establishment, there were over 500 cases filed with the Copyright Claims Board. Does the Copyright Office have enough resources to ensure the smooth operation of that board? Could you talk about that?

Ms. PERLMUTTER. Yes. Thank you for that question. So far, the answer is yes, but we need to see how this evolves in the coming months and years. So far, the cases are coming in at a pretty steady rate and our fears in the beginning that we might be inundated have not yet happened, so there is plenty of work. At the mo-

ment, we have a team that is large enough to handle it. We will certainly come back and report if that turns out not to be the case.

Mr. MORAN. Speaking of reports, how are you keeping track of the statistics and the outcomes of the CCB cases? Talk to me about that.

Ms. PERLMUTTER. A lot of data and information is publicly available on our website about the cases that have been filed. We are also developing internal charts and graphs to try to get a sense of what is happening and in what sectors. We will continue to make information available as is feasible.

Mr. MORAN. All right, and then finally, we have got about a minute, I want to go back to this NOI that you were talking about earlier. In August of this year, as you noted, “the Copyright Office initiated a Notice of Inquiry to better understand the use of copyrighted works in training AI models.” As of about September, mid-September, I think you guys have had 15,000 responses. I know we are not yet to the deadline of responses. Can you highlight some of the key feedback you have already received including before the NOI?

Ms. PERLMUTTER. I think what tends to happen is that we will get a rush of early responses as soon as we publish our notice and that is what happened. That is why the numbers seem high. Then we will tend to get many of the much more detailed responses late, like probably right near the deadline. So, at present, we are still going through the responses we have received so far. I think they have tended to be mostly reactions to the fact that we are doing the study and people talking about how important this is and how major the impact could be on their lives and careers.

Mr. MORAN. OK, thank you, Director. I yield back.

Mr. ISSA. I think the gentleman. We now go to the gentlelady from North Carolina, Ms. Ross.

Ms. ROSS. Thank you, Mr. Chair. Thank you for joining us today, Register Perlmutter.

My home district in North Carolina is home to creators in a variety of creative fields from musicians to visual artists to filmmakers to writers. As a matter of fact, we are having a bluegrass festival, international bluegrass festival this weekend which I am sorry I will not be there for. We all benefit from the work of these artists who make our lives fuller and richer with their creativity, their skill, their dedication, and their craft. They would not be able to produce the work they do without strong copyright protections that allow them to make a living as creators. So, I am grateful for this opportunity to hear from you about initiatives that the Copyright Office is taking to ensure that creators can continue to profit from their work.

In June 2022, the Copyright Office report titled, “Copyright Protections for Press Publishers,” in that report, the Office addressed the fact that there is still no practical method available from the Copyright Office for copyright owners of dynamic and voluminous content, such as a news website or a mobile app to register their content. The advent of AI which enables new types of infringement puts publishers in an even more precarious position, as we know the news industry is also in a precarious position. In the report, the office stated the office takes these concerns seriously and is consid-

ering how to best address them as part of its ongoing modernization initiative.

How has the office taken steps to address these concerns.

Ms. PERLMUTTER. We do take the need for this very seriously and in fact, we are working on a Notice of Proposed Rulemaking at this moment on a group option for registering news websites, so that should appear soon. We believe we can do it within our existing technological capabilities and not wait until ECS is fully developed.

Ms. ROSS. Thank you. I am the lead democratic sponsor, along with the chair of a bill called the Pro Codes Act which would protect the copyrights of standards and codes incorporated into law while requiring a free version of each code to be published online. At our July markup of the Pro Codes Act, questions were raised about whether granting copyrights in industry standards such as the National Electrical Code was somehow improper or violated the government edicts doctrine. Given that the Copyright Office has issued thousands of copyright registrations for industry standards over the course of decades, it appears that the Copyright Office does consider such standards to be copyrightable.

Can you further explain why allowing the private sector authors of standards to obtain and protect copyrights, even where those standards are later incorporated by reference into law does not violate the government edicts doctrine?

Ms. PERLMUTTER. Our view is that the privately authored sets of standards are protected by copyright, as you note. This is an important incentive for the work that is required to develop these standards which can require a lot of thought and expertise, but that at the same time, the public should have access to them when they are incorporated into law because the public does have a right of access to the law.

The courts have generally dealt with this issue so far by saying that while the standards themselves may be protected by copyright, the use of them generally falls under fair use if it is for purposes of using and applying and understanding the law. So, at present, we think the courts are handling this in an appropriate way.

Ms. ROSS. To compensate copyright holders for the use of their work to train AI models, some have suggested creating a licensing-type system for these works, similar to what the Music Modernization Act streamlined for music. From what you have seen of the Music Modernization Act effects, what do you think about these proposals?

Ms. PERLMUTTER. First, I would say I think the Music Modernization Act is working very effectively. The issue of whether there should be a similar license for training AI is a complicated one. It would involve all types of works, not just musical works, and be far reaching in its scope. That is why we are asking questions about it in our Notice of Inquiry. I think there are a lot of practical issues involved that need to be explored including about how the license fees would be set, how it would be distributed, and if it is, how it can be made feasible given the volume of works that would be involved.

Ms. ROSS. Thank you, Mr. Chair. I yield back.

Mr. ISSA. Thank you. Thank you very much for your line of questioning.

Now, we will go to the gentlelady from Florida, Ms. Lee.

Ms. LEE. Good morning, and thank you so much for being here. I would like to start by returning to the discussion of the Copyright Claims Board and specifically, I think it is very interesting that you made great use of that, and it seems to be off to a productive start. I am interested though, there is a set of claims that were rejected because they were noncompliant, or they didn't meet the technical standards for going through that resolution process.

Could you share with us what your office is doing to provide resources or guidance for those who are trying to utilize the Copyright Claims Board process?

Ms. PERLMUTTER. Yes, thank you for that question. I am very proud of what we are doing to help people use the process. We have a website with a wealth of information. We have a handbook to tell people what they need to do to use the system. We have people who answer the phone and answer questions if anyone calls. We are also reaching out to get law school clinics and volunteer lawyers for the arts signed up to help people navigate the system even though they do not need to be represented by an attorney. We are doing a lot of outreach, a lot of public speaking about it.

The system is set up so that there are a number of safeguards against inappropriate claims being brought so that was very carefully thought through by Congress in enacting the CASE Act, of course, and there are several opportunities along the way if a claim is noncompliant, the Board attorneys will tell the claimant and the claimant has two opportunities to revise the claim to make it compliant. I will say some of the lack of compliance we see is people sometimes bringing claims that, for example, don't involve copyright law, maybe a patent claim, or a claim against a foreign respondent which is not permitted under the statute.

Ms. LEE. Based on what you have seen so far with the inception of the program and its progress to date, what do you anticipate being the future of the program? Do you anticipate it is going to be broadly utilized? Any challenges or things that you need Congress to do to help you succeed?

Ms. PERLMUTTER. It seems to be very successful so far. The public reaction, the public reviews of what is going on have been positive. The system is working. We have had a number of final decisions, some based on settlements that have been entered into the record and we have found that while some respondents opt out, many respondents also are happy to proceed in the CCB and prefer the certainty of knowing that their potential damages are limited. So, we think it is working well and the upward trend has been quite steady, so we think that it will continue to go up, but presumably unless something really unusual happens, the trajectory won't change. We may need further resources, especially as we seek to further develop the eCCB, which is the electronic case management system. We will keep the Subcommittee apprised.

Ms. LEE. Speaking of your electronic case management system, one of the things you touched on in your testimony was your efforts to modernize and replace legacy IT systems. Would you share with us what you are working on there and your strategic plan to ensure

that you are making the right investments that are going to stand the test of time?

Ms. PERLMUTTER. It has been a huge priority for the Copyright Office. IT modernization, we are now in the fifth year of our originally planned modernization effort and now we are moving toward continuous development. The main highlights, as I described in my testimony, already we have moved from a very archaic paper-based recordation system in the last two years to one that is online. That has been huge. We are now focusing on registration. We expect in the next year to begin user testing for various components of the registration system including the handling of electronic deposits.

We are also going to start recording Notices of Termination online which we have not yet been able to do and that will start in the next year. We are making more and more historical records available online, so people no longer need to come to our offices in Washington, DC, to do research. We are experimenting with AI tools ourselves to extract metadata from our records. So, we have a lot planned.

Ms. LEE. Thank you. I yield the balance of my time to the Chair.

Mr. ISSA. Thank you. That metadata brings up just one quick question I will inject. You mentioned the disclaiming of AI produced. Can you envision that along with disclaiming that they include the metadata that shows where they—what they ingested, how it turned into what they produced that they are disclaiming? Are you considering that within your IT modernization?

Ms. PERLMUTTER. That is a very interesting idea. We have not yet considered it. We generally have been trying, however, to make the application for registration as easy and simple as possible and have heard some concern that we might be asking for too many details and people would prefer that we make it still easy to fill out an application without having to provide a lot of information. We have to keep that in mind as we look at that.

Mr. ISSA. Thank you. To be continued. With that, I go to my colleague and classmate from many years ago in Congress, Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chair. Thank you, Director, for being here. Earlier this year, it was reported that TikTok was limiting a number of songs available within its app for some users in Australia in an attempt to test the importance of music to the app's users. As a result, the number of people using TikTok in Australia declined for three consecutive weeks after the rollout of the test, according to numbers from the data research firm data.ai.

The test revealed what many creatives already know to be true. Much of TikTok's success can be attributed to copyright works by musical artists, many of whom I represent in my Los Angeles District, and who are often under compensated for the use of their work on TikTok's platform.

Director, in light of what we have seen in Australia and what is suggests, what thoughts do you and your office have about how the United States can ensure that creators and rights holders are protected when their work is used on digital platforms?

Ms. PERLMUTTER. Well, this is obviously a top priority for all of us in the copyright field. We have done a number of things over the years to contribute to that effort.



We, of course, don't have enforcement capabilities in the Copyright Office, but we do provide input from a policy perspective on what the law should say. That has included over the last few years a report on Section 512 of the DMCA and some improvements that could be made in that section, as well as looking at how copyright owners are using technological measures to identify and protect their works. We continue to be interested in that and to look at ways that we can convene interested parties to continue to discuss improvements.

We also continue to follow and review what other countries are doing in this respect and what tools have been adopted elsewhere that could be useful to American right holders.

Finally, we work closely with the Executive Branch on initiatives that have to do with international enforcement, including the U.S. Trade Representatives Special 301 report and Notorious Markets report.

Mr. SCHIFF. In terms of TikTok, do you think the remedy is primarily an enforcement one, or are there legislative changes you have recommended as a policy matter?

Ms. PERLMUTTER. We have not, to date, looked at potential legislative changes. I have not been made aware of any proposals from stakeholders but would be interested in hearing more about it.

Mr. SCHIFF. Let me turn to something else. Earlier this year the Supreme Court decided the *Warhol v. Goldsmith* case dealing with fair use. How do you think that decision impacted or clarified the way courts are supposed to apply the fair use analysis? How do you expect this ruling to impact any future rulemaking from the Copyright Office regarding the use of copyrighted material to train AI models?

Ms. PERLMUTTER. We agree with the Supreme Court decision, which adopted a lot of the analysis of the U.S. Government. The government participated in that case as an amicus.

It may be that the case will have an influence on the fair use analysis of the ingestion of copyrighted works for purposes of machine learning. It requires, well, it affirms the need to look at the markets for both the original work and the work that is based on the original work, the work that is the subject of the infringement claim, and to look at the extent to which they are competitive, that they share the same market, and the extent to which the defendant's use is commercial in nature.

So, how that will apply to the analysis of fair use in the ingestion of copyrighted content for AI training is still up in the air. It will certainly affect it. We are watching the court cases to see how the courts react. We will, we have asked questions about this in our Notice of Inquiry. We will be analyzing it once we receive the responses as well. It does seem as if it will have an impact.

Mr. SCHIFF. Well, certainly by those measures, whether it is in competition, the marketplace that test I think would be met, and that it is economic in nature is also plainly the case. Well, thank you, Director. I appreciate your work.

With that, I will yield back, Mr. Chair.

Mr. ISSA. Could I ask you yield to me?

Mr. SCHIFF. Of course.

Mr. ISSA. I just wanted to followup on one thing. You said fair use and then said use in commerce. Would you like to expand that linkage that fair use for not commerce is dramatically different than fair use when it is, in fact, turned into revenue?

Ms. PERLMUTTER. Well, fair use is very context specific and requires weighing a lot of factors, as I am sure you're aware, Mr. Chair. One of the factors are the nature of the use, including the extent to which it is commercial or noncommercial. So, the courts will look at that as part of the total weighing, but it is not determinative. What the Supreme Court did in the *Warhol* case was to elucidate a bit further what the relevance was of the commerciality of the use.

Mr. ISSA. Thank you. Thanks for expanding.

With that, we go to the gentleman from South Carolina, Mr. Fry.

Mr. FRY. Thank you, Mr. Chair.

Thank you, Madam Register, for being here today. I really appreciate the importance of this hearing and your testimony today.

Judge Moran hit on this earlier. I want to explore this topic a little bit further. In August of this year, the Copyright Office initiated the NOI, the Notice of Inquiry, to better understand the use of copyrighted works in training AI models. Judge Moran asked, "but I want to expand on that a little bit." What is—and I understand the themes. I know that the time is not yet finished in which people can comment. What are some of the early themes that you are seeing or the individual comments that come to your mind as some of the early feedback that you are receiving on the NOI?

Ms. PERLMUTTER. I can't say that I have read all the thousands of comments we have received so far. Lawyers in the office are in the process of doing that. My understanding is most of the early comments came from individual creators and artists expressing concerns over what is happening.

Mr. FRY. Just about the use of AI within their field?

Ms. PERLMUTTER. Yes.

Mr. FRY. Are they making suggestions on how to fix that, or they are just airing grievances?

Ms. PERLMUTTER. Let me get back to you with an answer to that question. I will say it is interesting because creators and artists are very much on both sides of the issue in various ways, because I do want to make the point that many of them are using AI as a tool in the creation process and want to be sure they can continue to do that. At the same time, they are concerned about what the impact will be if AI-generated content is competing in the marketplace with their works.

Mr. FRY. Madam Register, do you have any idea on the timing of when the Copyright Office might be able to make recommendations to us or a report to us based on this feedback?

Ms. PERLMUTTER. I would like to say as soon as possible. I know that timing is important here because technology is evolving very rapidly and its impact is likely to start being felt. We would like to be able to make recommendations in a short timeframe.

At the same time, we are aware that we are likely to be getting tens if not hundreds of thousands of comments. The comment period will end at the end of November. We will need some time to finish analyzing and absorbing and then writing the report. Hope-

fully, it will certainly be in 2024. I certainly hope it will be in the first half of 2024.

Mr. FRY. Thank you. Some of the most resource intensive projects that the Copyright Office has on its agenda over the next six months, I imagine that is probably one of them. Do you have the resources to appropriately carry out those tasks, taking into account stakeholder comments, where applicable, and giving them due consideration?

Ms. PERLMUTTER. I really appreciate that question. I believe we have the resources to do that at this point. It is true that we find ourselves doing more and more work as the copyright policy issues proliferate these days. At some point, we may need further resources. At present, we are well equipped to handle the work on our plate.

Mr. FRY. Thank you for that. Under the MMA, the Copyright Office has an ongoing regulatory authority to promulgate regulations, to implement the law, and ensure that proper functioning of the Medical Licensing Collective in its duties, including ensuring it acts as a neutral administrator serving three primary sets of stakeholders, songwriters, publishers, and digital service providers.

What steps can the Copyright Office take within its existing authority to improve oversight and transparency of the MLC, particularly, as redesignation approaches in 2025?

Ms. PERLMUTTER. We are taking a number of steps in that respect. We hold regular meetings separately with each of the interest groups, with the publishers, the songwriters, the digital service providers, and the MLC itself. We have open rulemakings. We continue to have an open door for people to raise issues with us. We will, as you mentioned, commence a public notice asking for input with respect to redesignation starting early next year. We do think it is very important to make sure that all sides are heard and feel that they are able to participate in the process.

Mr. FRY. What are some of the issues that are brought up in this, I guess, this sphere?

Ms. PERLMUTTER. Well, the issues are constantly ongoing. Somewhere there is, I think in general the process is working quite well. We do hear questions about perceptions that the board is not balanced because there are more members from the publishing community than the songwriter community. That is something that is set by statute. So, that would be an issue for Congress to address.

Mr. FRY. OK. Final question. Given the increased usage of name, image, and likeness in the outputs of generative AI, what are your thoughts on how Congress can best understand and legislate on this issue?

Ms. PERLMUTTER. This is also one of the issues that we are asking for input on in our Notice of Inquiry. A few years ago, the Copyright Office did a study on moral rights in the United States and as part of that study suggested that Congress would consider, might consider enacting a Federal right of publicity. There are a number of State laws that could cover the imitation of name, voice, and likeness that is currently taking place using generative AI. It is a patchwork of different laws in different States. So, the question is whether a Federal law that might either preempt State laws or

at least set a ceiling or floor for what State laws can say would be desirable.

Mr. FRY. Thank you. I really appreciate that.

With that, Mr. Chair, I yield back.

Mr. ISSA. Thank you.

With that, we go to the gentlelady from California, Ms. Lofgren.

Mr. LOFGREN. It is Lofgren.

Thank you very much. Thank you—

Mr. ISSA. Sorry, Zoe.

Mr. LOFGREN. Ms. Perlmutter. First, just a kudos for the modernization efforts. I know we are not done yet, but we have made great progress. I want to thank you and the Librarian as well.

Just a note on music modernization, I thoroughly think that was a triumph of collegiality and cooperation. There are a few bumps in the road. Part of it may be our fault. In terms of the songwriters, I am hoping that you can make an extra effort to reach out to them because of the, what Congress did, because we want to make sure everyone is heard. I know you believe in that.

I want to talk about the right to repair. We haven't talked that much about Section 1201 in terms of reform. I raise that with some trepidation because people who have content worry, and I understand that. If you have a software tool that protects content, if it protects a movie, if it protects your song, if it protects your book, if it protects your visual art, you shouldn't be able to break that. So, I am not suggesting that.

However, if you are using a software tool to protect something that isn't content, which is what you have addressed, that is a different situation. I am wondering, you can legally fix your tractor now, but you can't get the software that allows you to fix your tractor under 1201.

So, I am wondering if we could craft a narrow exception that would not cause any concern among the content community that is specifically, narrowly, and unequivocally only directed toward the right to repair. Do you think that is possible to do? If so, would you help us?

Ms. PERLMUTTER. Yes, I do think it is possible. In our office's report a couple of years ago on Section 1201, we noted that we had been recommending and the Librarian had been issuing exemptions to permit repair in certain circumstances and that it might make sense to have a permanent statutory exemption, so that this didn't need to be revisited every three years. We would still support that.

Mr. LOFGREN. We do have the triannual process for 1201 exemptions. I want to thank you. When we did 1201, and I was here in the Congress when we wrote it, we didn't intend to allow cell phone companies to protect their monopolies. It was about protecting content, not factors, cell phones, or other equipment.

You have a lot of work to do. I appreciate that, that you are not asking for more staff. If we were able to either streamline the 1201 process when it relates to noncontent issues or create a narrow exception that protects content, wouldn't that help relieve the workload in your office?

Ms. PERLMUTTER. Yes, I think there are several areas where 1201 could be amended that would make the process easier. I have to say I was around also when 1201 was written.

Mr. LOFGREN. Yes.

Ms. PERLMUTTER. The idea of the amount of work it would require terrified me at the time. We have learned how to handle it. It is a lot of work.

Mr. LOFGREN. In terms of the right to your person, you have talked about that. It is really State law, publicity about yourself. It is important that we take steps more urgently on that given the artificial intelligence is already here. People are going to need to take action to protect their appearance and their personhood in AI.

We don't have a statute I think in mind yet. I would very much welcome and ask for your assistance in crafting something that would provide that protection, but more importantly, that would think through how we might give people an easy avenue to enforce that right, because AI is massive. It is here. It is not going to be stopped. Yet, the potential for people to have their personhood misused is real, already here. Having a right and being able to enforce that right are two different things. Do you have comments on that?

Ms. PERLMUTTER. We would be happy to assist in drafting.

Mr. LOFGREN. I appreciate that very much. We will followup with you.

Mr. Chair, I yield back and thank you.

Mr. ISSA. I thank the gentlelady.

We now go to the other gentleperson from California, Mr. Lieu.

Mr. LIEU. Thank you, Mr. Chair. I want to thank Chair Issa and Ranking Member Johnson for holding this important hearing on copyright issues and to you, Register Perlmutter, for being here today and for your hard work and leadership.

I also want to align myself with the comments of Congresswoman Zoe Lofgren in terms of the Music Modernization Act, which is coming up on the five-year anniversary. I was proud to have been a cosponsor of the Act. The MMA transformed the way songwriters, music publishers, and tech platforms operate under streaming models.

The creation of the Mechanical License Collective has streamlined the administration, collection, and distribution of mechanical royalties. To date, it has paid out more than 1.3 billion to songwriters and publishers. As Co-Chair of the Songwriters Caucus, I want to thank you and your entire team for continuing to work with the MLC in meeting its mandate to serve songwriters and ensure that they are compensated.

So, I know you have answered a number of questions on fair use. I just want to understand. You are currently investigating the issue of whether it constitutes essentially fair use if a large language AI model trains itself on copyrighted works. Is that correct?

Ms. PERLMUTTER. Yes, it is part of the questions in our Notice of Inquiry. Of course, it also will depend on the exact circumstances. So, not every use in training will be the same for fair use purposes.

Mr. LIEU. When do you expect that to be completed?

Ms. PERLMUTTER. Well, that will be part of our report or reports coming out of the NOI, so as early as possible in 2024.

Mr. LIEU. OK. As part of the investigation, it is not only whether a large language model, let's say it trains itself on copyrighted Taylor Swift songs, but also you are looking at if it outputs lyrics in the style of Taylor Swift songs. Are you looking at whether that is fair use as well?

Ms. PERLMUTTER. Yes. Of course, it will also be, whatever we say in our report will also be informed by any court decisions that have come out by that point in time in the cases that have been brought.

Mr. LIEU. You have also said that essentially perhaps it should be essentially a Federal right for voice recordings because right now audio is not copyrighted, correct?

Ms. PERLMUTTER. The style or sound of a voice is not protected by copyright.

Mr. LIEU. Your office had issued a report basically suggesting that there should be some sort of Federal name, image, and likeness law essentially.

Ms. PERLMUTTER. We recommended that Congress consider that, yes.

Mr. LIEU. OK. That report laid out essentially a proposal that was around the same level as what California's protections are. Is that correct?

Ms. PERLMUTTER. I am not sure if I would say it was the same level. It contained some of, it talked about the elements of that legislation in California. Of course, the report came out before we had the generative AI that we have today. So, any legislation would need to take into account what the current capabilities and contexts are.

Mr. LIEU. All right. Thank you. In March of this year, your office issued, basically announced that a work that involves "sufficient human authorship" can be copyrightable. So, let's say someone uses AI to write a song of which over half the lyrics are written by AI. Would that constitute sufficient human authorship? How do you determine what that means?

Ms. PERLMUTTER. I wouldn't impose any strict percentage or numerical limit. So, less than half could be sufficient human authorship. It is really decided on a case-by-case basis. I find it very useful to think of this by analogizing it to a human and human situation. So, for example, if two people collaborated in writing a song, did each of them contribute enough authorship to make them co-author of the song? If the answer is yes in that context, then it should be the same in the AI context.

Mr. LIEU. Ultimately for this you are just going to have to rely on trust, right, that someone actually discloses they use AI to help them with whatever creative work they are trying to copyright.

Ms. PERLMUTTER. Yes, but that is true of all applications we receive. Applicants have to certify that what they are saying is truthful. It is a government document. There are penalties for making false statements. Of course, you could risk losing your registration.

Mr. LIEU. Do you view AI software as different than other kinds of software that creators have been using for decades to make their creations better?

Ms. PERLMUTTER. Yes, that is a good question. I think what we are seeing with the new generative AI in the last nine months or so does seem to be different, not just in speed but in kind from the

technologies that were used before. I think in the past AI was used more as a tool. Now, what we see is that it is generating content that if it were generated by a human being would be protected by copyright. So, I think we have moved to a somewhat different world than we were in before.

Mr. LIEU. Thank you.

I yield back.

Mr. ISSA. I thank the gentleman.

We now go to the gentlelady from Pennsylvania, Ms. Dean.

Ms. DEAN. I thank you, Chair. I thank the Ranking Member for hosting and holding this oversight hearing. Thank you, Register Perlmutter, for your work and the work of your 444-person team to carry out the mission of the U.S. Copyright Office, which is promoting creativity and free expression by administering the Nation's copyright laws and by providing impartial expert advice. I thank you for that work.

As an author myself, I benefit from and importantly rely upon the protections that copyright law provides. As we have all been discussing here, with the rise of AI these protections are more important than ever. So, I guess my theme for my five minutes is twofold. We must protect the spark of ingenuity that makes copyrighted work uniquely human, and so at this precipice, what are the top things we do to protect human content.

So, I was thinking about your office. Are you able to identify AI-generated work? Are you concerned about applicants hiding AI copyright, AI work within a copyright registration request application? What are the steps that you go through? I have to say nightmarishly I go back to the days when I was a professor of writing. I would be reading papers and wondering are those student's words or are they someone else's. So, what is it that you have to do now in this world to identify AI within an application?

Ms. PERLMUTTER. Our examiners look carefully at an application. We have issued this guidance that tells people if AI-generated content is included they need to disclose it. You are right. We have to trust, and we do take as factual the statements that are made in an application unless we have some reason to think they are not accurate.

So, there have been situations where it has been obvious from the face of an application that some of the content in the work may have been generated by AI. So, our examiners will go back and ask the applicant about it and engage in some correspondence. What we have seen so far in some of the cases we have had is that the result is that the applicant will then end up disclaiming some portion of the work that is submitted. So that has worked, for example, in books where the illustration was generated by AI, but the text and the selection and arrangement of the text with the images was done by the human applicant.

So, there is no way to be 100 percent sure. We are not unique in having that problem in today's world. We do our best to see from the face of the application and the deposit whether we think there is AI-generated content. Again, there are some legal requirements for people to be honest in the content, in the statements that they make to a government office.

Ms. DEAN. Absolutely. I was thinking of Mr. Lieu's question and sort of the reverse side of that. The office, your office instructs applicants to disclose all AI-generated content that is more than *de minimis*. What is *de minimis*?

Ms. PERLMUTTER. It is not a new concept. So, the same rules apply, for example, if the work contains content created by a third party. That also has to be disclaimed if it is more than *de minimis*.

We had a Webinar, we held a Webinar this spring where we walked people through the guidance and gave them a number of examples and told people that essentially what we mean by *de minimis* is, more than *de minimis* is if the material that is generated by AI would be protected by copyright if it were generated by a human being, then it should be disclaimed.

Ms. DEAN. Interesting, yes.

Ms. PERLMUTTER. So, we are not talking about just some small portion or something incidental, but something that, again, if a third party had generated it, if a human being had generated it, you would disclaim it as a separately copyrightable work.

Ms. DEAN. That is logical. That makes sense.

Finally, in the few seconds I have left, what has your office thought about or learned as a result of the labor disputes with the writers and the studios? Full disclosure, my son was on strike. He is part of the Writers Guild. In terms of, obviously one of the big issues was use of AI in written materials and in writers rooms. How is the Copyright Office connected there? What clear rules should we be developing?

Ms. PERLMUTTER. Well, it is a good question. Clearly the strike, both strikes, SAG-AFTRA and the Writers Guild, showed how important AI has become to authors and performers, because it was a critical part as I understand it of the negotiations.

We are now looking at what came out of the settlement on AI and analyzing it. Of course, we don't play a role because these are private party negotiations. It is not really a question of what the law says. It is a question of what they agree to. It is helpful to see what was thought to be important and what was thought to be reasonable as the private parties were negotiating. So, we will be looking carefully at the result.

Ms. DEAN. Again, I thank you for all the work that you and your office does.

I yield back.

Mr. ISSA. I thank the gentlelady.

We now go to the gentleman from California, Mr. Kiley.

Mr. KILEY. I am going to yield the balance of my time. I did just want to say thank you for your testimony. I know that your office has been very active in getting input on these very novel and vexing issues related to AI. I have certainly heard from a lot of creators who have concerns in this area. I think it is really important that we be mindful of the ability of creators to protect their rights and intellectual property moving forward.

So, with that, I yield to the Chair.

Mr. ISSA. I thank the gentleman.

I am going to try and use up a little bit of Mr. Kiley's time to challenge you to expand on making the record clear as much as we can.



So, let me go through some things that might happen to somebody's writings. You tell me whether they are clearly disclaimable, clearly ineligible, or clearly not a factor, *de minimis* as was said earlier. Spell check.

Ms. PERLMUTTER. No need to disclaim. That is a tool that has been commonly used for a long time.

Mr. ISSA. Word substitution to create enhancements such as sort of a thesaurus might do.

Ms. PERLMUTTER. I would say the same thing.

Mr. ISSA. Phrase enhancement, how is it better said.

Ms. PERLMUTTER. I would also just say the use of a tool to enhance something that is created by a human would not raise an issue as to copyrightability.

Mr. ISSA. Enhancement of desirability based on machine-learned desirability and focus group analysis.

Ms. PERLMUTTER. I also would see that more as a tool. Again, the machine is not generating something that would be copyrightable if a human generated it.

Mr. ISSA. Final question in this series. Using these types of tools but a regenerative AI, if you ingested an entire book and 40 percent of the words, phrases, and content were changed while, in fact, the underlying intent of the author wasn't and that, but enhanced the desirability and all those other phrases, would that, in fact, be either disclaimable or ineligible?

Ms. PERLMUTTER. So, the applicant wrote a book, and then 40 percent of the book was—

Mr. ISSA. Ingested, has the book evaluated by AI for all these and other ideas, and the book, although the same book with the same happy ending or unhappy ending was modified with 40 percent of the words and/or phrases being changed. I am using 40 as an arbitrary number.

Ms. PERLMUTTER. It is a tougher question. I think what we are talking about here is you have got an original copyrightable work by a human, which is the book, and then a derivative work created by the machine, which probably would not be copyrightable as a separate work.

Mr. ISSA. If you publish only the one, which is—and I am using the example for a reason. Ms. Dean said it very well. You are a professor. You are evaluating somebody's work. In my day, I had to put up with the nuns in my college objecting to my handwriting and my spelling. That has now been collectively, creatively enhanced in a way that I would probably do better in at least theology. However, I also wrote a book. I probably would have written a much better book if it was ingested by regenerative AI today.

The question is if Ms. Dean's book and my book were thrown in and hypothetically 40 percent of the words and phrases were, according to the machine, enhanced, but, in fact, the book was still a true copy of the author's work, what do you disclaim? What is copyrightable? What is not? It is an arbitrary question, but I thought for the record if you would give us your best analysis.

Ms. PERLMUTTER. Yes, it is a tough question. I think one thing that is important to understand is that what we require in a disclaimer is just something that says the work incorporates AI-gen-

erated content and an explanation of what the human contribution was. So, it doesn't require really fine tuning and specificity.

I think what your question really goes to is that these are not easy decisions. They are not easy lines to draw. So, one of the things when I talk about the Copyright Office being a natural laboratory for this is we are looking at individual applications and making case by case determinations, which is, of course, something that copyright law always requires. How do you draw the line between an idea and expression? How do you determine whether someone has contributed enough to be a co-author?

We are learning more and more each day as we look at more and more of these applications and make decisions on them. Some of those decisions are being challenged in the courts and will be being reviewed.

Mr. ISSA. I thank the gentlelady. I thank the gentleman for yielding the time.

We now go to Mr. Ivey for five minutes.

Mr. IVEY. Thank you, Mr. Chair. I want to commend you for having this hearing. I have only been on the Committee for about nine months now. I think we have done, of all the hearing we have done, I think we have done four that I would put in the substantive category. Three of them have been yours. I greatly appreciate that fact.

Thank you, ma'am, for coming today. I appreciate the great work you are doing.

I think we are in the hair-splitting segment of the hearing now. I am going to followup on some of the questions the Chair. I am trying to figure this out. I am a lawyer by training, but not productive law. I did litigation, unlike the copyright world where you are helping actual creations being made and protected.

One of the things I was wondering about was, and I think you mentioned this earlier. So, you have got sort of a human creator who generates let's say a song and uses AI to help with the—there is a portion of the song that is in part generated by the AI. That is AI that has been trained and ingested other information or music from other sources. I think what you were saying was that the creator, when the human creator comes to seek a copyright, has to explain or disclaim that there was AI generation as part of the final overall work. Is that right?

Ms. PERLMUTTER. Yes, they would not have to disclaim the use of AI as the tool, like to provide a beat or that kind of thing or to change a rhythm. They would if there was let's say a melody created entirely by AI that they incorporated into their larger musical work.

Mr. IVEY. OK. So, we will go forward with that. I have got a son that creates beats. He would disagree with where you drew that line right there, but we will set that to the side.

So, the melody line, so, and let's say then that, because we have got people who approached me, for example, and they were complaining about AI being trained using their creative work product. So, in the song that you and I just made, and this author says I had AI-trained assistance in generating this song. How was, or has there been a determination that has been made with respect to the people who helped create the content that was used to train the AI

that was then used in this song? How are they, or compensated for their work, or is it recognized even?

Ms. PERLMUTTER. Yes, well, that is a critical question right now. I know—and by the way I am a reformed litigator myself. I know there are a number of cases pending in the courts asking exactly that question.

So, assuming that the technology requires the reproduction of the works in the computer for purposes of the machine learning, there would be a prima facie case of infringement. Then the question would be whether it is fair use. Whether it is fair use might depend both on how it is used in the training and also what the output is going to be and the extent to which it competes in the market with the original.

Mr. IVEY. To what extent is this all going to be reliant on I think your term was honesty, I'll say honor code, but, the individual who—and I will preface the question with this just in my experience, to the extent compensation and the dollars get bigger, the honesty and honor code gets sometimes marginalized.

So, you mentioned some of this before, which is the certification gets signed and the like. Are there stronger enforcement and protections that could be out there for the creators of the original content that was ingested by the AI model?

Ms. PERLMUTTER. Yes, well, the honor issue and the accuracy and statements made to the government agency has to do more with the applications for registration.

In terms of litigation, what is interesting is I am seeing that more and more some of the companies that are producing and distributing AI technology and tools are beginning to say that they will license the copyrighted content that they use. Some companies that create or license themselves copyrighted content are saying that they are now going to create AI using that licensed content. So, we may be getting more and more people who are interested in making sure that there are no legal questions surrounding their use of copyrighted works to train the AI.

Other than that, the way to keep people honest I suppose is these lawsuits that are being brought, some of them as class actions. We will see what the courts have to say about the legality of proceeding without a license.

Mr. IVEY. Spoken like a true litigator, right.

Then the last question in relation to that, the CCB I guess is sort of an alternative approach. So, instead of going to court, they can choose this path, but it is voluntary. I did have a question about copyright trolls. Also, on the point you just made, to what extent could that be an avenue where these sorts of disputes get hashed out in a way that—again, a lot of the people who are musicians or writing songs are, oh, jeez, I am over my time, I apologize, Mr. Chair, aren't wealthy people.

Mr. ISSA. You are the second last. So, you are only holding up my questions. You are good.

Mr. IVEY. Thank you, Mr. Chair. I appreciate it.

Their ability to hire litigators can be limited. Is the CCB an option or an avenue that might be a viable approach for them or not so much?

Ms. PERLMUTTER. The CCB would be a possible approach. The limitation is that they can't issue injunctions. So, they can't order anyone to stop infringing. There is a limit of \$30,000 in damages.

So, certainly, the other option and the one that has been pursued so far has been bringing cases in Federal court where presumably, especially if it is a class action, there are lawyers who will get compensated at the end of the day if the action is successful.

So, I have been wondering whether we will start to see many cases involving generative AI in the CCB. So, far that has not begun to happen.

Mr. IVEY. Thank you, ma'am. Keep up the good work.

Thank you, Mr. Chair, for your indulgence.

Mr. ISSA. Thank you. Thank you for your question, because I am going to followup directly on that.

The CCB, as you say, voluntary, \$30,000 limit, creation of Congress, still in the early stages. However, the gentleman from Maryland mentioned the word copyright trolls. We are seeing a growth of what many would call copyright trolls, people who gather a few earlier words, and even when they are dramatically different, they still make the claim. There is a high cost in Federal court.

As you know, your experience in the past at the Patent and Trademark Office we created PTAB, and it is an alternate. It serves a similar purpose of adjudicating and is appealable to the Federal Circuit. It also, though, has a significant role in changing, if items end up in the Federal court, how the Federal court looks at them, because they give the obvious deference to the decision of PTAB.

Although it is not universally loved here on the dais, in this case, if we were to take the model in its infancy of CCB but empower it to be a right to go and, in fact, the decisions of it be if not substantive enough to be automatically considered adjudication, if we considered them to be admissible and some deference by the Federal court, would that be in your opinion a helpful use and expansion of the role of that?

The reason I ask it is Federal judges are perplexed trying to understand if this piece of a lyric should or shouldn't. They generally get one case in a career, where you have 500 cases in front of you today.

Ms. PERLMUTTER. It is an interesting question. I hadn't thought about that before. I will say, again, it is early days. We have only had one full written decision on the merits so far. We do have a very good board with three officers who are extremely experienced with litigation on both sides of the copyright issues. I have a lot of confidence in the quality of the decisions that are going to be issued.

So, yes, it could be that they could be useful as precedent. They certainly would be available to the public to look at. I think that is a very important aspect of the CCB.

Mr. ISSA. One of the reasons that I ask that question is that I am an old Oversight and Reform Chair. The reforms that are probably needed going forward to the institution of Congress for which you oversee it really do have to do with how the Patent and Trademark Office has been able to set fees, fund itself, and expand to serve the very people whose intellectual property is being pro-

tected. You have not been. You are a much smaller entity, in no small part because you depend on Congress to fund you.

So, one of the reforms that I want to put out here today during your visit is the idea that we have the ability on this Committee to change the structure, to provide for fee setting, to provide for a level of autonomy and expansion to meet the demands of, in fact, those entities you serve. I want to make sure that we make it clear that is something we would like to have an ongoing dialog about.

I will stop you because I don't want to be too long in this final one.

Earlier today we talked about what I call standard essential copyright, in other words, copyrights that are put into products or even into standards. Would it be helpful for Congress to, in fact, as we pretty well define standard essential patents as something which does not give up the right of the patent holder but gives a requirement to make available, even at a fee but still available? Should copyrights that are embedded in products, whether it is inside the deep bowels of an automobile or the toner cartridge of a photocopier, should that, in fact, be something that Congress addresses and defines?

Ms. PERLMUTTER. I think that is an area where attention could be useful. It may be that in the process of putting a permanent exemption into Section 1201, which as I have said we support, we could look at how to define the scope of that exception.

Mr. ISSA. Thank you. Last, copyright is a little different than patents in that just because something has been copyrighted 100 years ago or 1,000 years ago it doesn't take a lot to, in fact, create a new copyright. Would you agree?

Ms. PERLMUTTER. Yes.

Mr. ISSA. However, your office and the offices around the world today do not maintain a single database so that one can at least reference the scope and the prior art, if you will.

Do you believe that in the 21st century we should establish a global copyright database, meaning that all the entities like you around the world should, in fact, have an interoperable database so that when there is a question of whether something is new and original, or simply lifted as the gentlelady from Pennsylvania implied as a former professor, in fact, that there be an ever-expanding database? For lack of that, is that level of trust on the author perhaps a little greater than it should be in the 21st century?

Ms. PERLMUTTER. There is a lot to unpack in that question. So, I would say, first, more data being available to the public, including internationally, is definitely a positive thing. It is certainly something that people have long advocated for in the music space, because it would be very useful given the complexity of music licensing to have that kind of complete database.

One question is the extent to which that should be a function of government and the extent to which it should be a privately run database, which might be a little bit more flexible and easy to keep up to date.

One of the issues with having some kind of international government-run database is that, of course, copyright registration is not mandatory. Not all works are registered. So, by definition, it won't be completely comprehensive. Another problem is that many coun-

tries around the world don't have a registration system. So, we probably have the most extensive registration system that exists. So, there are a lot of issues to be dealt with.

Then, of course, it is also the case that, unlike patent law, with copyright law the fact that someone else came up with something similar in the past doesn't mean that your use is infringing. It has to actually be copied from the original. So, the mere fact that something was in a database, and you did something similar would not necessarily establish infringement. So, in a sense, there is less of a need on the copyright side than there is in industrial property.

Mr. ISSA. In closing, in discussions with many of the, or three of the regenerative AI producers, they all tell me that, in fact, providing the metadata that goes with the portion of the ingested material, which, if you will, the AI brain used, is, in fact, relatively easy if written into the code.

Should, like Europe, as we address mandates, should, in fact, we ensure that this information is written into the code so that, in fact, for you and other users that metadata is available, and by the way, yes, potentially for litigators?

Ms. PERLMUTTER. This is definitely one of the issues we heard a lot about in our listening sessions earlier this year and something that we are asking about in the NOI. I think there is a strong argument that some level of transparency is important for many reasons, as you say, including for the ability of copyright owners to know that their works were incorporated in some way in the machine learning.

Mr. ISSA. Thank you. Last, would you agree to take questions for the record if they come to you timely in the next week or so?

Ms. PERLMUTTER. I would be happy to. Thank you.

Mr. ISSA. Thank you.

With that, this concludes today's hearing. I want to thank our witnesses for appearing before the Committee.

Without objection, all Members will have five legislative days to submit additional written questions for the witness and additional materials for the record.

Without objection, this hearing is adjourned.

[Whereupon, at 11:53 a.m., the Subcommittee was adjourned.]

All materials submitted for the record by Members of the Subcommittee on Courts, Intellectual Property, and the Internet can be found at: <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=116404>.