



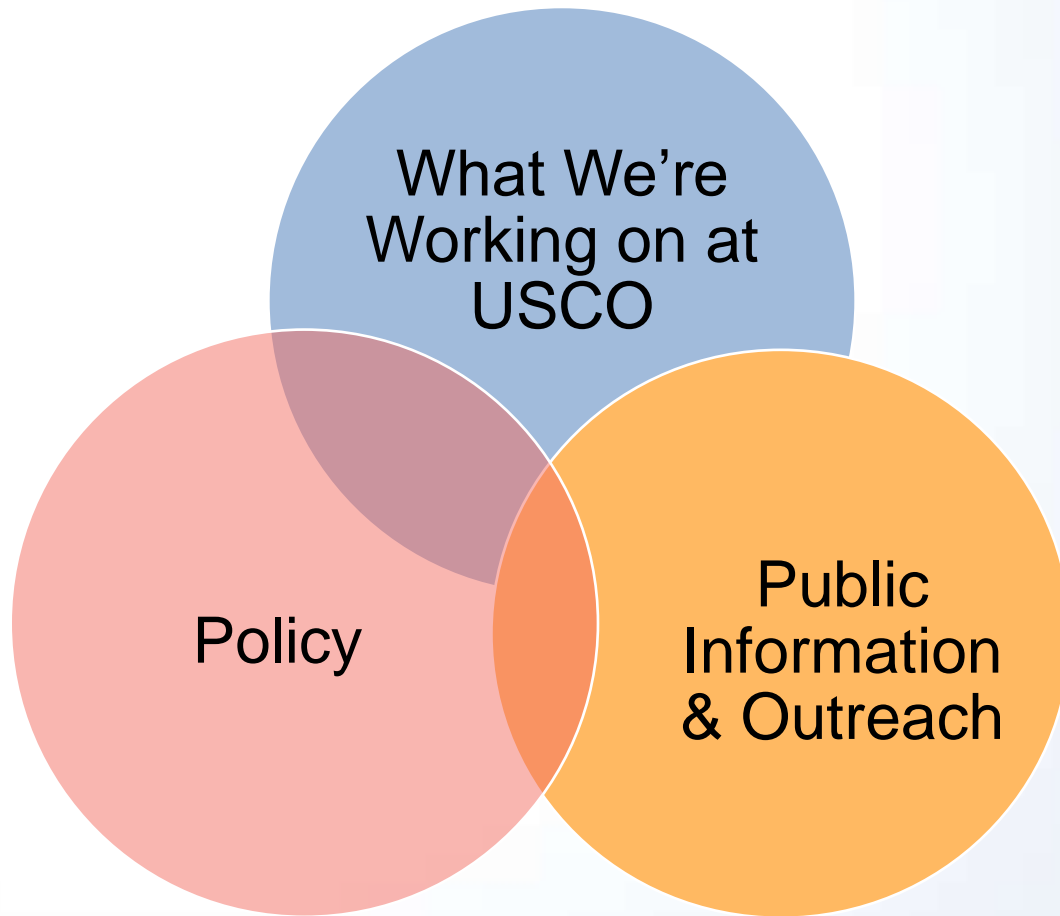
The Copyright Office at the 2019 Miami University Libraries Copyright Conference

Chris Weston

Senior Counsel, Policy and International Affairs

U.S. Copyright Office

September 26, 2019





Illustrative Highlights of Recent Copyright Office Activities

IT Modernization, MMA, Section 1201 Triennial Rulemaking, Other
Rulemakings



- Information Technology Modernization
- Optimizing Business Processes
- Organizational Change Management
- Education and Engagement
- Impartial Expertise on Copyright Law and Policy
- Measuring Success





Virtual Card Catalog

2019

VCC Release 3:
Expanded Virtual
Card Catalog

Crowd Tasked Data
Correction of
Application Cards
[1898 through 1945]

Record Books
Scanning
Pilot Completion

Recordation Development

2018

Limited
Demonstration
Usability Testing

Recordation-Wide
Distribution
Demonstration and
Survey

2020

Initial Limited Pilot

Registration Development

2018

Limited
Demonstration
Usability Testing

Registration-Wide
Distribution
Demonstration and
Survey

2019

Start Development
of Registration
Portal Functionality

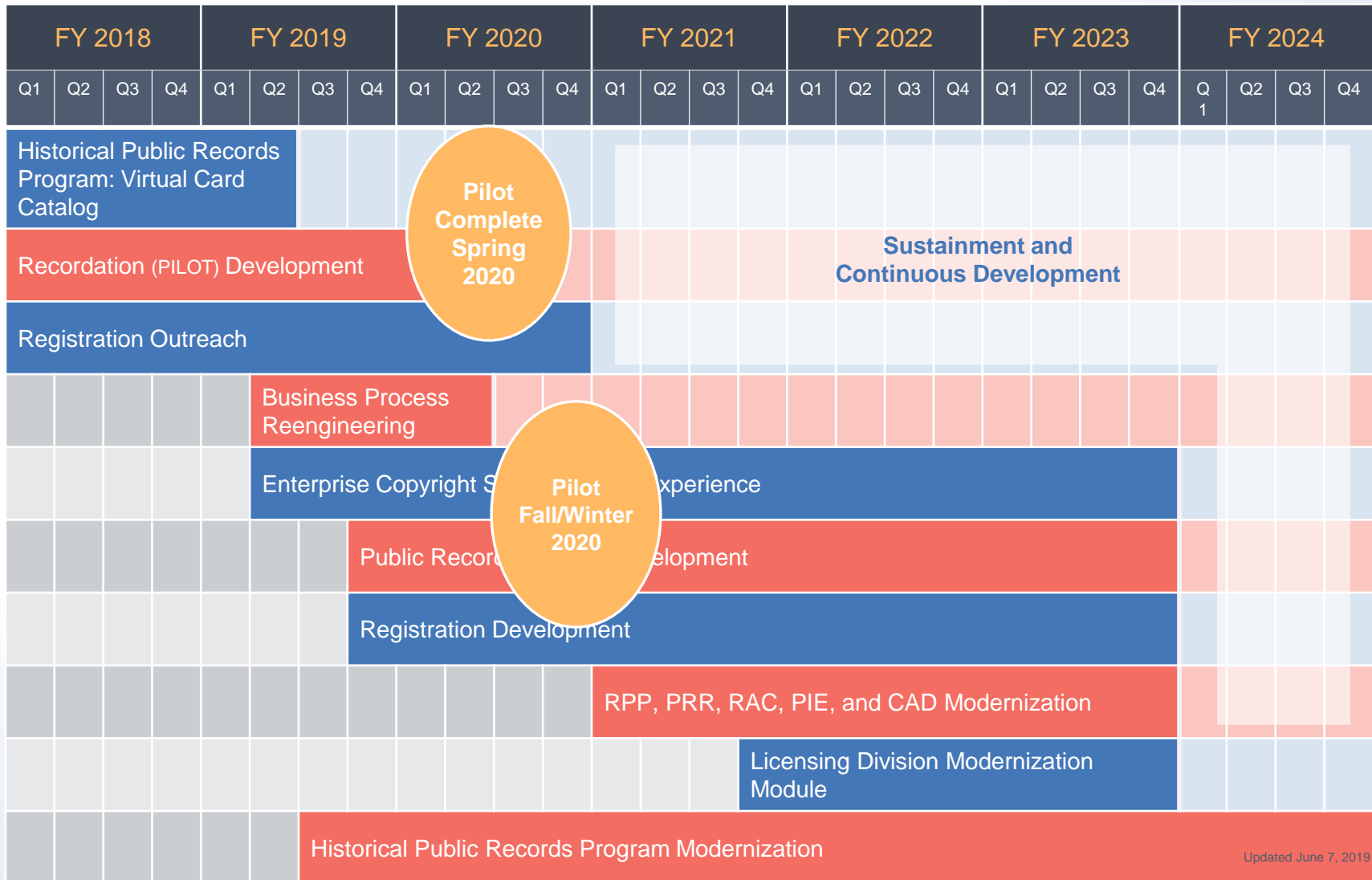
Data Management

2019

Initial Data
Management Plan
and Data Model

Implement Data
Analytics Tool

PLANNED MODERNIZATION TIMELINE







VIRTUAL CARD CATALOG *(PROOF OF CONCEPT)*

OVER 41 MILLION COPYRIGHT CARD CATALOG RECORDS AT YOUR FINGERTIPS

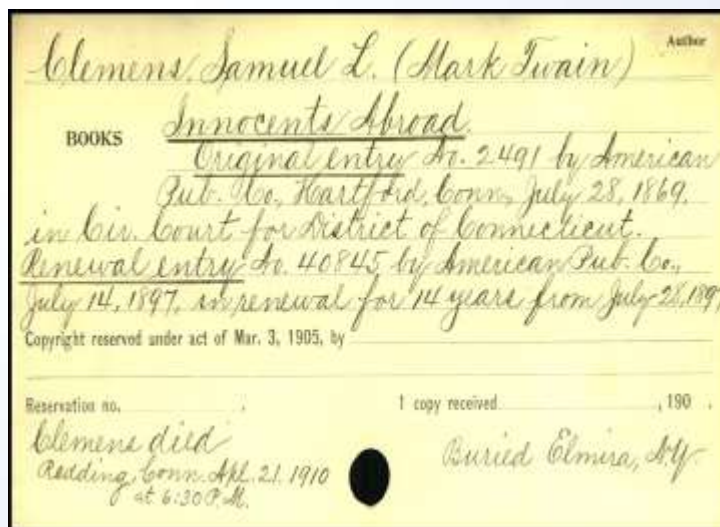


Virtual
Card
Catalog

24 million
cards
added
in 2019

41 million card images,
spanning 1870–1977, including
24 million card images
added in 2019, can be
filtered by the
OCR text on the card

Cards can be **browsed by**
index, time period, and
the labels on the drawer





Music Modernization Act



signed into law October 11, 2018

Orrin G. Hatch - Bob
Goodlatte Music
Modernization Act
enacted October 2018

Includes many Copyright
Office recommendations
from our reports, ***Federal
Copyright Protection for
Pre-1972 Sound
Recordings*** and
***Copyright and the Music
Marketplace***

Historic legislation
transforms **multiple
areas of music law**



Music Modernization Act

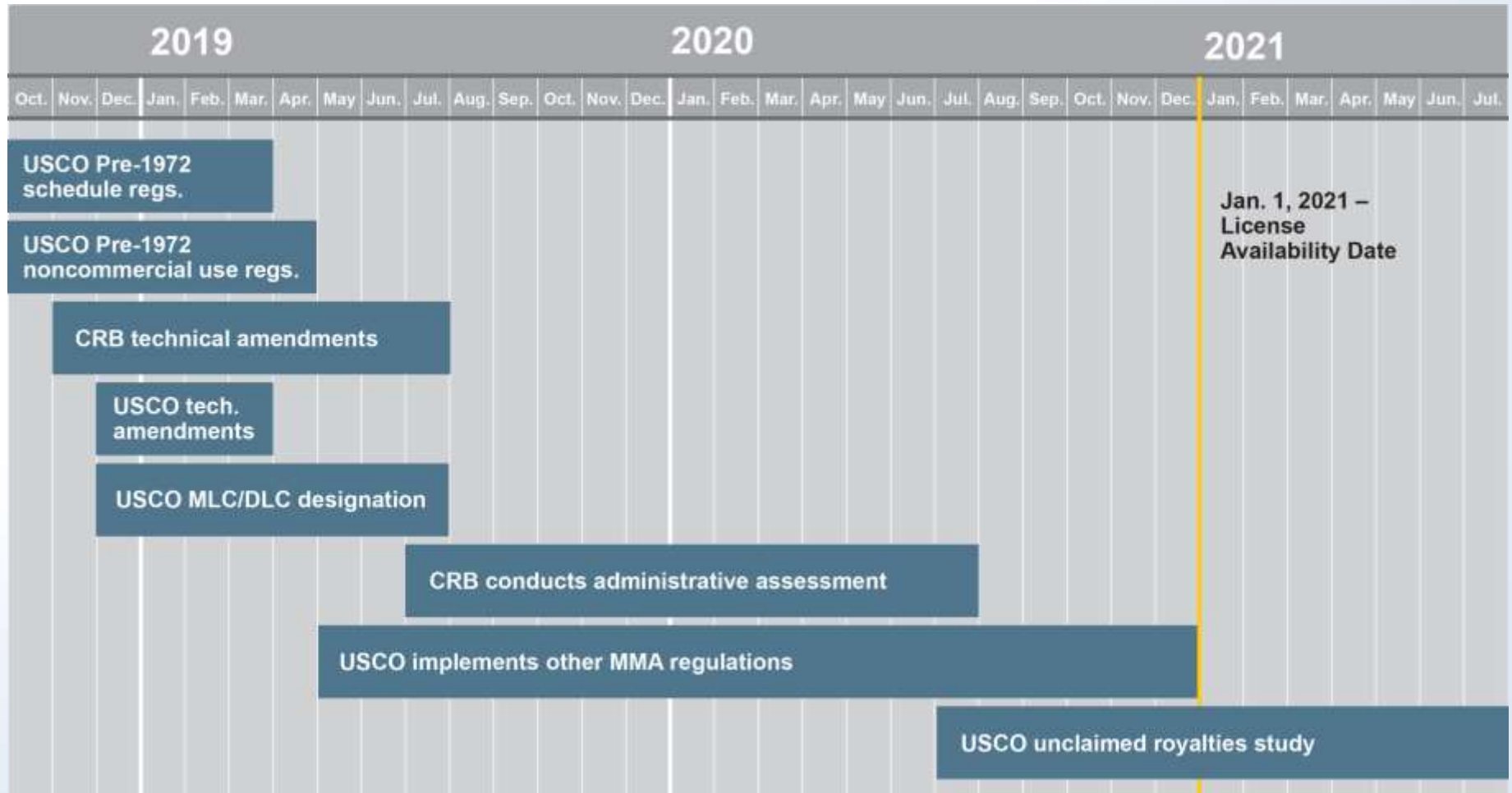
signed into law October 11, 2018

Music licensing

Classics protection and access

Allocation for music producers

MUSIC MODERNIZATION ACT





Completed Rulemakings

- Technical Amendments to Section 115 Compulsory License Regulations (March 2019)
- Pre-1972 Sound Recording Schedules and Notices of Contact Information (March 2019)
- Noncommercial Use Exception to Unauthorized Uses of Pre-1972 Sound Recordings (April 2019)
- Designation of Mechanical Licensing Collective and Digital Licensee Coordinator (July 2019)



**Title II:
Classics
Protection
& Access Act**

- Applies several Title 17 limitations and exception to uses of pre-1972 sound recordings, including fair use, first sale, and section 108
- Public performances by digital transmissions subject to statutory licensing like post-1972 sound recordings
- Statutory damages available if certain requirements met
- **Permits noncommercial uses of pre-1972 sound recordings not being commercial exploited under certain circumstances**



Effective May 9, 2019, the Copyright Office accepts Notices of Noncommercial Use (NNU).

- An NNU is a special type of document that users may file to become eligible for a safe harbor allowing certain noncommercial uses of sound recordings fixed before February 15, 1972 (“Pre-1972 Sound Recordings”) that are not being commercially exploited.

www.copyright.gov/music-modernization/pre1972-soundrecordings/NNUfiling-instructions.html

Note: The Copyright Office does not verify the validity or accuracy of information in NNUs, so you should not rely on information contained in NNUs filed by third parties (other than your authorized agent), or assume that the proposed use in an indexed NNU is, in fact, noncommercial.

For more information regarding the specific steps that a user should take to demonstrate she has made a good faith, reasonable search, including more explanation regarding how to search each step, the Office has provided detailed instructions.

EXAMPLE of one step:

- In the case of ethnographic Pre-1972 Sound Recordings of federally recognized Alaska Native or American Indian tribes, searching through contacting the relevant tribe, association, and/or holding institution.





Up Next

- Outreach per Section 102(e) of the MMA
- Unclaimed Royalty Study

MUSIC MODERNIZATION ACT – COPYRIGHT OFFICE RESOURCES

Orin G. Hatch—Bob Goodlatte Music Modernization Act

The Orrin G. Hatch—Bob Goodlatte Music Modernization Act (“Music Modernization Act”) addresses Copyright Administration that brought us the first ever joint civil sharing between performers and technological developments in the music marketplace. It is the most significant piece of copyright legislation in decades. The Act is signed into law May 19th, 2018. This is a historic landmark for the music industry and the Copyright Office and the U.S. Copyright Office. The Copyright Office administers the licensing of copyright, including the right to publish the many forms of the music marketplace, including songwriters, composers, artists, record labels, digital services, streaming, and the public.

In addition to the legislation, Congress held a series of hearings on music, as part of its comprehensive review of the nation's copyright law. To learn that effort, the Copyright Office conducted a comprehensive study of the music industry, “Hearings on the Music Industry,” as well as the music industry’s response to the Copyright Office’s earlier report, “Patent Copyright Protection for the Music Industry.” The report examined the availability of and impact for long-term sound recordings from January 19, 1970, under federal copyright. Many of the legislative efforts in this report will be taken in execution of the legislation.

Licensing Interactive Streams

Pre-1972 Recordings

Music Producers/Royalties

Copyright MMA and BO

Future Rights

BO

BO

The Orrin G. Hatch — Bob Goodlatte Music Modernization Act

On October 11, 2018, the Orrin G. Hatch — Bob Goodlatte Music Modernization Act was signed into law.

This bipartisan and unanimously enacted legislation represents the codification of years of effort by a wide array of policymakers and stakeholders, as well as the U.S. Copyright Office itself, to update the music licensing landscape to better facilitate legal licensing of music by digital services.

The Copyright Office welcomes the passage of landmark legislation. The Music Modernization Act (MMA) is expected to benefit the many stakeholders across all aspects of the music marketplace, including songwriters, publishers, artists, record labels, digital services, investors, and the public at large.

Visit [copyright.gov/music-modernization](https://www.copyright.gov/music-modernization) for more information about the MMA, including links to the updated law, legislative history, music-related reformations, policy studies, new databases related to pre-1972 sound recordings, and other public information aids.

The Licensing Division of the Copyright Office

This circular presents an overview of the Licensing Division of the Copyright Office. It includes copyright and statutory licenses and the forms and documents available.

The Licensing Division of the Copyright Office administers the compulsory and statutory licenses in the Copyright Act (Title 17 of the United States Code). These licenses are:

- Statutory license for secondary transmission by cable systems (section 111)
- Statutory license for making of ephemeral recordings (section 112)
- Statutory license for public performance of sound recordings for means of digital audio transmission (section 113)
- Compulsory license for making and distributing of phonorecords (section 113)
- Statutory license for secondary transmission of digital audio transmission by satellite carrier (section 118)
- Statutory license for secondary transmission of local television programming by satellite carrier (section 122)
- Statutory obligation for distribution of digital audio recording devices and media (section 100)

The division reflects results from the public process for recommending television and radio broadcast, network and non-network digital audio recording, and non-network digital audio recording products for distribution their products (section 100). In general, the division administers its licensing cases from copyright law collected and create the balance in terms of licensing activities with the U.S. Treasury for later distribution to copyright owners. See [copyright.gov/music-modernization](https://www.copyright.gov/music-modernization) for details. The division also reflects the public at large in administering the cable and satellite licenses.

Copyright

www.copyright.gov

www.copyright.gov/music-modernization



Through the Section 1201 Rulemaking, the Register of Copyrights recommends, and the Librarian adopts, **temporary exemptions** to the prohibitions against circumvention of access controls.

Anyone can petition the Copyright Office

Process repeats every **3 years**

New streamlined process for renewals of unopposed exemptions

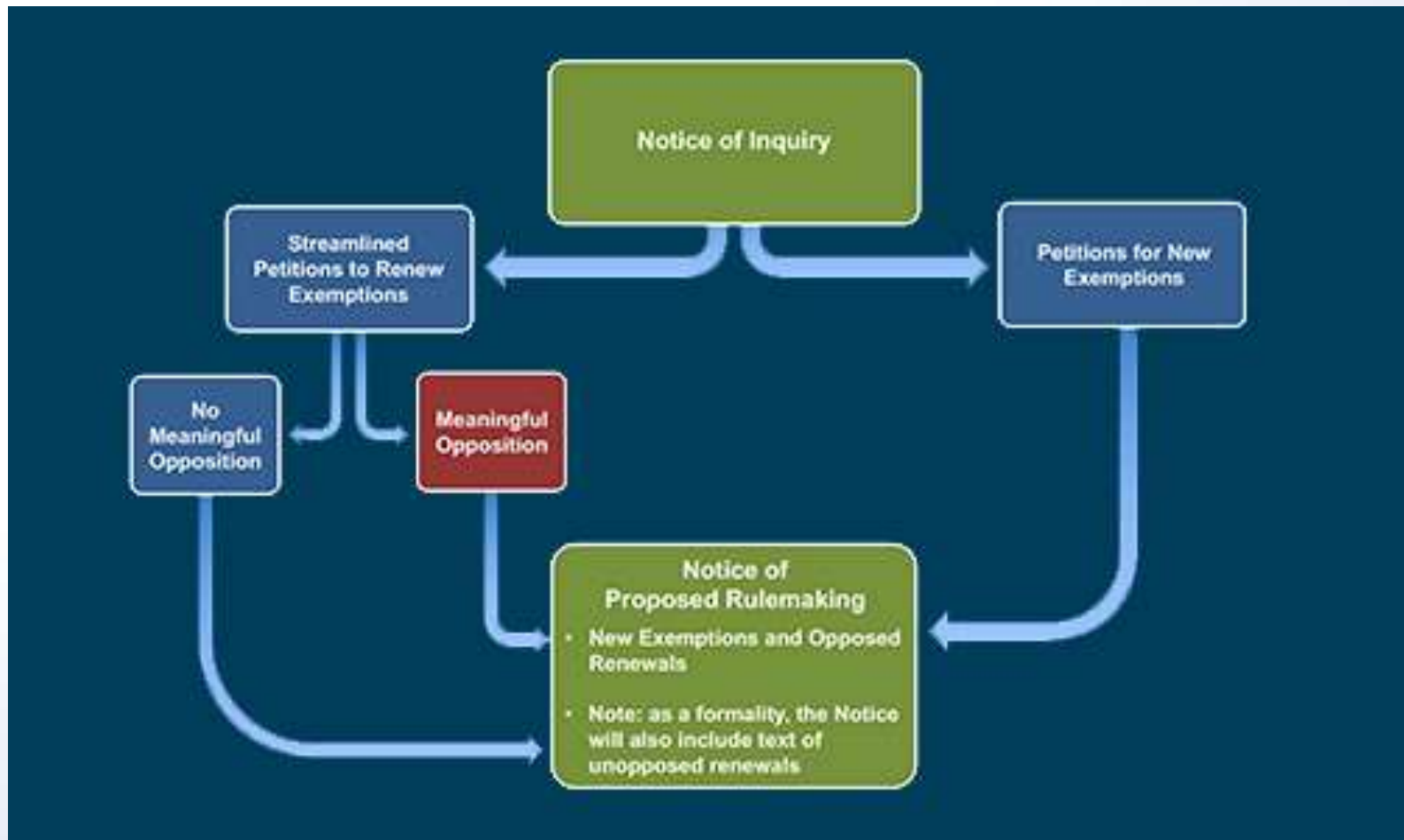


- The Copyright Office's June 2017 Policy Study on Section 1201 established a remarkable consensus that the triennial rulemaking should be streamlined to permit previously adopted exemptions to be more easily renewed
 - Over 40 stakeholders wrote in general support, none opposed
- The statute prohibits adopting a presumption of renewal
- But the Office can make a “a determination that, due to **a lack of legal, marketplace, or technological changes**, the factors that led the Register to recommend adoption of the exemption in the prior rulemaking **will continue into the forthcoming triennial period**”



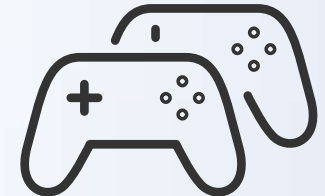
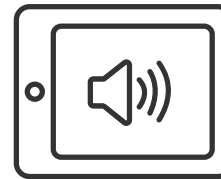
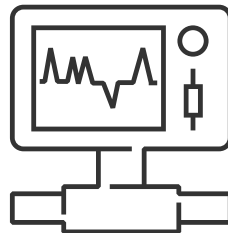
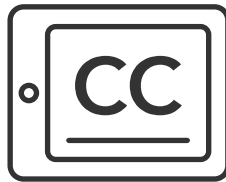


- For the Seventh Triennial Rulemaking, the Office implemented a petition-based process for streamlining

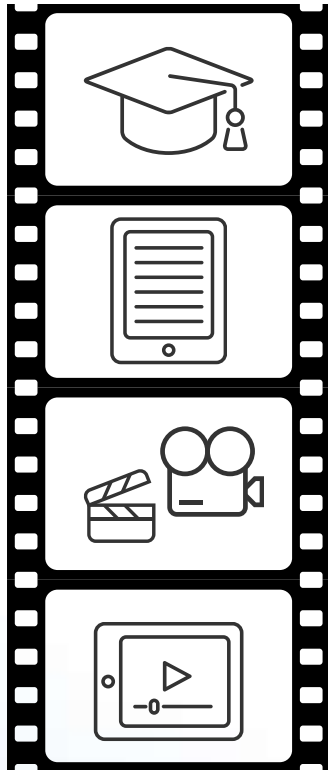




The Office considered **twelve classes** for expansion or adoption



Legal standard: whether the prohibition on circumvention is having, or is likely to have, **an adverse effect** on users' ability to **make noninfringing uses** of a particular class of copyrighted works



- The streamlined process received positive feedback from stakeholders. The Acting Register was able to recommend renewal of all exemptions granted in the 2015 rulemaking through this streamlined process.
- The Acting Register recommended that the Librarian of Congress renew, expand or new adopt of number of exemptions. These regulations became effective on October 28, 2018.
- There were several proposed categories that the Acting Register did not recommend, and the Librarian declined to adopt.
- All materials from this proceeding, along with FAQ and videos, are posted on the 1201 page at <https://www.copyright.gov/1201/2018/>



Modernizing practices since 2018:

- Over a dozen rulemakings completed or in progress

Enables the Copyright Office to:

- Simplify applications for uncomplicated registrations
- Improve service
- Simplify deposits
- Move into modern era



REGULATORY ACTIVITY

Open Rulemakings Include:

- Group Registration of Works on an Album of Music
- Group Registration for Short Online Literary Works

Recent Final Rules:

- Group registration for **unpublished works**
- Re: **Single application** for online registration of one work by one author
- Group registration for **newsletters and serials**
- Group registration for **newspapers**
- Group registration for **published or unpublished photos**
- **Simplified deposit requirement** for certain literary monographs and musical compositions
- **Architectural works**



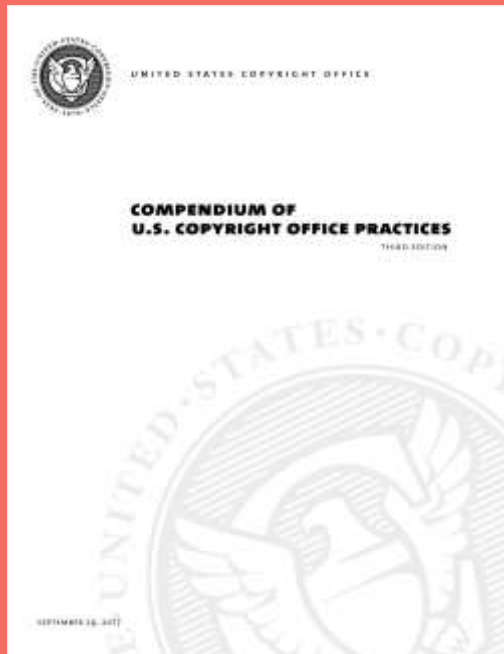


- Commissioned Booz Allen analysis
- Notice of proposed rulemaking (2018)
- Conducted review including policy considerations
- 175 comments
- Supplemental notice of proposed rulemaking (2019)

Next Steps

- Review comments and continue rulemaking
- Results in a recommended fee schedule sent to Congress for 120-day period (Sept. 2019)

ADDITIONAL WORK STREAMS OF THE OFFICE



Compendium Revisions

Review Board Letters Online

Select category or categories to search

- ☒ Architectural works
- ☒ Choreography
- ☒ Common shapes/symbols/designs
- ☒ Compilation
- ☒ Computer program
- ☒ Deposit
- ☒ Musical work
- ☒ Originality
- ☒ Other
- ☒ Rule of doubt
- ☒ Sound recording
- ☒ Text
- ☒ Derivative work
- ☒ Human authorship
- ☒ Idea/expression dichotomy
- ☒ Jewelry design
- ☒ Labels and logos
- ☒ Layout and format
- ☒ Textiles
- ☒ Three-dimensional artwork
- ☒ Two-dimensional artwork
- ☒ Typography
- ☒ Useful article
- ☒ Words and short phrases

Select/Deselect All

Title	Year	Categories	Outcome
Yeezy Boost 350 Version 1, Yeezy Boost 350 Version 2	2019	Common shapes/symbols, Designs, Originality, Textiles, Two-dimensional artwork, Three-dimensional artwork, Useful article	Refusal Reversed
The Explorer & Forget Me Not	2019	Common shapes/symbols Designs, Jewelry design, Originality, Three- dimensional artwork	Refusal Reversed in Part

Review Board Letters

Search Cases

Select jurisdiction or jurisdictions to search

- ☒ U.S. Supreme Court
- ☒ First Circuit
- ☒ Second Circuit
- ☒ Third Circuit
- ☒ Eighth Circuit
- ☒ Ninth Circuit
- ☒ Tenth Circuit
- ☒ Eleventh Circuit
- ☒ Fourth Circuit
- ☒ Fifth Circuit
- ☒ Sixth Circuit
- ☒ Seventh Circuit
- ☒ District of Columbia Circuit
- ☒ Federal Circuit

Select/Deselect All

Select category or categories to search

- ☒ Computer program
- ☒ Education/Scholarship/Research
- ☒ Film/Audiovisual
- ☒ Format shifting/Space shifting
- ☒ Parody/Satire
- ☒ Photograph
- ☒ Review/Commentary
- ☒ Sculpture
- ☒ Internet/Digitization
- ☒ Music
- ☒ News reporting
- ☒ Painting/Drawing/Graphic
- ☒ Textual work
- ☒ Unpublished
- ☒ Used in government proceeding
- ☒ Other

Select/Deselect All

Case	Year	Court	Jurisdiction	Categories
Brammer v. Violent Hues Productions, LLC, No. 18-1763 (4th Cir. Apr. 26, 2019)	2019	4th Circuit	Fourth Circuit	Fourth Circuit, Photograph, Internet/Digitiz

Fair Use Index



Illustrative Highlights of Recent Copyright Office Policy Activities

Recent Studies, Marrakesh Treaty Implementation, WIPO SCCR Work,
Legislative Outlook



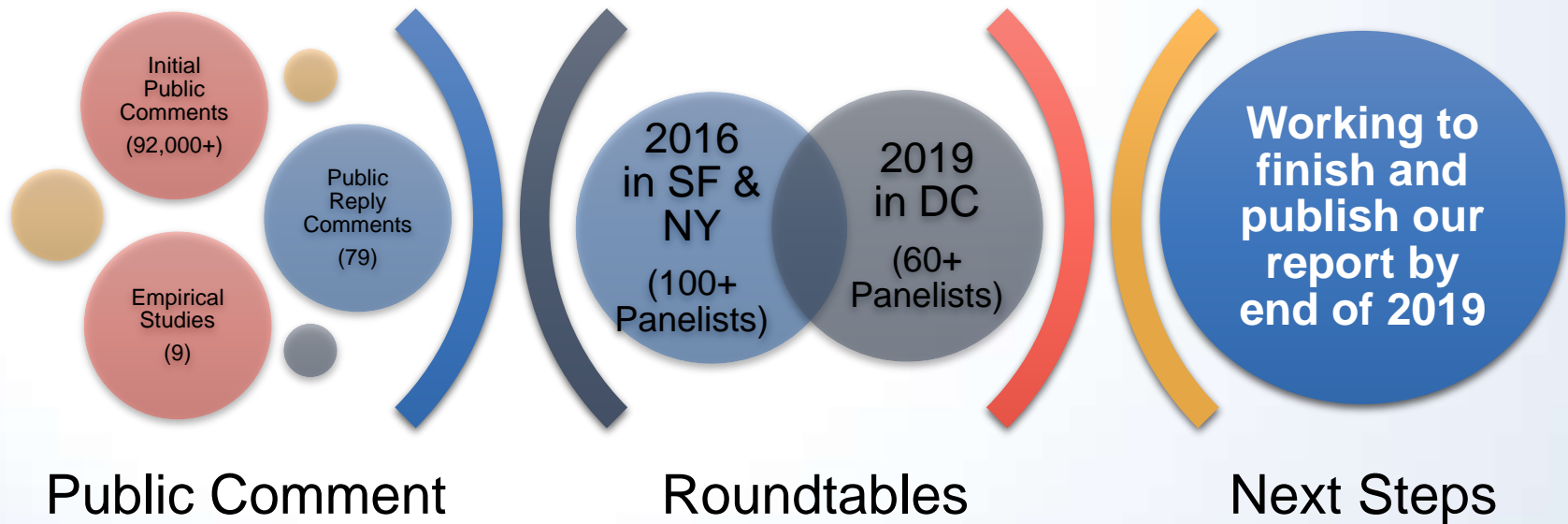
The DMCA turned 20 in 2018.

No changes have been made to the statutory ISP liability regime in the U.S. (although there have been case law developments). Other countries have adopted a variety of different statutory regimes.

We've heard from stakeholders that it's a **tale of three cities**:

- ISPs generally think the system under section 512 is working well.
- Content owners note significant resources required to send takedown notices and address “whack-a-mole” problem.
- Public interest groups note problems with incorrect takedowns chilling free speech and exercise of fair use.

(The issues are not nearly so cut-and-dried.)



POLICY STUDIES: MORAL RIGHTS OF ATTRIBUTION AND INTEGRITY



Berne
Convention
Adopted
1886

Since 1889 ...



Many (not all) Berne
members adopt
explicit statutes on
moral rights protection

Article 6bis
on moral
rights added
to Berne
1928



U.S. case law
changes, new
international treaties
are adopted, new
technologies and
business models
develop



U.S. joins
Berne
1989

Authors and
creators place
great value in
their name





Lanham Act

Amend section 43(a) to expand unfair competition protections to include false representations regarding authorship of expressive works

VARA

1. Clarify “commercial art” exclusion.
2. Better instruct courts on applying “recognized stature” element.
3. No author should be able to waive another author’s VARA rights.

§ 1202

Add new “1202A” allowing author to recover civil damages upon proving defendant intended to conceal attribution information

Right of Publicity

Consider adopting new federal right of publicity, to act as floor of minimum protections

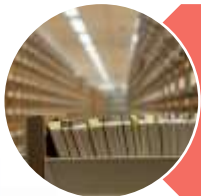
(And there is a lot more in the Report than just the above points)



Section 108 was enacted in 1976; slightly revised in 1998



Exceptions to rights of reproduction and distribution for libraries and archives



Widely understood as being out-of-date in digital era



2008: Section 108 Study Group Report recommends wide range of changes

In September 2017, the Copyright Office issued its *Section 108 Discussion Document*.

- Reiterates the Office's longstanding belief that section 108 needs to be updated
- Contains possible statutory solutions for further discussion among stakeholders and Congress

Organization and Scope

- Add museums
- Add exceptions to the rights of public display and performance





Preservation, Research, and Replacement Copies

- Replace published / unpublished distinction with a publicly disseminated/not publicly disseminated distinction
- Allow preservation copies to be made of all works in an eligible entity's collections
 - with expanded access for copies of works that were not disseminated to the public,
 - a “dark archive” for publicly disseminated works, and
 - replacement of the three-copy limit with a “reasonably necessary” standard

Unsupervised Reproducing Equipment

- Clarify that the limitation of liability for patron use of unsupervised reproducing equipment includes equipment brought onto the premises by users





Copies for Users



- Clarify that digital distributions, displays, and performances are allowed to be made of copies made at the request of users
- Add a requirement for copies for users of an entire work or a substantial part of a work: the work not be available for purchase or license
- Eliminate the exclusion of musical works; pictorial, graphic, or sculptural works; and motion pictures

Licenses and Outsourcing

- Provide that eligible institutions do not infringe a work if they make preservation or security reproductions in violation of contrary, non-bargained-for, contractual language
- Allow eligible institutions to contract with third parties to perform any of the reproduction functions under section 108





Some positive . . .

"The Section largely supports the suggestions in the Copyright Office's 2017 Report."

American Bar Ass'n, Section of Intellectual Property Law

"Many of the Document's recommendations have merit in that they update section 108's provision to reflect the nature of digital technology. In addition, the Document's model statutory language is much better organized than section 108 as now written, and much easier to understand."

Library Copyright Alliance



... and some not-so-positive

"The Document's proposed amendments, while salutary, would not allow libraries to perform any lawful activity in which they are not already engaging under the fair use right codified in section 107."

Library Copyright Alliance

"While codifying these activities to provide a safe harbor so that libraries do not need to rely on fair use is beneficial, in some ways the report fails to fully extend to many of the projects libraries currently engage in. For example, the preservation copies would be limited to a dark archive; libraries already routinely rely on fair use to digitize special collections and provide access to the public. The Copyright Office also chooses not to propose an exception for web-harvesting, though many libraries currently preserve web pages around particular issues."

Association of Research Libraries



MARRAKESH TREATY

to Facilitate Access
to Published Works for
Persons Who Are Blind,
Visually Impaired, or
Otherwise Print Disabled

copyright



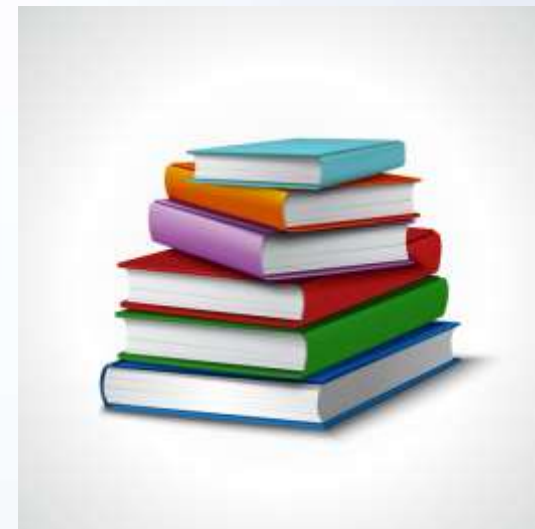
- **285 million people worldwide are blind or visually impaired.**

90% of them live on low incomes in developing and least developed countries.

- **Only 1–7% of books are published in a format they can read.**

2016 statistics

- The United States became the 50th member state to deposit its Marrakesh Treaty instrument with WIPO.
- Treaty obligations for the U.S. entered into effect on May 8, 2019.





Amendments to Section 121

Works Covered

Old: Nondramatic literary works

New: All literary works, plus musical works fixed in the form of text or notation.

Accessible Formats

Old: “Specialized formats,” limited to specific technologies

New: “Accessible formats,” defined as an “alternative manner or format” that allows an eligible person to have access to a work that is equivalent to a person without a disability.

Eligible Persons

Old: “Blind or other persons with disabilities”

New: “eligible person” is someone who is either blind, has a “visual impairment or perceptual or reading disability” rendering them unable to read printed works “to substantially the same degree as a person without an impairment or disability,” or has a physical disability making them unable to hold or manipulate a book or focus or move their eyes to read.

New Section 121A

- Authorized entities may **export** works in accessible formats to either another authorized entity in a country that has signed the Marrakesh Treaty, or an eligible person in such a country.
- Authorized entities, eligible persons, and agents of eligible persons may **import** works in accessible formats.
- Authorized entities engaged in either export or import under section 121A must establish and follow their own practices to:
 - Make sure they are only serving eligible persons
 - Limit the distribution of accessible format copies to eligible persons
 - Discourage the further reproduction and distribution of unauthorized copies
 - Keep appropriate records
 - Create a public list of all accessible format works

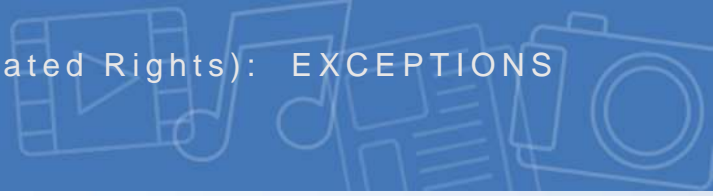


FAQ and legislative texts are posted on the International Page of copyright.gov



October 18-19, 2019

The Conference will conclude the fact-finding and information gathering phase foreseen in the SCCR's limitations and exceptions Action Plans and will provide an opportunity to address on a global scale some of the issues identified during the three regional seminars on limitations and exceptions held in Singapore, Nairobi, and Santo Domingo.



SCCR-39
Oct. 21-25, 2019





Should there be an international instrument mandating a certain level of exceptions for libraries and archives?

Some countries and NGOs say yes, e.g., the Africa group.

U.S. Position:

supports the development of “high-level principles and objectives for national copyright limitations and exceptions for libraries and archives, and for educational activities.” Supports a “framework of common understanding” over binding norm setting.

The conversation continues .

..



IGC-40
June 17-21, 2019





Challenges

- Expensive
- Lengthy and time-consuming
- Must be brought in federal court
- May not be eligible for statutory damages or attorney's fees
- Hard to find representation
- Difficult to proceed *pro se*
- Fee shifting



Legislation was introduced in the 115th Congress.

The Copyright Office issued its report on **Copyright Small Claims** in September 2013.

On May 1, 2019, the Copyright Alternative in Small-Claims Enforcement (CASE) Act of 2019 was introduced in both the House and Senate.



Public Information and Outreach

Information on the work of the Copyright Office





Modernization is the Copyright Office-wide initiative to:

(1) build a new enterprise copyright system featuring a user-centered and flexible design, (2) streamline processes and policies, (3) improve access, and (4) reimagine the entire Office.

Many resources are posted on the Modernization webpage at www.copyright.gov/copyright-modernization/

Bimonthly webinars:

- January 2019 – Introduction to Modernization
- March 2019 – User Experience Design, Accessibility and Usability
- May 2019 – Data Management & the Strategic Plan
- July 2019 – Answering Your Modernization Questions
- September 2019 – The Recordation Modernization Initiative **TODAY!**



ACCESS TO HISTORICAL RECORDS



Card Viewer

+ [icon] [icon]

Schultz, Gwendolyn M.

BB43890.

John Muir and John Tyndall: a contrast in mountaineers. By Gwendolyn M. Schultz. (In Wisconsin Academy review, Sept. 1973, p. 1, etc.) © Gwendolyn M. Schultz; 21sep73; BB43890.

1. Title. de - J
2. Schultz, Gwendolyn M. 10 - 23
3. Wisconsin Academy review, Sept. 73 - 2
1973.x
4. Contrast in mountaineers.

Timeframe: 1971-1977
Drawer: SCHUL-SCHULY
Card: 0927

Page: 8/ 50 951-1001 of 1416



Orrin G. Hatch—Bob Goodlatte Music Modernization Act

The Orrin G. Hatch—Bob Goodlatte Music Modernization Act ("Music Modernization Act") addresses Congress's determination that copyright law has not kept pace with changing consumer preferences and technological developments in the music marketplace. It is the most significant piece of copyright legislation in decades. The law is organized into three key titles: Title I—Music Licensing Modernization; Title II—Classics Protection and Access; and Title III—Allocation for Music Producers. The Copyright Office welcomes the passage of landmark legislation expected to benefit the many across all aspects of the music marketplace, including songwriters, publishers, artists, record labels, digital services, libraries, and the public.

In advance this legislation, Congress held a series of hearings on music, as part of its comprehensive review of the nation's copyright laws. To inform that effort, the Copyright Office conducted a comprehensive study of the music licensing framework as well as the ever-evolving needs of those who create and invest in music, which resulted in a report entitled "Copyright and the Music Marketplace." This report followed the Copyright Office's earlier report "Federal Copyright Protection for Pre-1972 Sound Recordings," which examined the desirability of and means for bringing sound recordings fixed before February 15, 1972, under federal jurisdiction. Many of the suggestions offered in these reports will be realized in enactment of this legislation.



Download our Music Modernization Act information pamphlet [here](#).

Related Rulemakings

Related Links

Music Policy Studies

Licensing Interactive Streams



Title I—Music Licensing Modernization Act
addresses Section 115 of Title 17

Pre-1972 Recordings



Title II—Classics Protection and Access Act
addresses pre-1972 sound recordings

Music Producers/Royalties



Title III—Allocation for Music Producers Act
addresses royalty payments for certain creators

OFFICE OF PUBLIC INFORMATION AND EDUCATION



US Copyright Office
@CopyrightOffice

Follow

Copyright Office extends comment period to May 31 for proposed updates to Compendium of U.S. Copyright Office Practices. [go.usa.gov/xmEbs](https://www.go.usa.gov/xmEbs)

8:34 AM · 10 May 2019

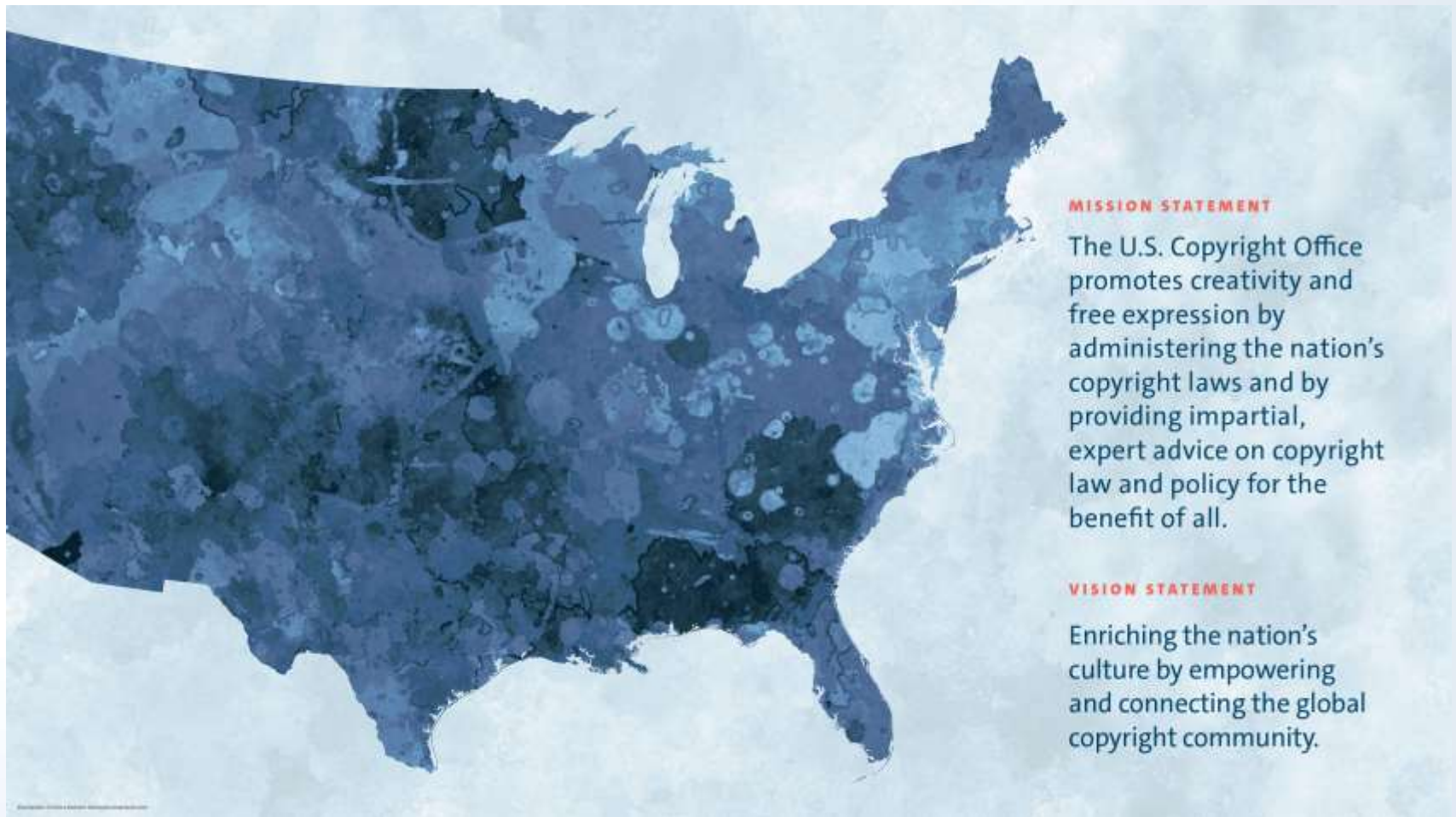
14 Retweets 7 Likes



2 14 7



Thank You!



cwes@copyright.gov

www.copyright.gov