COPYRIGHT AND AI, PART III
US. COPYRIGHT OFFICE REPORT

On May 9, 2025, the U.S. Copyright Office released the third part of the Copyright and AI Report, subtitled "Generative AI Training." This was a "pre-publication version." And it was released in the midst of controversy – the Librarian of Congress being fired just before its release, and the Register of Copyright fired just after. Aaron Moss has allowed us to reprint his blog post of May 11, 2025 (two days after the report released), "Five Takeaways the Copyright Office's Controversial AI Report."

Then, on May 22, 2025, Shira Perlmutter, the Register of Copyright, filed a lawsuit for unlawful firing against Todd Blanche, Paul Perkins, Sergio Gor, Trent Morse, the Executive Office of the President, and Donald Trump. Full disclosure: Perlmutter is a long-time member of the Journal's advisory board. And of course, Aaron Moss also wrote a blog post about the firing and the lawsuit, and so we asked again for permission to reprint. For the sake of newsworthiness and the historical record, we have included the full complaint as part of this issue.

FIVE TAKEAWAYS FROM THE COPYRIGHT OFFICE'S CONTROVERSIAL NEW AI REPORT

by AARON MOSS*
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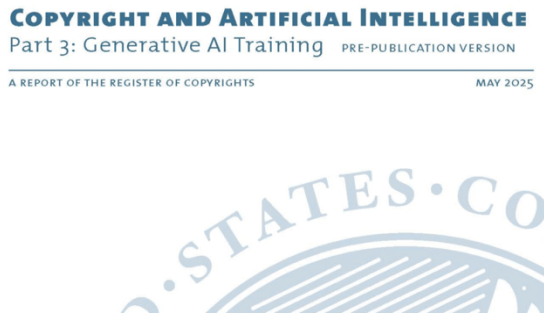

The Copyright Office released a "pre-publication version" of its long-awaited AI and fair use report just a day before the Register of Copyrights was dismissed. Inside the timing, the fallout, and what it all means.

Late Friday afternoon—a time traditionally reserved for burying news and slipping out of the office—the U.S. Copyright Office quietly dropped a "pre-publication" version of Part 3 of its highly anticipated artificial intelligence study (read it here).[2] The 108-page report provides the Office's detailed take on how U.S. copyright law, particularly the fair use doctrine, should apply to the use of copyrighted works to train generative AI models. To be clear, "pre-publication versions" of Copyright Office reports aren't standard practice. And the timing of this one was no accident. The report's release was sandwiched between two extraordinary firings. The day before it was posted on the Copyright Office's

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[1] COPYRIGHTLATELY, http://www.copyrightlately.com (last visited May 27, 2025)

[2] U.S. COPYRIGHT OFFICE, COPYRIGHT AND ARTIFICIAL INTELLIGENCE PART 3: GENERATIVE AI TRAINING (PRE-PUBLICATION VERSION) https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-3-Generative-AI-Training-Report-Pre-Publication-Version.pdf (2025).

website, the Trump administration abruptly dismissed Dr. Carla Hayden, the longtime Librarian of Congress who had appointed Register of Copyrights Shira Perlmutter. [3] Then, on Saturday—less than 24 hours after the report went live—Perlmutter was fired by the administration as well.[4] While some have speculated that the report itself triggered Perlmutter's dismissal, it's more likely that the Office raced to release the report before a wave of leadership changes could delay—or derail—its conclusions.

Whether this report survives as "official" policy is uncertain. It may even be rescinded by the time you read this post. But its 50,000-plus words remain very much alive—alongside more than 40 generative AI copyright cases now pending in federal courts across the country. Judges, law clerks, and policymakers will read them. And on several hotly contested issues, the report speaks with unusual clarity—often siding with creators over the tech platforms whose tools are backed by an increasingly aggressive executive branch. Several of those platforms are now lobbying the Trump administration to declare it categorically lawful to use copyrighted works for AI training.[5]

I don't typically veer into political commentary in this space. That said, the Register of Copyrights isn't supposed to be a political position. It's not a presidential appointment, and the Copyright Office sits within the Library of Congress—not the executive branch—raising serious questions about the legality of the Register's dismissal. What really can't be questioned is that Shira Perlmutter served the Copyright Office with honor and distinction, guiding it into the modern age—and into the uncharted territory of AI. Her removal underscores just how much was at stake in getting this report out the door—and how much it may come to define her legacy.

Though lengthy, the report is worth reading in full, especially in light of the broader context surrounding its release. In the meantime, here are my five biggest takeaways.

1. Copying Starts Early—and May Linger in the Weights

Unsurprisingly, the Copyright Office acknowledges that building a training dataset using copyrighted works "clearly implicate[s] the right of reproduction"[6]—making it presumptively infringing unless a defense like fair use

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[3] Andrew Limbong, *Librarian of Congress firing is latest move in upheaval of U.S. cultural institutions*, NPR (May 9, 2025 4:36 PM EST), https://www.npr.org/2025/05/09/nx-s1-5393737/carla-hayden-fired-library-of-congress-trump.

[4] Scott MacFarlane, *Trump fires director of U.S. Copyright Office, sources say*, CBS News (May 10, 2025 9:04 PM EST), https://www.cbsnews.com/news/trump-fires-director-of-u-s-copyright-office-shira-perlmutter-sources/.

[5] Cecilia Kang, *Emboldened by Trump, A.I. Companies Lobby for Fewer Rules*, N.Y. Times (March 24, 2025).

[6] U.S. Copyright Office, *supra* note 2 at 26.

applies. Developers typically create multiple copies of protected works throughout the training process: downloading, reformatting, transferring between systems, and incorporating them into training datasets. And when a trained model later generates outputs that reproduce or closely resemble copyrighted content, several of the copyright owner's exclusive rights may be implicated then as well.

The more interesting and controversial question is what happens inside the model itself. Specifically, can the model's "weights"[7]—the numerical parameters that encode what it has learned—constitute a copy? According to the report, the answer is yes, in some cases. If a model can output verbatim or nearly identical content from the training data—even without being prompted—that expression "must exist in some form in the model's weights." In such cases, the Office concludes, "there is a strong argument that copying the model's weights implicates the right of reproduction for the memorized examples."[8]

The implications are significant. If protectable expression is embedded in the weights, then "subsequent copying of the model weights, even by parties not involved in the training process, could also constitute prima facie infringement."[9] That means distributing, fine-tuning, or deploying a model could expose not just the original developers but also downstream users to liability under both reproduction and derivative work rights.[10] Liability would ultimately turn on whether the model retains substantial protectable expression—but the Office's analysis clearly opens a path for claims beyond the training stage.

> **KEY QUOTE:** "*Whether a model's weights implicate the reproduction or derivative work rights turns on whether the model has retained or memorized substantial protectable expression from the work(s) at issue. . . [T]he use of those works in preparing a training dataset and training a model implicates the reproduction right, but copying the resulting weights will only infringe where there is substantial similarity*."[11]

2. Training May Be Transformative—But It Depends on How the Model Is Used

Where a model engages in copying that constitutes prima facie infringement, the next key question is whether a defense like fair use applies. The Office's first-factor analysis—the purpose and character of the use—closely tracks the Supreme

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[7] *Id.* at 5.
[8] *Id.* at 28.
[9] *Id.*
[10] Aaron Moss, *Derivative Work*, CopyrightLately, https://copyrightlately.com/glossary/derivative-work/.
[11] U.S. Copyright Office, *supra* note 2 at 30.

Court's reasoning in *Warhol v. Goldsmith*: whether a use is transformative depends not just on the training process, but on how the resulting model is ultimately used.[12]

At one end of the spectrum are research-driven or closed-system applications, where the model performs tasks unrelated to the expressive goals of the source material. For instance, training on books to support a content moderation tool—a system used to detect and filter harmful or inappropriate content—is "highly transformative," in the Office's view.[13] At the other end are use cases where the model produces outputs "substantially similar to copyrighted works in the dataset."[14] Fine-tuning an image model on screenshots from an animated series to generate lookalike character art isn't transformative—it's a substitute for the original.[15]

Most uses fall in between. A model trained on sound recordings to generate new music might not copy any one track outright but still serves the same audience and purpose—entertainment—which the Office views as only "modestly transformative."[16] But if the same model were used to restore archival audio, the altered purpose would tip more strongly toward fair use.[17]

The Office also highlights the role of technical guardrails. Developers who implement safeguards to limit a model's ability to reproduce copyrighted material may reduce the risk of market substitution—making a finding of fair use more likely.[18] Although, per *Warhol*, if those safeguards are lifted or fail, the fair use analysis may need to be reevaluated.

> **KEY QUOTE:** "*[W]hile it is important to identify the specific act of copying during development, compiling a dataset or training alone is rarely the ultimate purpose. Fair use must also be evaluated in the context of the overall use.*"[19]

3. Training Isn't "Non-Expressive"—and It's Not Human Learning, Either

As part of its first-factor analysis, the Office directly confronts two common defenses: that AI training is "non-expressive,"[20] and that it mimics human

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[12] Aaron Moss, *Let's Go Hazy: Making Sense of Fair Use After Warhol,* Copyright Lately, May 22, 2023, https://copyrightlately.com/making-sense-of-copyright-fair-use-after-warhol/

[13] U.S. Copyright Office, *supra* note 2 at 41.

[14] *Id.* at 46.

[15] *Id.* at 44.

[16] *Id*. at 41 n. 235.

[17] *Id* at 41

[18] *Id.* at 59.

[19] *Id.* at 36-37.

[20] *Id*. at 44.

learning.[21] Given how frequently these arguments appear in litigation and commentary, they're worth calling out on their own.

First, the report rejects the idea that training is merely statistical.[22] Language models, it explains, don't just process word frequencies—they learn "how [words] are selected and arranged at the sentence, paragraph, and document level," which it calls "the essence of linguistic expression."[23] Similarly, image models trained on aesthetic works absorb creative patterns specifically to generate expressive outputs. When a model is designed to replicate or reassemble expressive content, the training process can't be dismissed as non-expressive.[24]

Second, the Office pushes back on the human learning analogy.[25] Fair use doesn't automatically cover every act done in the name of learning.[26] As the report puts it, a student "could not rely on fair use to copy all the books at the library to facilitate personal education."[27] Humans also absorb information imperfectly and idiosyncratically. AI systems, by contrast, ingest exact digital copies and process them at "superhuman speed and scale"[28]—a difference the Office considers fundamental to the fair use analysis.

> **KEY QUOTE:** "*Humans retain only imperfect impressions of the works they have experienced . . . Generative AI training involves the creation of perfect copies with the ability to analyze works nearly instantaneously*."[29]

4. COPYING EVERYTHING USUALLY HURTS—BUT CONTEXT CAN TIP THE SCALE

The third fair use factor examines how much of a copyrighted work was used—and whether that amount was reasonable given the use's purpose. That presents a challenge for AI developers, whose models often ingest millions of works in full.[30] Wholesale reproduction typically weighs against fair use.[31]

But as the Copyright Office emphasizes, context matters.[32] Courts have allowed full-work copying where it enabled transformative tools—like search

[21] *Id.*
[22] U.S. COPYRIGHT OFFICE, *supra* note 2 at 45.
[23] *Id* at 47.
[24] *Id.*at 47-48.
[25] *Id.*
[26] U.S. COPYRIGHT OFFICE, *supra* note 2 at 48.
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Id.* at 55.
[31] *Id*. at 55.
[32] *Id* at 55.

engines or plagiarism detectors—that provide information *about* the underlying works.[33] In those cases, the Office explains, full reproduction was "definitionally necessary" to achieve their functionality.[34]

Generative AI, by contrast, isn't limited to providing information about the training data. As the Office puts it, "the use of entire copyrighted works is less clearly justified" here than it was in the Google Books or image thumbnail cases.[35]

Even so, the Office acknowledges the technical realities of modern AI development. It cites research suggesting that "internet-scale pre-training data, including large amounts of entire works, may be necessary to achieve the performance of current-generation models."[36] So while full copying "ordinarily weighs against fair use," that presumption may be mitigated if developers can show the copying was functionally necessary to a transformative purpose—and if the resulting model includes effective guardrails to prevent the output of protected expression.[37]

> **KEY QUOTE:** "*[T]he third factor may weigh less heavily against generative AI training where there are effective limits on the trained model's ability to output protected material from works in the training data*."[38]

5. Market Dilution May Be the Most Important—and Novel—Harm

Perhaps the report's most consequential—and controversial—takeaway is its expansive reading of the fourth fair use factor: the effect of the use on the potential market for the copyrighted work. The Office identifies three categories of potential market harm caused by generative AI training:

- **Lost licensing opportunities**: Where rights holders could have been paid to include their works in training datasets.[39]

- **Lost sales**: When a model generates outputs substantially similar to a protected work in the training set.[40]

- **Market dilution**: When AI-generated content floods the market with new works that, even if not directly infringing, compete with or diminish the

[33] U.S. Copyright Office, *supra* note 2 at 56.
[34] *Id.*
[35] *Id.* at 57.
[36] *Id.*
[37] *Id*. at 57.
[38] U.S. Copyright Office, *supra* note 2 at 59.
[39] *Id*. at 66.
[40] *Id*. at 62.

> value of the original training materials through sheer volume or stylistic imitation.[41]

It's this third theory—market dilution—that's likely to generate the most debate. The Office warns that "the speed and scale at which AI systems generate content pose a serious risk of diluting markets for works of the same kind as in their training data."[42] Even when outputs aren't substantially similar to any particular work, "stylistic imitation made possible by [the original work's] use in training may impact the creator's market."[43]

But this theory is legally untested. As the Office acknowledges, it's "uncharted territory," and no court has yet embraced it as a reason to deny fair use.[44]

Whether they will remains to be seen. The Copyright Office doesn't make law—it offers guidance that courts may consider under *Skidmore* deference, which depends entirely on the strength and persuasiveness of the Office's reasoning.[45] And while the Office draws from deep subject-matter expertise, courts will likely demand more than policy concerns or anecdotal examples—especially when asked to extend fair use doctrine into new territory. Of all the positions advanced in the report, this one may prove the most vulnerable to revision—or rejection—depending on the ultimate fate of the Office's report.

> **KEY QUOTE:** "*The speed and scale at which AI systems generate content pose a serious risk of diluting markets for works of the same kind as in their training data*."[46]

THE BOTTOM LINE

The Copyright Office isn't picking winners or losers in the 40-plus AI copyright cases now pending in court, and its report repeatedly emphasizes that fair use turns on the specific facts of each case. But taken as a whole, the analysis reads as broadly favorable to copyright owners—most notably in its endorsement of a novel market dilution theory that no court has yet adopted. That position arrives amid a politically charged shake-up of the Office's own leadership.

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[41] *Id.* at 64.
[42] *Id* at 65.
[43] *Id* at 56.
[44] U.S. COPYRIGHT OFFICE, *supra* note 2 at 65
[45] *Skidmore v. Swift & Co.*, WIKIPEDIA, https://en.wikipedia.org/wiki/Skidmore_v._Swift_%26_Co.
[46] U.S. COPYRIGHT OFFICE, *supra* note 2 at 65.

Beyond fair use, the 108-page report explores licensing infrastructure, collective bargaining proposals, and broader policy reforms. For creators and rights holders pushing back against unauthorized AI training, it offers a detailed—and often forceful—rebuttal to sweeping fair use defenses.

But whether courts will adopt the Office's reasoning—or whether the report will even remain official policy under new leadership—is very much an open question.

As always, I'd love to hear what you think. Drop me a comment below or @copyrightlately on social media. In the meantime, I'm holding onto the full report…for safekeeping… because you never know how long it'll stay up on the Copyright Office's website.

PERMULLTER'S LAWSUIT IS ABOUT MORE THAN JUST GETTING HER JOB BACK

by AARON MOSS*
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Copyright Lately
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Can the White House remove the Register of Copyrights? Shira Perlmutter says no—and warns the stakes go far beyond her job.

When Shira Perlmutter filed suit last week against senior White House and Justice Department officials—along with President Trump himself—much of the media coverage framed the case as an effort to reclaim her job as Register of Copyrights.[1] And it's true that Perlmutter is seeking reinstatement, arguing that her May 10 ouster from the top role at the U.S. Copyright Office was "blatantly unlawful."[2] But her motion for a temporary restraining order (read here) lays out a broader purpose: to block what she portrays as an Executive Branch power grab—one that's already disrupting operations, stalling critical policy work, and threatening the independence of the agency tasked with administering the nation's copyright laws.[3]

In other words, for Perlmutter, this isn't a garden-variety employment dispute. It's about safeguarding the integrity of the Copyright Office itself.
The Trump Administration sees things differently. In an opposition filed late today (read here), the government defends Perlmutter's removal as lawful and—while not directly disputing many of the institutional disruptions she alleges—argues that those are not her harms to assert.[4] According to the filing, Perlmutter has "no right to perpetual service as Register of Copyrights"—and no legal claim

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[1] Andrew Limbong, *Fired Copyright Office head sues Trump administration over removal*, WBEZ CHICAGO, May 23, 2025, https://www.npr.org/2025/05/23/nx-s1-5408982/register-of-copyrights-lawsuit-trump.

[2] Complaint For Declaratory and Injunctive Relief at 2, Perlmutter v. Blanche, No. 25-cv-1659 (D.D.C. May 22, 2025).

[3] Motion for a Temporary Restraining Order at 6, Perlmutter v. Blanche, No. 25-cv-1659 (D.D.C. May 22, 2025).

[4] Defendants' Opposition To Plaintiff's Motion for A Temporary Restraining Order at 6, Perlmutter v. Blanche, No. 25-cv-1659 TJK (D.D.C. May 26, 2025) https://copyrightlately.com/pdfviewer/perlmutter-v-blanche-opposition-to-tro/?auto_viewer=true#page=&zoom=auto&pagemode=none.

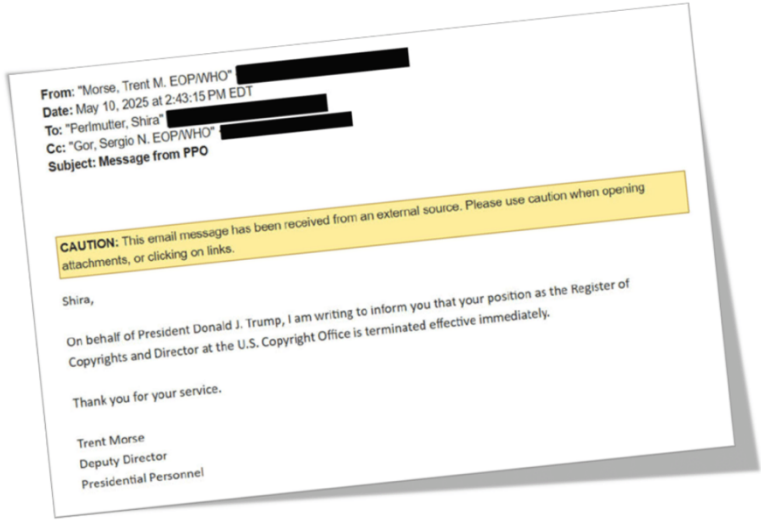
to remain in office simply because the agency might operate differently without her.

On Wednesday, May 28, U.S. District Judge Timothy J. Kelly will hear arguments on Perlmutter's TRO motion. It promises to be an extraordinary proceeding to cap what's already been an extraordinary month for the Copyright Office. Perlmutter claims the White House is orchestrating an unprecedented and unconstitutional takeover of a legislative branch agency by installing senior DOJ officials atop both the Library of Congress and the Copyright Office. If allowed, she warns, the move would undermine the Office's structural independence, compromise the confidentiality of congressional research and copyright deposits, and put congressionally mandated projects in peril—including its fourth and final report on copyright and artificial intelligence.

As we head into Wednesday's hearing, here's what you need to know.

EVENTS LEADING TO THE LAWSUIT

The drama started on May 8, when President Trump abruptly fired Librarian of Congress Dr. Carla Hayden in a two-sentence email. Under internal Library rules, Hayden's deputy—40-year Library veteran Robert Newlen—succeeded her as Acting Librarian.[5] The next day, the Copyright Office released a pre-publication version of Part 3 of its report on generative AI and fair use, a project nearly two years in the making.



From: "Morse, Trent M. EOP/WHO" [redacted]
Date: May 10, 2025 at 2:43:15 PM EDT
To: "Perlmutter, Shira" [redacted]
Cc: "Gor, Sergio N. EOP/WHO" [redacted]
Subject: Message from PPO

CAUTION: This email message has been received from an external source. Please use caution when opening attachments, or clicking on links.

Shira,

On behalf of President Donald J. Trump, I am writing to inform you that your position as the Register of Copyrights and Director at the U.S. Copyright Office is terminated effective immediately.

Thank you for your service.

Trent Morse
Deputy Director
Presidential Personnel

[5] Andrew Limbong, *Librarian of Congress firing is latest move in upheaval of U.S. cultural institutions,* NPR (May 9, 2025), https://www.npr.org/2025/05/09/nx-s1-5393737/carla-hayden-fired-library-of-congress-trump.

"Thank you for your service": Register Perlmutter was notified of her dismissal in a two-sentence email on Saturday, May 10.

Things escalated over the weekend. Perlmutter received an email from a White House personnel official informing her that she, too, was being removed—effective immediately—from her role as Register of Copyrights.[6] The White House asserted that Deputy Attorney General Todd Blanche had been appointed Acting Librarian under the Federal Vacancies Reform Act (FVRA), and that Blanche had designated DOJ official Paul Perkins to replace Perlmutter as Acting Register. But when Perkins and fellow DOJ official Brian Nieves arrived at the Library of Congress on the morning of May 12 with paperwork claiming their new roles, Library staff refused to recognize their authority.[7] Capitol Police were called, and the two officials ultimately left without incident.[8]

Perlmutter filed suit on May 22, arguing that neither the President nor Blanche has the legal authority to remove or replace her as Register.[9] Her motion seeks to preserve the status quo while the court determines whether her removal was lawful.[10]

WHAT THE TRO SEEKS—AND WHY IT MATTERS

Perlmutter's legal argument is straightforward: only the Librarian of Congress—not the President—has the authority to appoint or remove the Register of Copyrights.[11] Because the Librarian appointed her, she argues, only a lawfully appointed Librarian can remove her.[12] The Trump administration's reliance on the FVRA doesn't hold up, she claims, because the Act applies only to executive agencies—and the Library of Congress, as a legislative-branch institution, isn't one.[13] Perlmutter maintains that Blanche's purported appointment as Acting Librarian was invalid, and that any actions he took—including naming Perkins as Acting Register—have no legal effect.[14]

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[6] Scott MacFarland, *Trump fires director of U.S. Copyright Office, sources say*, CBS NEWS (May 10, 2025), https://www.cbsnews.com/news/trump-fires-director-of-u-s-copyright-office-shira-perlmutter-sources/.

[7] Maya C. Miller and Evlin Barrett, *Trump Installs Top Justice Dept. Official at Library of Congress, Prompting a Standoff*, NY TIMES (May 12, 2025), https://www.nytimes.com/2025/05/12/us/politics/trump-library-of-congress.html.

[8] *Id.*

[9] Complaint For Declaratory and Injunctive Relief, *supra* note 2.

[10] *Id.* at 2.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] Complaint For Declaratory and Injunctive Relief, *supra* note 2 at 2.

The administration strongly disagrees.[15] It argues that the Library does fall within the FVRA's scope—or, at minimum, that the President has independent Article II authority to remove federal officers and install temporary replacements.[16] But even if Perlmutter were right on the law, the government insists her TRO still fails—because the injuries she cites don't belong to her. "Plaintiff would not be irreparably harmed if she were reinstated and the Library was not exactly as when she left it," the filing tersely states.[17]

Meanwhile, the Copyright Office risks becoming collateral damage in the constitutional crossfire—with daily operations clouded by uncertainty and its institutional credibility hanging in the balance.

OPERATIONAL PARALYSIS

Perlmutter's motion describes a state of internal confusion as to who's lawfully in control of the Library of Congress and the U.S. Copyright Office—confusion she says is preventing the Office from fulfilling key statutory duties.[18] One immediate consequence is its inability to complete the fourth and final part of its report on copyright and artificial intelligence, which will address potential liability for AI-generated outputs.[19] While a pre-publication version of Part 3 was released the day before her removal, Perlmutter asserts that she can't issue the final installment without confirmation that she remains the lawful Register.[20] "If another person is appointed to Plaintiff's role," the motion states, "her ability to perform these duties will become at best unclear and at worst impossible."

There are also signs that the leadership vacuum at the Copyright Office may already be affecting some of its core day-to-day operations—most notably its copyright registration program, which processes hundreds of thousands of applications annually. While staff continue to accept and examine submissions, it remains unclear whether the Office can validly issue registration certificates without a properly appointed Register. Under Section 410(a) of the Copyright Act, "[w]hen, after examination, the Register of Copyrights determines that . . . the material deposited constitutes copyrightable subject matter . . . the Register shall register the claim and issue to the applicant a certificate of registration under the seal of the Copyright Office."[21] The plain language suggests that only the

[15] Defendants' Opposition To Plaintiff's Motion for A Temporary Restraining Order, *supra* note 4 at 1.
[16] *Id.* at 1.
[17] *Id.* at 21.
[18] Complaint For Declaratory and Injunctive Relief, *supra* note 2 at 7.
[19] *Id.*
[20] U.S. COPYRIGHT OFFICE, COPYRIGHT AND ARTIFICIAL INTELLIGENCE PART 3: GENERATIVE AI TRAINING (PRE-PUBLICATION VERSION) https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-3-Generative-AI-Training-Report-Pre-Publication-Version.pdf (2025).
[21] 17 U.S.C. § 410

Register can finalize registrations—raising questions about whether certificates issued without a lawfully-designated Register's stamp of approval while this dispute is pending would be valid.

STALLED POLICY WORK

Perlmutter's motion also suggests that the leadership disruption will stall or jeopardize several major statutorily required initiatives. In addition to Part 4 of the Copyright and AI study, these include:

1. **Enterprise Copyright System (ECS):** A multi-year effort to unify the Office's registration, recordation, public records, and licensing services into a single digital platform. ECS aims to replace outdated systems like eCO and eliminate paper-based workflows.[22]

2. **Fee Study:** The Copyright Office is required to periodically assess and adjust the fees it charges for public services.[23] The Register must ensure that any proposed changes are fair and equitable, and that they give proper consideration to the broader objectives of the copyright system.

3. **Copyright Claims Board (CCB) Review**: Created by the CASE Act of 2020, the CCB offers a streamlined, voluntary forum for resolving smaller copyright disputes.[24] The Copyright Office is currently conducting a required review of the Board's operations, including its effectiveness and accessibility.[25]

4. **Music Modernization Act (MMA) Redesignation:** Under the MMA, the Office is required to reassess and potentially redesignate the Mechanical Licensing Collective (MLC) and the Digital Licensee Coordinator (DLC), which manage blanket mechanical licenses and digital royalty distribution.[26]

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[22] COPYRIGHT OFFICE MODERNIZATION, https://www.copyright.gov/copyright-modernization/Copyright-Office-Modernization-Update.pdf (June 2022).
[23] 17 U.S.C. § 708.
[24] Aaron Moss, *Felony Streaming and CASE Act Pass: What You Need to Know,* COPYRIGHTLATELY (Dec. 22, 2020), https://copyrightlately.com/felony-streaming-bill-and-case-act/.
[25] CASE Act Study, 90 Fed. Reg. 11625 (Mar. 10, 2025), https://www.federalregister.gov/documents/2025/03/10/2025-03795/case-act-study.
[26] Periodic Review of the Designations of the Mechanical Licensing Collective and Digital Licensee Coordinator, 89 Fed. Reg. 20 (Jan. 30, 2024),

Perlmutter asserts that Perkins' claim to be Acting Register has already interfered with her ability to oversee and advance these initiatives—and, if not enjoined, will continue to obstruct the Office's ability to fulfill its statutory responsibilities.

RISKS TO CONFIDENTIALITY AND LEGISLATIVE INDEPENDENCE

Finally, Perlmutter asserts that the attempted takeover by Executive Branch officials poses a deeper threat to the Copyright Office's role as a neutral advisor to Congress.[27] Her motion argues that placing DOJ personnel atop both the Library of Congress and the Copyright Office would compromise the agency's ability to provide independent policy guidance and assist lawmakers in their legislative and oversight functions.[28] That work, she contends, needs to remain insulated from Executive Branch influence to preserve the constitutional separation of powers.[29]

As part of her broader separation-of-powers argument, Perlmutter also warns of the risk of unauthorized Executive Branch access to confidential materials.[30] The Copyright Office maintains a vast archive of unpublished works submitted for registration—screenplays, manuscripts, musical compositions, and proprietary software—many of which are protected by statute from public disclosure.[31] The Library of Congress, meanwhile, houses private research prepared by the Congressional Research Service for Members of Congress. Perlmutter argues that unlawful Executive access to this information would cause immediate and irreversible harm, jeopardizing the value of copyright deposits, undermining the integrity of the registration system, and eroding the public's trust in the Office as a secure and neutral institution.[32]

THE BOTTOM LINE

Shira Perlmutter casts her lawsuit as a battle to preserve the integrity and independence of the Copyright Office—not just her own position at its helm.[33] The Trump Administration sees it differently, calling Perlmutter's removal entirely proper. Moreover, the legal standard for a temporary restraining order is

https://www.federalregister.gov/documents/2024/01/30/2024-01781/periodic-review-of-the-designations-of-the-mechanical-licensing-collective-and-digital-licensee.

[27] Complaint For Declaratory and Injunctive Relief, *supra* note 2 at 11.

[28] *Id.* at 5.

[29] *Id.* at 6.

[30] *Id.* at 10.

[31] *Id.* at 7.

[32] Complaint For Declaratory and Injunctive Relief, *supra* note 2 at 6.

[33] *Id.* at 10-11

clear, they argue, and Perlmutter hasn't shown the kind of personal, irreparable harm that would justify emergency relief.[34]

If the court grants the TRO, Perlmutter will temporarily resume her role while the legal issues play out. If not, the administration's appointees will remain in control—for now—amid ongoing questions about the Office's direction and independence—just as major policy debates over generative AI and licensing structures reach a critical stage.

Perlmutter's case raises a significant constitutional question: Does the President have the authority to remove and replace officers of an agency historically viewed as part of the Legislative Branch—or is the Copyright Office, as the administration now argues, effectively an executive entity subject to presidential control? But equally important—and perhaps even more immediate—is whether the Copyright Office can effectively fulfill its responsibilities while this dispute unfolds.

As always, I'd love to hear what you think. Drop me a note in the comments below or @copyrightlately on social media.

Thank you again, Aaron Moss, for allowing us to reprint both of these blog pieces as part of 72(2).

[34] Defendants' Opposition to Plaintiff's Motion for A Temporary Restraining Order, *supra* note 4 at 5.