

# Annual Report of the Register of Copyrights

FISCAL YEAR ENDING SEPTEMBER 30, 2009

novel questions of law as required under the statute. The judges failed to refer the novel question of substantive law as to whether “interactive streaming” constitutes a digital phonorecord delivery under section 115. They also failed to refer the novel question of substantive law requesting a determination as to the scope of the license with respect to copies made to facilitate the delivery of digital music.

In addition, the Register found that the Copyright Royalty Judges erred in their conclusions regarding both their and the Register’s authority to review regulations submitted to them under an agreement by the participants. The judges’ conclusion that they could not review these regulations led to the inclusion of regulations that constituted erroneous resolutions of material questions of substantive law under the copyright law, which the Register corrected.

#### Request to Register by U.S. District Court for Puerto Rico

On October 13, 2008, the Prioritizing Resources and Organization for Intellectual Property Act (Pub. L. No. 110-403) was signed into law to strengthen intellectual property laws. The act amended section 411 of the copyright law by adding subsection (b) to create a new procedure for infringement actions that requires courts to seek the advice of the Copyright Office on issues that may involve fraud on the Copyright Office.

Section 411 is well known for its provision, now designated subsection (a), that requires copyright owners to register or preregister their copyright claims before instituting infringement actions. The new provision in subsection 411(b)(1) mandates that a certificate of registration satisfies the requirements of subsection (a) regardless of whether the certificate contains any inaccurate information unless two criteria are satisfied: first, the inaccurate information was known to be inaccurate when it was provided and, second, the inaccuracy, if known, would have caused the Register of Copyrights to refuse registration. Subpart 411(b)(2) requires courts to consult with the Register regarding the analysis of the second of those two criteria, specifically as to “whether the inaccuracy of information, if known, would have caused the Register of Copyrights to refuse registration.”

On June 1, 2009, the U.S. District Court for Puerto Rico used this provision for the first time, issuing an order to the Register of Copyrights pursuant section 411(b)(2) in the case of *Luis A. Velazquez-Gonzales v. Rafael Pina, d/b/a Pina Records, et al.*