

Analysis and Proposed Copyright Fee Adjustments to Go into Effect on or about August 1, 2009

**Submitted to Congress by
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March 15, 2009



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ANALYSIS AND PROPOSED COPYRIGHT FEE SCHEDULE

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Introduction

The Copyright Office proposes herein a new schedule of fees to be implemented on or about August 1, 2009. Adjustments are needed from time to time to bring fees for copyright services in line with the cost of providing those services. The attached fee schedule proposes to increase or decrease fees based on increased or decreased costs, in some cases resulting from new operational processes under the Office's reengineered system.

This report contains the analysis Congress requires the Office to submit with its proposed fee schedule. If Congress does not reject the schedule within 120 days, the new fees will take effect pursuant to regulations to be published by the Register of Copyrights.

I. Background on Adjusting Copyright Office Fees

The proposed fees were determined based on the guidelines set forth in legislation enacted in 1997 (Technical Amendments Act, Pub. L. No. 105-80, Ill Stat. 1529 (1997)) that direct the Register of Copyrights to set fees (statutory fees) by regulation rather than by statute, according to the following procedure:

1. The Register shall conduct a study of the costs incurred by the Copyright Office for the registration of claims, the recordation of documents, and the provision of services. This study should also consider the timing of any increase in fees and the authority to use such fees consistent with the budget. [708 (b) (1)]
2. On the basis of the study, the Register is authorized to fix fees at a level not more than that necessary to recover reasonable costs incurred for the services described plus a reasonable adjustment for inflation. [708 (b) (2)]
3. The fees should also be fair and equitable and give due consideration to the objectives of the copyright system. [708 (b) 4)]
4. The Register must then submit a proposed fee schedule with the accompanying economic analysis to Congress for its approval. The Register may institute the new fees 120 days after the schedule is submitted to Congress unless Congress enacts a law within the 120-day period stating that it does not approve the schedule. [708 (b) (5)]

A. *Overview of the Copyright Office budget*

The Copyright Office budget is separate from, but appropriated within, the overall Library of Congress budget. The Office benefits from shared Library resources, including the Offices of Human Resources, Financial Services, Integrated Support Services, and Information and Technology Services.

Copyright Office basic funds (i.e., non-licensing fees) support activities associated with administering the copyright law, including registration of claims, recordation of documents, and related services. The royalty-related activities of the

Office's Licensing Division are funded out of royalty fees received in accordance with several statutory licenses.

The Copyright Office net appropriation supports service-related activities not recovered by fees, as well as other costs not related to fee services. It also supports some operational costs not fully recovered through fees. This is the case with respect to the registration program. The Office has traditionally charged fees that recover less than the full cost of registration, with a goal of encouraging participation in the copyright process, thereby providing a comprehensive record of copyrighted works for the public's use, and enhancing the Library of Congress collections with voluntarily deposited published works. The Copyright Office annually processes and forwards to the Library of Congress more than half a million registered and deposited copies, including books, serials, maps, music, and motion pictures. The value of these deposits is normally in excess of \$40 million; with fiscal year 2007 transfers valued at \$45.0 million and fiscal 2008 transfers valued at \$23.7 million. The one-year decline in fiscal year 2008 transfers is an artifact of our reengineering and system implementation

B. Development of a cost study

The cost study for this proposed fee schedule is the first to reflect the operational activities associated with the reengineered processes of the Copyright Office, which were implemented in August 2007. The cost study was adapted from a model originally developed under contract by PriceWaterhouseCoopers as a step in reengineering. The Office follows the guidelines established by the Federal Accounting Standards Advisory Board (FASAB) for federal agencies to use in determining the full cost of program

activities. Its publication, SFFAS Statement No. 4, Managerial Cost Accounting Concepts and Standards for the Federal Government, promotes activity-based cost as the preferred method of cost accounting for calculating the cost of providing services. In addition, full-cost reporting is required in SFFAS No. 7, Accounting for Revenue and other Financial Sources, for the annual general purpose financial statements of federal entities. OMB Circular A-25: User Charges also provides costing guidelines and their use in establishing fees charged to users for various types of services.

Activity-based cost analysis is particularly appropriate for Copyright Office basic services. More than 80 percent of personnel costs are directly associated with one or more of the Office's fee services. The method also works well because most copyright activities are labor-intensive, and staff costs can be traced by estimating staff time spent in the various services.

The cost study analyzes costs incurred during the second quarter of fiscal year 2008 (January 1 to March 31, 2008). In establishing study parameters, the Office concluded, as it has in previous cost studies, that some costs should not be included in the analysis. The study omitted public information costs and certain costs associated with legislative, regulatory, judicial, and international responsibilities that do not relate directly to any fee service. The study also omitted activities, including those involved in processing incoming deposits not associated with registration and securing copies of copyrighted works published in the United States that were not registered or voluntarily deposited for the use of the Library of Congress. Overhead expenses associated with omitted activities were likewise excluded.

This year's cost study took place during a period when the Office was adjusting to the reengineered operations environment, including staff retraining in the new registration processes and newly-developed information systems. The registration program was also understaffed by 14 specialists and seven technical staff during the time frame of the study. Thus, the full costs associated with registration were understated. Full staffing will soon be accomplished, and the additional costs have been built into out year forecasts.

Increased electronic filing contributes to goals outlined in the Office's and the Library's strategic plans, including providing more online services to improve processing and reducing pendency time for all claims. A separate cost study, based on the Licensing Division's budget and expenditures, was undertaken to provide current cost information for the one statutory fee service provided by that division.

II. Evaluation of Cost Study Results and Other Congressional Criteria

Following the cost study, a second analysis was conducted, focusing on statutory fee-setting requirements and economic factors, including, when applicable, fees charged by the private sector for comparable services. The determination to recover full or partial costs for a particular service was based on the statutory requirement that fees be fair and equitable and give due consideration to the copyright system's objectives. The Office proposes to adjust fees upward where costs have increased and keep fees unchanged or reduced where costs remain constant or have decreased due to efficiency gains through increased automation. Other fee proposals will adhere to the

forecasted Consumer Price Index (CPI) to maintain current level cost recovery. A summary fee schedule is contained in the chart in Section II.B of this report.

A. *Rationale for adjusting certain fees*

The basic registration fee: new three-tier fee structure

Reengineering of Copyright Office processes has enabled the Office to expand filing options beyond traditional paper applications. In July 2008 the Office released to the general public two new filing options for basic copyright claims: electronic filing via the electronic Copyright Office (eCO) and Form CO, a paper application with two-dimensional (2D) barcodes for automated processing.

Electronic filing: eCO offers total electronic filing to many users. A user establishes an account and without delay may complete an application online, pay the fee via pay.gov, and upload a copy of the work to be registered. In cases where the deposit cannot be uploaded or where the Library requires the deposit of one or two physical copies, the user selects a 'mail-in' option and prints a shipment slip to accompany the deposit when mailed. The Office realizes substantial savings in not having to process a paper form, manually enter and quality-review input data, or process a fee payment. The fee for electronic filing reflects this savings and remains at \$35.

Form CO: Form CO is available on the Copyright Office website. It is completed online and prints with several 2D barcodes that contain the information from the application. When the form is scanned by the Copyright Office, the eCO system reads the barcodes and populates the fields of an electronic application with the captured

data. There is significant savings to the Office in eliminating the data entry or data transfer functions from the form. However, costs associated with scanning and fee payment still remain. Reflecting costs associated with form scanning and fee processing, the proposed filing fee for Form CO with 2D barcodes is \$50.

Traditional paper forms: Paper forms without barcodes will continue to be accepted for registration. To process these forms, the Office must digitize, manually enter and verify the information provided in the form, and process the accompanying check or money order even before the substantive review of the claim begins. This is a labor-intensive process resulting in increased processing costs. The Office proposes a higher fee of \$65 to recover the greater cost. This fee will apply as well to paper filings of applications for group registration for database updates, contributions to periodicals, and published photographs.

Group registration for serial issues: The cost of registering a group of serial issues published within a three-month period has increased. However, the Copyright Office intends to expand the electronic registration process in the near future to include the group registration options. For this reason and because the Office does not wish to discourage users from making group registrations by increasing the fee at this time, the Office proposes that this fee remain at \$25 per issue.

Group daily newspapers/newsletters: Group registration for an entire month of issues of a daily newspaper or newsletter using a single form and fee provides a great benefit to the filer. In addition to the cost savings, alternative deposit material may be submitted. The Office proposes raising the fee to \$80, a \$10 increase over the current fee that reflects forecasted CPI increases.

Supplementary registration: The cost of amending completed registrations has declined in recent years. The cost savings, resulting from online availability of more of the records that must be reviewed in processing these filings, will be passed on to customers. The proposed fee of \$100 is a decrease from the current \$115 fee.

Renewal registration: For works published between January 1, 1964, and December 31, 1977, the owner of the renewal rights can submit an application for registration of a renewal claim any time during the renewed and extended term of 67 years. There are limited benefits to making such registrations. As a consequence, the number of such renewal claims is less than 500 per year. The Office proposes to increase the fee for renewal registrations from \$75 to \$115 to reflect the current costs of providing the service and in light of the fact that all copyrights subject to renewal have already entered the renewal term.

Receipt for a deposit under section 407: The cost of providing a receipt for a deposit has increased. To achieve full cost recovery, the Office proposes to increase the fee from \$20 to \$30.

Recordation of a transfer of copyright ownership or other document, including a statement revealing the identity of an author of an anonymous or pseudonymous work or a statement relating to the death of an author: The cost of providing this service has increased. The Office proposes a fee increase in direct proportion to the increase in the CPI since the last fee adjustment. The Office recommends increasing the fee for recordation of a single-title document from \$95 to \$105 and increasing the fee for groups of 10 additional titles included in the document from \$25 to \$30.

Notice of intention to obtain a compulsory license under section 115(b): This fee has not been adjusted since 1978 and has become both a windfall for filers who have only one title in their notice and a burden for those with many titles. The Office is proposing a change in the fee structure to better reflect the relative cost of processing the single-title versus multiple-title filings. The proposed fee, formerly a flat \$12 per title, would be \$60 for a single-title document and \$20 for groups of 10 additional titles.

Additional certificate of registration: The cost of providing an additional certificate of registration has decreased as more and more copyright applications are available in scanned image form and do not have to be retrieved from paper copy storage to be reproduced. This cost savings will be passed on to the customer. The Office is proposing a fee decrease from \$40 to \$35.

Other certification: As a result of increased labor costs, the cost of certification of a Copyright Office record has increased. The Office is proposing a fee increase from \$150 to \$165 per hour.

Making and reporting of a search: The cost of providing this service has increased. The proposed fee is intended to recover closer to 100 percent of costs and would be consistent with private sector search providers. The proposed fee increase is from \$150 to \$165 per hour, with a two-hour minimum charge.

B. Fairness, equity, and due consideration to the objectives of the copyright system

The Office believes that the proposed schedule of fees meets the requirement of fairness and equity, giving due consideration to the objectives of the copyright system.

The Office achieved a strategic goal in expanding online services to the public with the July 2008 release of eCO. In the months since electronic filing was made

generally available, use has expanded rapidly. Within a few weeks of the release, more than 50 percent of all claims received each week were filed electronically. The lower fee for e-filing contributed significantly to that success. The proposed fee schedule provides a much greater fee incentive and should persuade even more filers to switch to e-filing. Further expansion of online service will reduce overall processing costs for the Office. The Office benefits to a lesser extent from Form CO filings with 2D barcodes. They are less costly to process than traditional paper forms, and a lower fee is an incentive for filers to use the form. The Office wishes to discourage use of the traditional paper forms, which are the most costly to provide and process, by imposing a fee that reflects this greater cost. The Office believes that the three-tiered fee system based on scaled costs of the three filing options is fair to the public and beneficial to the registration system.

Providing the new electronic filing option serves the objectives of the copyright system by making registration more accessible to the public and processing more cost-effective. Formerly, filers had to come to, or mail to, Capitol Hill all their filing materials. Payment options, particularly for infrequent filers, were generally limited to checks and money orders to avoid the risks involved in sending credit card information through the mail. The Copyright Office had to manually key all copyright information into its systems.

Electronic filing has brought Copyright Office services to filers at home and at the office. In many cases, electronic filers can also upload their deposit copy, attach it to the application, and send it electronically, completing the e-filing. This can be a significant cost savings in packaging and postage for those who otherwise would have to mail a large manuscript, a CD, or other type of deposit. The effective date of registration for e-

filers is generally earlier as well, because all registration components are received immediately in the Copyright Office. Under electronic filing, payment options include credit cards and electronic checks (ACH), securely available online via pay.gov, a service of the Department of the Treasury. In instances when electronic uploads are not appropriate, the electronic filing system generates a shipment slip to accompany the hard copy deposit(s) submitted through the mail.

Setting higher fees for paper claims, with or without the 2D barcodes, is a cost disadvantage to those unwilling or unable to file electronically. The higher fee is an outgrowth of the manual labor, including key entry and proofreading associated with paper filing. Those who can file electronically or use the 2D barcode form option will realize substantial savings per registration filing compared to those who do not have a computer and Internet access and must, therefore, pay the higher fees associated with higher processing costs. However, many libraries and civic centers offer free access to computers with Internet service. If the savings in fees is important to the filer, using this free access is an option available to virtually all potential filers. The Office believes the higher fees are not only justified on the basis of relative processing costs, but also meet the standard of fairness and equity.

The other fee adjustments in the attached schedule are also fair and equitable. The fee changes are based on a combination of costs associated with reengineered processes and adjusted as applicable by the CPI. In addition, the proposed fee decrease for two frequently-used services (additional certificates and supplementary registrations), will benefit customers.

C. *Comments from the public*

The Copyright Office published a notice of public rulemaking seeking public comment regarding the proposed fee adjustments. Four comments were received, of which three are relevant to the fee adjustments proposed in this document. The comments and the Office's response are as follows:

Music Reports, Inc. (MRI), provider of music licensing and royalty accounting services to digital music services in the United States, submitted by Ronald H. Gertz, Esq., Chairman of the Board

This comment pertains to the fee for recordation of a Notice of Intention to Make and Distribute Phonorecords (17 U.S.C. §115). MRI states that the recommended fee is an improvement, but that it is still excessive and burdensome for filers who have large numbers of titles. MRI asks that the Office cap the fee for a single filing at \$20, no matter how many titles are included. MRI suggests that filers can provide a searchable CD-ROM in an Excel-like format that would greatly reduce Copyright Office processing costs. In addition, MRI urges the Office to automate this recordation as soon as possible. The Office reviewed the cost study with respect to this service and determined that the cost could be reduced in the near term by having the work involved performed by lower graded staff. We then calculated the costs based on the salaries of the relevant staff and determined that full cost could be recovered with a fee of \$60 per filing, plus \$20 per group of 10 titles. The schedule of fees attached to this document reflects that change.

The Office intends to provide electronic filing for this service; however, Licensing Division resources are currently committed to other automation initiatives. It is anticipated that when the Office is able to provide an electronic filing option for section

115 Notices of Intention, the cost of processing such notices (including the per-title cost for notices involving large numbers of titles) will drop considerably, and the fee can be reduced. At that time, a reduced fee will be proposed and sent to Congress.

Author Services, Inc., a literary agency which represents the Church of Spiritual Technology with regard to the works of L. Ron Hubbard, submitted by Ryland Hawkins

This comment relates to renewal registrations on Form RE. Author Services, Inc., notes that the proposed fees are far higher since 2006. They believe the registration cost has gone down because instructions with new forms issued in October 2007 are more complete. They believe the effect of these changes was not taken into account. They suggest that there are interests beyond commercial interests that may dictate registration.

The cost study underlying the proposed fee schedule indicated that the cost of providing renewal registrations has increased. The fee was set to recover the full cost of providing the service regardless of the reason for registration.

Professional Photographers of America (PPA), representing also Commercial Photographers International, the Society of Sport & Event Photographers, the Student Photographic Society, and Evidence Photographers International Council, contact, Maria D. Matthews, Copyright & Government Affairs Coordinator, PPA.

This comment is concerned with the group registration fee for published photographs. PPA strongly objects to the filing fee increase to \$65, particularly when electronic filing is not available for groups. It challenges the assertion that copyright owners can easily submit electronic applications via public Internet sources, such as

libraries and civic centers. It also expresses concern over the proposed per-title fee for unpublished collections.

The Office believes that the \$65 fee is appropriate for photographers to pay in the interim period between the fee increase and the offering of group registrations via eCO. Photographers can submit an application for group registration encompassing hundreds of photographs. Electronic filing has not yet been developed in eCO for group registrations, but when it is available, claimants will be able to register groups of published photographs for the \$35 fee. Until that time, the fee of \$65 is appropriate in that it reflects more accurately the cost of providing registration for paper filings. In fact, the actual costs associated with filing group registrations exceed \$65. However, as in other instances, full cost recovery would be cost-prohibitive and serve as a registration barrier.

The issue of uploading photographs using public Internet sources is expected to be mitigated by the recent increase in uploading time permitted in the eCO system to one hour.

The Office also notes that the proposed per-title fee for unpublished collections has not been implemented. Before it is implemented, the public will have an opportunity to comment on the change.

III. Conclusion

A. *Projected revenue based on proposed fees*

The Copyright Office anticipates increased revenue from most of the services reflected in the adjusted fee schedule. Overall, however, the Office expects to bring in less revenue than in fiscal year 2008.

In fiscal year 2008, the Office's fee receipts totaled \$29,260,571. After July 1, when eCO opened to the public, we noted an immediate shift from paper to electronic filing, with a correlated decline in receipts of \$10 per filing. The Office anticipates an even greater shift in electronic filing, from the current 53 percent to as much as 65 percent, if the fee adjustment goes into effect. Total fee receipts for Fiscal Year 2009, therefore, are projected to be only \$27,750,741 from basic services, plus \$13,975 for non-royalty Licensing Division services, for a total of \$27,764,716. In addition, the current economic downturn is expected to impact the overall number of copyright filings.

The Office believes that over the course of the next few years, this relatively modest reduction in receipts will be acceptable since we expect overall operating costs to decline as we move towards more technology-focused processing.

B. Fee schedule with proposed fee changes

The Copyright Office believes that the proposed schedule of fees meets the statutory goals of fairness, equity, and due consideration to the objectives of the copyright system.

New fees for Congressional approval

	Services described in 17 U.S.C.§708(a)(1)-(9)	Current Fee	Proposed Fee
(1)	Registration of a basic claim in an original work of authorship:		
	Electronic filing	\$35	\$35
	Form CO (2D barcode application)	\$45	\$50
	Forms PA, SR, TX, VA, SE (paper filing)	\$45	\$65
	Registration of a claim in a group of contributions to periodicals (Form GR/CP), published photographs, or database updates (paper filing)	\$45	\$65
	Registration of a claim in a group of serial issues (Form SE/Group, per issue)	\$25	\$25
	Registration of a claim in a group of daily newspapers or newsletters (Form G/DN)	\$70	\$80
	Supplementary registration to amend a completed registration (Form CA)	\$115	\$100
(2)	Registration of a renewal claim (Form RE)	\$75	\$115
(3)	Issuance of a receipt for a §407 deposit	\$20	\$30
(4) &(6)	Recordation of a document (single-title)	\$95	\$105
	Additional titles (per group of 10 titles)	\$25	\$30

(5)	Recordation of a Notice of Intention to obtain a compulsory license under 17 U.S.C. §115b (single-title)	\$12	\$60
	Additional titles (per group of 10)	N/A	\$20
(7)	Issuance of an additional certificate of registration	\$40	\$35
(8)	Certification of other Copyright Office records (per hour)	\$150	\$165
(9)	Search report prepared from official records (per hour) [minimum: 2 hours]	\$150	\$165

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