

Library of Congress Department 17 Washington, D.C. 20540

(202) 707-8350

February 28, 2002

Dear Mr. President:

I am pleased to present a schedule of proposed Copyright Office fees and the accompanying analysis as required by the Technical Amendments Act, Pub. L. No. 105-80, 111 Stat. 1529 (1997).

As described in the analysis, the Office has followed the steps outlined in the statute and proposes to institute the new copyright fees on July 1, 2002. Under the law, 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. In completing this analysis, the Office conducted a study of costs in providing services and considered other pertinent information, including the effect of a fee increase on usership, the maintenance of a comprehensive public record, as well as the collections and exchange programs of the Library of Congress.

Thank you for your consideration of this proposed fee schedule. Please let me know if you require any additional information.

Respectfully,

Marybeth Peters

Register of Copyrights

The Honorable Richard Cheney President of the Senate Washington, D.C. 20510



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Dear Mr. Speaker:

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The Honorable J. Dennis Hastert Speaker of the House of Representatives Washington, D.C. 20515



ANALYSIS AND PROPOSED COPYRIGHT FEE SCHEDULE TO GO INTO EFFECT July 1, 2002

Submitted to Congress by:

Marybeth Peters Register of Copyrights

February 28, 2002

ANALYSIS AND PROPOSED COPYRIGHT FEE SCHEDULE

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Introduction

The Copyright Office proposes herein a new schedule of fees to be implemented July 1, 2002. The proposed fees were determined based on the guidelines set forth in legislation enacted in 1997 that permits the Register of Copyrights to set 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.
- 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.
- 3. The fees should also be fair and equitable and give due consideration to the objectives of the copyright system.
- 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.¹

This is the second schedule of fees set forth since adoption of the new fee setting procedure. The Office submitted a proposed fee schedule on February 1, 1999^2 . This schedule was approved by Congress and was implemented on July 1, 1999.3

The Copyright Office reached a number of policy decisions relating to fees during the 1998-1999 process. Among these was the decision to perform a cost analysis and review fees on a three-year schedule. For a number of reasons, it was determined impractical to attempt to increase fees more frequently than every three years.

This report contains the analysis Congress requires the Office to submit with its proposed fee schedule. If approved, the schedule will be set by regulation. This schedule sets new fees for

¹ Technical Amendments Act, Pub. L. No. 105-80, 111 Stat. 1529 (1997).

Analysis and Proposed Copyright Fee Schedule To Go Into Effect July 1, 1999, by Marybeth Peters, Register of Copyrights, February 1, 1999.

³ 64 FR 29518 (June 1, 1999).

services identified in the statute and also for services related to registration that do not have to be reviewed by Congress. This report also provides:

- A brief recounting of the background on setting Copyright Office fees the Copyright Office budget.
- A discussion of how the Office prepared its cost study and determined the proposed fees.
- A review of how decisions were made to adjust certain fees and not others. Some are
 adjusted to recover the full cost of providing the service, some are adjusted by the rate of
 inflation to maintain cost recovery, some were not adjusted based on current and projected
 cost recovery, and one fee was eliminated for reasons of public policy.

I. Background on Copyright Fees

A. Fees previously set by Congress

In 1870, registration of claims to copyright was centralized in the Library of Congress. The fee to register a copyright claim was \$.50, an amount sufficient to cover the cost of recording the title or description of the work. Registration fees were increased in 1909 and 1928 and the Copyright Office remained self-sufficient until 1942, when, for the first time, revenues fell short of expenditures. Another increase in 1948 brought income above expenditures again, but for only one year. After that time, fee increases were never sufficient to recover operating costs and the percentage of costs covered by fee receipts eroded between legislated fee increases.

In 1965, Congress increased the registration fee from \$4 to \$6, bringing recovery of Office expenditures from 62 percent to an estimated 80 percent. A 1978 fee increase to \$10 brought receipts to about 80 percent of expenditures, but by 1989, receipts had again diminished to 40 percent of the Office's expenditures. The last legislatively enacted fee increase, to \$20 effective in 1991, raised receipts to about 65 percent of expenditures; significantly, an amendment to increase the fee to \$30, which would have achieved full-cost recovery, was defeated in the House Judiciary Committee.

The fees set in mid-1999 recovered approximately 68.5 percent of the Office's costs in FY 2000 and 66.1 percent in FY 2001. In FY 2001, the total amount of fee receipts was slightly lower than in FY 2000 (\$21,601,045 in FY 2001 compared to \$21,932,886 in FY 2000).

Congress's consistent establishment of fees that would recover about two-thirds of the Office's costs, with the rest of the budget coming from appropriations, reflects the fact that the

Copyright Office has come to do much more than just register copyright claims over its 105 year existence as a department of the Library of Congress. It has increased its services to the Library, the United States Congress, the Executive Branch, and the American public, and expanded its national and international policy roles. Consequently, both Congress and the Office have recognized that not all costs of the Office should be borne by users of its fee services.

The report that accompanied the legislation leading to the 1990 increase noted:

The Copyright Office does not recommend a 100 percent fee-based registration system, since the Office performs some valuable services not directly related to maintenance of the public record. Public information services, rulemaking, participation in the development of national and international copyright policy, and preparation of reports and studies for the Congress are among the services of a public nature performed by the Copyright Office, and the Committee can reasonably expect the taxpayers to shoulder some of this burden.⁴

B. Overview of the Copyright Office budget

Copyright Office basic funds support activities associated with administering the copyright law, including registration of claims, recordation of documents, and related services. The Office's Licensing and Copyright Arbitration Royalty Panel work is funded by royalty fees. The full cost of all Copyright Office functions was \$38,438,249 in FY 2001.

The Copyright Office net appropriation, approximately 28 percent of the FY 2001 total basic appropriation, represents funding provided by Congress rather than through fees. The net appropriation supports policy costs and the cost of obtaining copies of copyrighted works needed for the Library's collections, which are unrelated to fee services, as well as those costs not fully recovered through fees. Approximately 72 percent of the Copyright Office's total FY 2001 budget was based on offsetting collections authority from user fees.

The Copyright Office budget is separate from that of the Library of Congress, although there are shared resources stemming from budgeted expenditures. The Library of Congress assumes certain intra-entity expenses supporting the Copyright Office in the Offices of Human Resource Services, Financial Services, Integrated Support Services, and Information and Technology Services. In return, the Copyright Office annually provides the Library of Congress

⁴ H.R. Rep. No. 101-279 (1989).

with very valuable materials, including books, serials, maps, music, and motion pictures, for the Library's collections or use in its exchange programs. The value of these deposits is increasing and was estimated at nearly \$32 million in FY 2001.

C. Development of a cost study

The cost study for this proposed fee schedule was developed by the Copyright Office based on a model created as part of the its business process reengineering (BPR) initiative. In FY 2000, the Office hired PricewaterhouseCoopers to assist in developing a BPR project plan. One task was to analyze the current cost of providing various services in the "as-is" environment. The cost study forming the basis for the recommended fee schedule uses the BPR model, with adjustments to omit non-fee services and include some fee services that were not included in the BPR study. The cost analysis used the activity based costing methodology for determining the Office's full cost for each service.

The cost study identified direct and indirect, intra- and inter-entity costs and concluded, as did the 1998 cost study, that some costs should not be included in the analysis. The study omits purely policy and public information costs, i.e., costs related to legislative, regulatory, judicial, and international responsibilities, which do not relate directly to any fee service. Excluded policy expenses include certain staff from the Office of the General Counsel, the Public Information Office, the Publications Section, and all Policy and International Affairs staff. The Office also excluded the costs of the Copyright Acquisitions Division, whose primary responsibility is securing copies of copyrighted works published in the United States that have not been registered or voluntarily deposited for the use of the Library of Congress, and certain overhead expenses associated with these activities.

The activity-based costing methodology used in the study was approved in *Managerial Cost Accounting Standards for the Federal Government, Statement of Federal Financial Accounting Standards, No. 4*, published by the Office of Management and Budget, on July 31, 1995. Under this approach, resource costs are assigned to activities, and activities are assigned to specified services. Most Copyright Office activity costs were associated directly with one or more fee services. Certain general and administrative costs related to fee services were treated as indirect costs and were allocated proportionately across all fee services. Intra- and inter-entity costs were allocated to the specific activities they support or, when they represented general support to the Office, were allocated proportionately across all fee services.

The cost study identified full costs for each fee service, calculating both the total cost for the service and the unit cost per request. Included in full costs are inter-entity costs that are funded by other federal agencies and intra-entity costs that are provided by the Library of Congress and are compensated by the valuable copies the Office provides for its collections. To identify the costs to the Copyright Office, aggregate and unit costs without inter- and intra-entity expenses were calculated as well. The costs specific to the Copyright Office were used as the basis for determining cost recovery for most statutory services.

The cost study was accompanied by analysis which considered statutory fee setting requirements and economic factors. The determination to recover full or partial costs for a particular fee was based on the statutory requirement that fees be fair, equitable, and give due consideration to the objectives of the copyright system. In some cases, market pricing was considered. Where the private sector provides a service comparable to the one provided by the Office (e.g., searching public records), the fee charged in the private sector was considered.

II. Evaluation of Cost Study Results and Other Congressional Criteria

Based on the cost study and accompanying analysis, the Office is proposing adjustments for certain fees. The fee schedule is contained in Section E of this report.

A. Rationale for adjusting certain fees

Statutory fees

The Office determined that most fees for services mandated by statute with the exception of the basic registration filing fee, should be adjusted to reflect any increased costs of providing the various services. Those statutory fees that will be adjusted to achieve or maintain full cost recovery include the fees for making a renewal registration, recording a document, and providing additional certificates.

Services the Office provides that benefit only or primarily the user of that service should recover the full cost to the Office of providing the service, unless that cost would be excessive. The Office believes there is no overriding principle that would lead to recommending a recovery less than the direct cost of providing these services. The Office observes that some of these fees are for optional services; others may be commercial in nature. For example, since renewal is now automatic, a renewal claimant based the determination whether or not to seek a renewal registration on his or her commercial interest.

The fee for searching and preparing a report from Copyright Office records is recommended for adjustment based on inflation. The recommended fee is intended to maintain the current level of cost recovery.

The Vessel Hull Design Protection Act of 1998 assigned to the Copyright Office the responsibility for administering the registration of claims to protection in vessel hull designs⁵. The requirements for registration established in the law were unlike any the Office uses for other works. In the first instance, therefore, the fee was modeled after that for registering mask work protection in semiconductor chip designs. In the recent cost study, actual costs to the Office were calculated for the first time. It showed that vessel hull design registrations are significantly more costly to process than mask work registrations. The fee has been increased to recover the full cost to the Copyright Office of making these registrations.

Another new statutory responsibility the Office recently acquired is the registration of designated on-line service provider agents as described in the Digital Millenium Copyright Act of 1998⁶. In this case, as an initial fee, the Office set the recordation fee at \$20. The recent cost study found the actual cost to be greater; however, the Office is making a modest increase at this time because it is likely that service providers will have to re-file when the regulation is made final.

Non-statutory fees

The Copyright Office provides a number of services that are not mandated under the statute. These include fees for expediting service, for example, where registration or other services are required for litigation, customs, or business-related deadlines. They also include fees for group registrations of related works, other services related to registration, copying charges, and service charges for managing deposit accounts.

A number of these fees will be adjusted upward to achieve full cost recovery. Others are adjusted to maintain the same percentage of cost recovery based on inflation over the past three years. The fee for inspecting a registered deposit is being abolished. This fee has been in effect for some years. It was based on the requirement that a staff member monitor the person inspecting the

⁵ Pub. L. No. 105-304, Title V, 112 Stat. 2905-2918 (October 28, 1998).

⁶ Pub. L. No. 105-304, 112 Stat. 2860 (October 28, 1998).

deposit of the copyrighted work in order to avoid having infringement result from such inspections. The Office, though, is an office of public

record and it believes that charging a fee for this service may impinge upon the right to view these public records for certain members of the public.

When the previous cost study was conducted, the Office adjusted non-statutory fees on July 1, 1998, separate from the statutory fees. The Copyright Office earned additional receipts for these services for a full year before the statutory fees could be adjusted on July 1, 1999. The delay for statutory fees was occasioned by the rulemaking proceeding and public comment period the Office held to be certain the public had an opportunity to provide input into the process and policy decisions on these fees, as well as by the 120-day Congressional non-approval period in which Congress could enact a law if it did not approve the schedule.

For convenience and because the timeframe is shorter, the non-statutory fees are slated for adjustment on the same schedule as statutory fees. The new schedule of fees in Section E of this report includes all fees, whether adjusted or not.

B. Rationale for not adjusting the basic registration filing fees

There are a number of factors that weigh against adjusting the basic registration filing fee in 2002. Among them are the level of cost recovery the fee enjoyed in FY 2000 and FY 2001, the large increases imposed on the public in recent years, the negative effects of the decline in registrations that follows every fee increase, the costs associated with increasing the fee, and the changes in processing anticipated from the business process reengineering effort.

1) Basic registration fee recovered nearly 90 percent of associated costs in FY 2000

The Office does not propose adjusting the basic registration fee which accounts for 76.6 percent of Copyright Office business. In FY 2000, the first full year after the basic registration fee was increased from \$20 to \$30, the fee recovered nearly 90 percent of the cost to the Copyright Office of providing the service. This cost recovery was achieved despite a 7.4 percent decline in the number of new copyright claims filed. If the number of registrations increases at a rate of 1.5 to 2 percent per year, as expected, the percentage cost recovery will remain strong. The cost study, therefore, did not support adjusting the fee for basic registration at this time.

2) Recent 50 percent increase in basic registration filing fees

As mentioned above, in 1999, the basic registration fee increased from \$20 to \$30, a 50 percent increase. The prior increase was from \$10 to \$20 in 1991. The basic registration fee has tripled in $8 \frac{1}{2}$ years.

3) Negative effects of diminished registrations

Tripling the fees has had a negative effect on filings. In 1999, the Copyright Office received more than 626,000 claims. In FY 2000, fewer than 580,000 were received, representing a decline of 7.4 percent or 46,000 claims. In FY 2001, 591,000 claims were received, still 35,000 fewer than in FY 1999. Diminished claims have a negative effect on the Copyright Office, the Library of Congress and on the national copyright system.

Overall value of copyright registration system. In the United States, a system of copyright registration has been a basic feature of the copyright law since 1790. Such a system has both practical and historical value to national and international researchers and scholars. A public registry is beneficial: it provides a single, comprehensive record that is official, is based on an objective administrative review, is freely accessible to the entire public, and is a source of objective authoritative information.

Effect on the collections of the Library of Congress. Deposit copies submitted with copyright registrations become the property of the federal government pursuant to 17 U.S.C. § 704(c). The Library of Congress selects materials it wishes to accession or use in its exchange and gift programs from the copies accompanying registration filings. The Library's Americana collection relies heavily on copyright receipts, as do other collections to a lesser extent.

The mandatory deposit provision of the copyright statute requires the deposit of the best edition of each copyrighted work published within the United States, whether or not that work is registered. Materials not registered are acquired every year both by voluntary submission and by demand. Enforcement of the mandatory deposit provision is costly, however, and it does not extend to unpublished works. When registrations drop, the workload of the division responsible for making demands on publishers who have failed to deposit voluntarily increases, and fewer deposits are transferred to the Library's collections.

In FY 2001, the Copyright Office transferred more than 728,000 copies of works, valued at nearly \$32 million, to the Library. (See *Appendix I.*) Only by preserving a strong voluntary registration system, with its accompanying copies, is the Library assured of receiving this wealth of materials at relatively low cost.

Effect on copyright owners. Registration provides authors and other copyright owners with a number of benefits. Particularly important to authors is the certificate of registration, which constitutes prima facie evidence of the copyrightability of the work and the stated facts. It serves as proof of the existence and ownership of a copyright. Judicial remedies, to some copyright owners, are extremely important. When the work is not timely registered, the copyright owner loses access to two important remedies for copyright infringement, the possibility of recovering statutory damages and attorney's fees.

Effect on users of copyrighted works. The existence of extensive registration and recordation records assists those who wish to use copyrighted materials, including those copyright owners who create derivative works from other copyrighted works. If the comprehensiveness of the public record is diminished, searching for copyright owners will be much more difficult.

Effect on judicial system. The standards of copyrightability could suffer if the Office does not maintain a large public registry. Legal principles are developed after enough jurisprudence evolves from a sufficient number of individual cases on particular issues that are subjected to judicial analysis in an iterative fashion. Copyright registration provides the courts with objective evidence of the copyrightability of a work, including its form and content, facts of authorship and ownership.

Effect on copyright industries. A strong public registration system facilitates commercial transactions relating to copyright. A sharp diminution in the number of registered claims results in a much less comprehensive public record of ownership.

4) Costs of increasing the basic registration fee

In addition to the lost receipts attributable to a decline in registrations and other service requests, increasing basic filing fees is expensive to the Office. Registration is sought by every segment of the population, from knowledgeable authors, artists and composers and large publishing concerns to first-time creators of copyrighted works. Conveying information on new fees to remote, irregular users has always been a problem. In addition to website information, the Office must print the information and distribute it as widely as possible. Even given this effort, the

Office can expect to receive insufficient fees for nearly 10 percent of claims the first year following an increase. In FY 2000, 58,000 of 579,853 claims arrived with a short fee that required correspondence to request the supplemental amount. The workload required the services of five full time contractor staff in addition to that of three full time Copyright Office employees. These expenses combine to diminish the value of increasing the basic registration fee.

5) Expected increases in efficiency under business process reengineering (BPR)

The Copyright Office does not wish to adjust the basic registration fee during its ongoing BPR. The Office is in the implementation planning phase of a four-year BPR project that will dramatically restructure its work processes. The outcome of BPR will be an operation where electronic filing and processing of service requests is encouraged to the greatest extent possible, and the movement of physical materials is minimized. The Office expects to improve the timely and accurate processing of service requests and to contain costs to permit fees to remain as low as possible, thus encouraging registration of claims and recordation of documents.

The Office prefers to avoid increasing the basic registration fee in the middle of the current reengineering process. Once the new processes are in operation, the Office will be able to assess the new costs of the reengineered processes and activities. This new model should enable the Office to predict costs over a multi-year period, which is not possible at present in light of the expected changes.

C. Projected revenue based on proposed fees

The Copyright Office anticipates increased revenue from the new fee schedule. In FY 2000, fee receipts totaled \$21,781,215; in FY 2003, it is estimated that fee receipts will reach \$22,945,547.

D. Conclusion

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, and we respectfully request that Congress approve these fees as proposed in Section E of this report.

E. Fee schedule with proposed fee changes

New statutory fees § 708(a)(1)-9) for Congressional approval	Existing fee	Proposed fee	
Registration of a basic claim in an original work of authorship (Forms TX, SE, PA, SR, VA)	\$30		
Registration of a renewal claim (Form RE)	\$45	\$60	
RE addendum	\$15	\$30	
Registration of a correction or amplification to a claim (Form CA)	\$65	\$100	
Providing an additional certificate of registration	\$25	\$30	
Certification of other Copyright Office records (per hour)	\$65	\$80	
Searchreport prepared from official records (per hour)	\$65	\$75	
Recordation of document (single title)	\$50	\$80	
Additional titles (per group of 10 titles)	\$15	\$20	
Receipt for 407 deposit	\$4	\$10	
Announcement of new special fees § 708(a)(10) to be effective July 1, 2002			
Registration of a claim in a group of serials, (Form SE/Group)	\$10/issue - \$30 minimum	\$15/issue - \$45 minimum	
Registration of a claim in a group of daily newspapers (Form G/DN)	\$55	\$55	
Registration of a restored copyright (Form GATT)	\$30	\$30	
Registration of a claim in a group of restored works (Form GATT/Group)	\$10/claim - \$30 minimum	\$15/claim - \$45 minimum	
Registration of a claim in a vessel hull	\$75	\$140	
Registration of a claim in a mask work	\$75	\$75	
Special handling of a claim	\$500	\$580	
First appeal	\$200	\$200	
Second appeal	\$500	\$500	
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On-line service provider designation of agent	\$20	\$30
Recordation of Notices of Intent to Enforce (NIEs) (single title)	\$30	\$30
Additional titles (per title)	\$1	\$1
Expedited search & report (surcharge, per hour)	\$125/first hr \$95/add'l hrs.	\$250
Location and retrieval of Copyright Office records (per hour)	\$65	\$80
Location and retrieval of in-process materials (per hour)	\$65	\$100
Inspection of Copyright Office records	\$65	N/A
Copying of Copyright Office records by staff (per page, black & white)	\$0.50	\$0.50
Expedited Certification & Documents services (surcharge, per hour)	variable (\$75- \$95/hour)	\$200
Deposit account overdraft charge	\$70	\$100
Uncollectible deposit account replenishment check charge	\$35	\$35

Estimated Value of Materials Transferred, Fiscal 2001

		Non-			
	Registered	registration			Total value
	works	works	Total works		of works
	transferred	transferred	transferred		transferred
	to other	to other	to other		to other
	departments	departments	departments	Average	departments
	of the	of the	of the	Unit	of the
	Library	Library	Library	Price	Library
Books 1	162,390	50,057	212,447		\$9,801,937
Ink Print	138,260	23,493	161,753	\$58.22	\$9,417,260
Electronic Works (ProQuest)	21,694	26,219	47,913	\$3.60	\$172,487
Microfilm	2,436	345	2,781	\$76.30	\$212,190
Serials ²	190,461	224,840	415,301		\$6,196,760
Periodicals	172,367	197,500	369,867	\$26.16	\$5,805,432
Ink Print Newspapers	18,094	25,200	43,294	\$0.91	\$23,639
Microfilm Newspapers	2,679	2,140	4,819	\$76.30	\$367,690
Computer-related works	6,703	1,036	7,739		\$1,483,745
Software	2,346	15	2,361	\$25.32	\$59,781
CD-ROMs	1,341	905	(705 serials) 2,246	\$634.00	\$1,423,964
Printouts	3,016	116	3,132	indeterminate value	
Motion Pictures ³	13,695	104	13,799		\$12,284,834
Videotapes	13,010	104	13,114	\$80.19	\$1,051,612
Feature Films	1,267	-	1,267	\$8,866.00	\$11,233,222
Music	47,076	285	47,361	\$32.07	\$1,518,867
Dramatic Works, choreography,					
and pantomimes	959		959	\$58.22	\$55,833
Other works of the performing arts	263		263	\$32.07	\$8,434
Sound Recordings	22,275	1,191	23,466	\$13.03	\$305,762
Maps	3,455	157	3,612	\$32.95	\$119,015
Prints, pictures, and works of art	3,005	82	3,087	\$26.63	\$82,207
Total	450,282	277,752	728,034		\$31,857,394

^{1 60%} of "BOOKS" are selected for the collections; 40% are used for the Library's exchange program.

^{2 60%} of "SERIALS" are selected for the collections, except in the case of Microfilm Newspapers (100% of which are selected).

³ Includes 582 copies selected by the Library under motion picture agreements.