



ANNOUNCEMENT

from the Copyright Office, Library of Congress, Washington, D.C. 20559-6000

INTERIM REGULATIONS WITH REQUEST FOR COMMENTS

FEES

The following excerpt is taken from Volume 59, Number 144 of the Federal Register for Thursday July 28, 1994 (pp. 38369-38372)

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 211

[Docket No. 94-5]

Fees

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulations with request for comments.

SUMMARY: This notice is issued to inform the public that the Copyright Office is adopting amendments to 37 CFR 201.6 and 211.3 and also adopting a new regulation at 37 CFR 201.32, as interim regulations with a request for comments. The effect of these interim regulations is to increase or institute fees for special services as authorized under the Copyright Code. These fee adjustments are limited to special services, and reflect the actual cost of providing the services. They include full-term storage of copyright deposits, special handling of copyright registrations, and other expedited services.

DATES: Effective date September 26, 1994. Written comments should be received before September 12, 1994.

ADDRESSES: Fifteen copies of written comments should be addressed, if sent by mail to: Eric Schwartz, Acting General Counsel, Copyright GC/1&R, P.O. Box 70400, Southwest Station, Washington, DC 20024.

If delivered by hand, copies should be brought to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room 407, First and Independence Avenue, S.E., Washington, D.C..

FOR FURTHER INFORMATION CONTACT: Eric Schwartz, Acting General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20540. Telephone: (202) 707-8380. Telefax (202) 707-8366.

SUPPLEMENTAL INFORMATION:

I. Background

Today we are issuing two separate but associated documents concerning fees for providing certain discretionary services to the public. This document contains interim regulations to increase or institute fees for special services authorized under the Copyright Code. Published elsewhere in today's **Federal Register** is an associated document dealing with proposals for fees to cover costs of providing and maintaining Deposit accounts.

Copyright Office funding

The Copyright Office is funded annually by Congressional appropriation; however, the total appropriation includes a credit based on income from projected fees. We base this projection on an estimate of the fees we expect to receive over the course of the next fiscal year from services provided during that period. If revenue from fees falls short of our estimate, the total Congressional appropriation is decreased by the amount of the shortfall. In fiscal year 1993, our receipts failed to reach the projected level. Analysis of current fees indicates that the total received in fiscal

year 1994 will again fall short of the projected amount.

Not only has Congressional funding been reduced, but the fee income has also declined because the number of copyright registrations, and the consequential fees they generate, have not increased in recent years. There are several possible explanations for this shortfall, including an increase in group registrations and fewer renewal registrations resulting from legislation in 1992 making renewal registration optional.

Congressional authorization

Title 17 of the United States Code authorizes the Register of Copyrights to require payment of fees for services specifically described in section 708(a)(1)-(9). In addition, paragraph 708(a)(10) permits the Register to require "for any other special services requiring a substantial amount of time or expense, such fees as the Register of Copyrights may fix on the basis of the cost of providing the service." The final sentence in 17 U.S.C. 708(a) provides that "[t]he Register of Copyrights is authorized to fix the fees for preparing copies of Copyright Office records, whether or not such copies are certified, on the basis of the cost of such preparation." Paragraph 708(d) further permits the Register to prescribe regulations for the refund of "any sum paid by mistake or in excess of the fee required. . . ."

Actual costs of providing special services

Before proposing these fee adjustments, we consulted the Library of Congress' financial managers and

conducted a comprehensive economic analysis of the operating costs involved in providing special user services to ascertain the actual costs of providing these services. Our analysis concluded that the current fees charged for special services do not offset the costs of the services provided. Most of the fees for special services have not been adjusted in almost a decade. Special services entail high administrative costs because requests for these services disrupt the normal work flow, are labor intensive, and are moved ahead of regular requests. The analysis included an examination of all the discretionary fees set under authority of 17 U.S.C. 708(a)(10). It identified the special services currently offered, and it calculated the cost of providing each service, taking into account staff time, overtime, and storage. In the past, the Office has chosen not to charge any fee for some services. Our analysis confirmed that we should adjust fees in order to justify the disruption to our normal work-flow and the high cost of these services, and to recapture actual cost; it also confirmed that we should impose charges for certain other administrative expenses.

Fees for expedited services

Users who request expedited services need information or certified documents in order to meet extraordinary time deadlines, usually for business or litigation purposes. In these situations a user asks us to move his or her request ahead of the hundreds of pending requests; in most cases, if sufficient reason is given, we will comply. Compliance requires additional staff time or overtime to respond to the request in an expedited manner. It is appropriate to charge special service fees that reflect the actual costs of these services to avoid other users or the general public from having to subsidize these services. We are not proposing adjustments to the statutory fees set under § 708(b) or seeking any legislative change in these fees. We will continue to provide regular searches, certifications, or copies of registration or recordation materials at the current fees.¹

II. Special Handling Fees

Special handling procedure

Although the effective date of registration is the date the application, required fee, and deposit are received, it usually takes us several weeks to process a claim and mail the certificate of registration. Special handling is granted at the discretion of the Register in a

limited number of cases as a special service to copyright applicants who have a compelling reason for the expedited issuance of a certificate of registration or recordation of a document pertaining to copyright. A request for special handling is granted only for claims involved in pending or prospective litigation, customs matters, or contract or publishing deadlines that necessitate expedited service. For many years, we used an informal procedure for special handling of applications. When we began providing this service, we noted that we could not continue to absorb the extra charges for providing such a service, but did not establish a fee for special handling until 1982 when these procedures were formalized. 47 FR 19254 (May 4, 1982).

Work involved in special handling

Under normal work procedures, applications for registration or documents for recordation pass through various administrative and examining processing steps. Special handling requests disrupt the regular workflow procedure and require expedited handling outside the normal first-in, first-out basis. These claims require special handling at each step and routing between work stations that supersedes the normal, chronological processing. A separate system of controls must be maintained to assure that each claim moves expeditiously through each stage and that these claims can be quickly located. Special handling claims take staff away from processing all other claims, including those received earlier, in order to process them in a substantially shorter time period. Under regular procedures these same employees could more efficiently process many standard claims.

Multiple applications

Another special workflow problem for the Office arises from processing multiple applications accompanied by a single deposit when the request for special handling is limited to one claim or fewer than all of the multiple claims. Because all the applications share the deposit for the special handling claim, all claims must be processed in the same expedited manner. A \$50 surcharge is currently applied to each additional claim attached to the deposit used for the special handling claim and processed at the same time. This surcharge will remain at \$50, but it may be avoided by submitting a separate deposit.

Fees for special handling

When a fee is charged for special handling, this fee is added to the regular fee for registration (\$20.00) or

recordation (\$20.00 for a document listing no more than one title).

In 1982 we set the special handling fee at \$120. 47 FR 19254 (May 4, 1982). In 1984 we raised the fee to \$200 to reflect the actual cost of the service. 49 FR 39741 (Oct. 10, 1984). In 1985, we established the special handling procedures for import statements and documents. 50 FR 46206 (Nov. 6, 1985). In 1991 we reviewed our special handling procedure, but did not increase fees. 56 FR 37528 (August 7, 1991).

We have not adjusted special handling fees for almost ten years. Our analysis indicates that to recover actual costs the new fee should be \$330. The conditions under which a request for special handling is approved will not change. We are also raising the fee for special handling of mask work claims, which have not changed since 1985, 50 FR 26719 (June 28, 1985), as amended at 56 FR 59886 (Nov. 26, 1991), from \$200 to \$330.

III. Full-Term Storage

Service provided

The Copyright Code mandates storage for the full copyright term of copies or phonorecords of unpublished registered works. It does not specify how long we should retain deposits for published works. Retention is more important in the case of unpublished works because our copy or phonorecord may be the only one in existence. Our policy for published works is to retain deposit copies or phonorecords not selected by the Library for its collections for at least five years from the date of registration; if possible, we retain copies of visual arts works for at least ten years or longer. In addition, we offer optional full-term storage service for those who register published works and want to assure that the deposits will be retained in our custody for the full term of copyright.

Fees for full-term storage

Congress authorized a fee for full-term storage in 17 U.S.C. 704(e). Our current charge for full-term storage of published copyright deposits is \$135. 52 FR 28821 (Aug. 4, 1987). Our recent analysis of the costs of this service reveals that the actual cost is much higher. Our new regulations increase the charge to \$270 for full-term storage of published deposits. We will continue to provide full-term storage of unpublished deposits without a fee.

¹See Copyright Office Circular 4 for current schedule of fees.

IV. Expedited Certifications and Documents Services

Services provided

Users may request an additional certificate of registration, or copies of the copyright deposit, the copyright application, correspondence, and other copyright related documents. Frequently the requester needs these services on an expedited basis for compelling business or litigation reasons. The Certifications and Documents Section expedites these services when sufficient reason is provided.

Justification of increase

The fees for these expedited services were established after the revision of the Copyright Code in 1978 and have never been increased. Our new interim regulations increase the fees for expedited services performed by the Certifications & Documents Section to reflect actual costs and expenses. Actual costs for these services include the staff time necessary to travel to and search off-site storage facilities; in contrast, non-expedited requests are mailed to off-site division offices where regular staff can search for the requested material. All of these expedited service fees are surcharges that will be added to the regular charge for the service provided.

Expedited additional certificates

The fee for providing an expedited additional certificate, performing a search for a document that is "in-process" (where the recordation process has not been completed), or certifying or furnishing a copy of a document has been \$18 per hour for almost ten years. These new regulations will raise the rate to \$50 per hour.

Copy of deposit or file under Copyright Office control

The fee for providing an expedited copy of a copyright deposit stored off-site in a Copyright Office storage facility, or for furnishing a copy of a correspondence file stored either on-site or off-site, has been \$18 per hour. The new fee will be \$70 for the first hour spent in providing the copy and \$50 for each additional hour. The first hour is more costly because it reflects time expended by several staff members.

Copy of deposit or file not under our control

Expedited provision of a copy of a deposit or correspondence file stored off-site at a Federal Records Center, a more remote site not under the control of the Copyright Office, has also been \$18 per hour. It is being increased to \$135 for the first hour and \$50 for each additional

hour. This service costs more to provide because support services are more numerous and time-consuming and must also cover the cost of returning the deposit or correspondence file to the Federal Records Center.

V. Reference and Bibliographic Searches

Services provided

Copyright owners and users frequently need to get information on registrations, renewals, and transfers and other documents relating to copyright. Our records on these copyright related facts are public and are available for public inspection. A researcher can either come to the Office during regular business hours and perform a free search (with assistance from Copyright Office staff) or the researcher can have someone else perform the search. Several organizations provide such services for a fee. In addition, the post-1978 records of the Copyright Office (and the bibliographic records of the Library of Congress) are available on-line via the Internet.

The Reference and Bibliography Section of the Copyright Office will perform an expedited search of these public records for a fee when there is a compelling reason to do so. The Reference and Bibliography Section regularly performs searches of Office records at the statutory rate of \$20 for each hour or fraction of an hour consumed. Before January 3, 1991, that section performed approved expedited searches for the statutory \$10 hourly fee plus an additional charge of \$20 per hour for the expedited service with a two hour minimum charge (a \$60 minimum). Since then, the statutory fee has been \$20 per hour, bringing the minimum to \$80.00. Under the new fee schedule the charge for approved expedited searches is \$100 for the first hour and \$50 for each additional hour plus the \$20 statutory fee for each hour.

The public can conduct searches on the Copyright Office in-process systems (COINS) database through a public access terminal in the Records Maintenance Unit for the search fee of \$20 per hour or fraction of an hour. This fee will remain unchanged.

VI. Copying Fees

We will continue to duplicate our records under the conditions detailed in the applicable regulatory provisions and offer use of photocopy equipment and microfilm printers for the public's use at the prevailing rates established by the Photoduplication Service of the Library of Congress, except for certain specialized services for which the rates

are based on our operational costs (e.g. color photocopying). Additional charges for specialized copying, for example audio cassette copying charges, are fixed by other divisions of the Library providing these services. All of these fees may be adjusted periodically.

VII. Policy Decision on Refund of Excess Fees

Automatic Refund Level

Our practice until 1991 was automatically to refund excess fees of more than \$5.00; amounts of \$5.00 or less were not refunded unless specifically requested. In 1991 we changed the automatic refund policy to provide automatic refund for payments of \$10.01 or more in excess of the statutory fee; 56 FR 7812 (Feb. 26, 1991). 37 CFR 201.6(c). We are now adjusting the level at which automatic refunds of overpayments will be made from \$10.01 to \$50.01; we will not refund amounts of \$50 or less unless specifically requested.

VIII. Administrative Processing Fee for Nonregistration Services

In 1991, we determined that an administrative processing fee is authorized under section 708(a) of the Copyright Code to reflect the minimum administrative cost of responding to a request for a nonregistrative service, even if the service cannot be successfully completed. For example, a request is made for a certification of records and after a search by our staff, the file cannot be found. We need to charge an administrative fee for the search even though it is unsuccessful. Accordingly in 1991, we amended 37 CFR 201.6(c) to state that in making any refund of fees remitted for nonregistration services, we could first deduct our administrative cost. Our regulation permits us to charge a processing fee "in an amount equivalent to one hour of the requested service, or the minimum fee set by statute for the service." 37 CFR 201.6(c). We will not make any change to this charge.

List of Subjects in 37 CFR Part 201

Copyright; Fees.

Interim Rules

In consideration of the foregoing, part 201 of 37 CFR chapter II is amended as follows.

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 is revised to read as follows:

Authority: 17 U.S.C. 702; 17 U.S.C. 708.

§201.6 [Amended]

2. In §201.6, paragraph (c) remove the fee of "\$10," and add in its place "\$50".

3. Section 201.32 is added to read as follows:

§201.32 Fees for Copyright Office special services.

The Copyright Office has established the following fees for the special services indicated:

Special services	Fees
1. Special handling fee	\$ 330
2. Full-term storage fee	\$ 270
3. Surcharge for expedited Certifications and Documents Section services (per hour)	
a. Additional certificates	\$ 50
b. In-process searches	\$ 50
c. Copy of assignment	\$ 50
d. Certification	\$ 50
e. Copy of deposit (stored off-site)	\$ 70 (first hour)
	\$ 50 (each additional hour)
f. Copy of correspondence file (stored in Madison Building) or at an off-site storage facility	\$ 70 (first hour)
	\$ 50 (each additional hour)
g. Copy of deposit or correspondence file (stored at Federal Records Center)	\$135 (first hour)
	\$ 50 (each additional hour)
4. Surcharge for expedited Reference & Bibliography searches	
First hour	\$100
Each additional hour	\$ 50

List of Subjects in 37 CFR Part 211

Mask Work Protection; Fees.

Interim Rules

In consideration of the foregoing, part 211 of 37 CFR chapter II is amended as follows.

PART 211—MASK WORK PROTECTION

1. The authority citation for part 211 continues to read as follows:

Authority: 17 U.S.C. 908.

§211.3 [Amended]

2. In §211.3, paragraph (7) remove the fee of "\$200," and add in its place "\$330".

Dated: July 19, 1994.

Barbara Ringer,
Acting Register of Copyrights.

Approved:

James H. Billington,
Librarian of Congress.

[FR Doc. 94-18306 Filed 7-27-94; 8:45 am]

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