



COPYRIGHT COST STUDY AND FEE RECOMMENDATIONS

A Report

Prepared for the Register of Copyrights

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Abstract

This report presents the results of a study and analysis of the costs that the Copyright Office incurs in registration of claims, recordation of documents, and the provision of related services and recommends a new fee schedule for those services. The core of this study and analysis is the work done by Abacus Technology Corporation (Abacus), an outside consulting firm which developed a methodology for determining the Office's full costs and the fees required to recover part or all of the costs. Another consultant from the consulting firm, Ron Young and Associates, reviewed the Abacus report for compliance with the new Federal Financial Accounting Standards. Throughout the process the Library of Congress's Financial Services Directorate (FSD) provided advice and guidance. First, Abacus worked with the Copyright Office's Fee Analysis Task Group (FEATAG) to establish a framework for determining costs by work function and to identify the organizational units which perform the work. Then Abacus identified costs by organizational unit and activity. Based on those cost parameters, Abacus proposed appropriate fees which are presented in this report. The report also includes FEATAG's recommended fee schedule, covering both statutory and discretionary fees and based upon Abacus's cost determinations as well as policy and economic factors relating to fees such as fairness and equity, consideration of the objectives of the copyright system, and elasticity.

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COPYRIGHT COST STUDY AND FEE RECOMMENDATIONS

1.0 INTRODUCTION AND BACKGROUND

1.1 Introduction

In 1990 Congress doubled or adjusted all of the copyright fees specified in the copyright law; this fee increase became effective six months after enactment of the bill. The legislation also gave the Copyright Office the authority to fix fees at five year intervals based on the change in the Consumer Price Index. Pub. L. No. 101-318. Under this authority, in 1994, the Acting Register of Copyrights appointed an internal committee known as the Copyright Office Fee Services Task Force to study costs and recommended revised fees. This committee examined what 17 U.S.C. §708(b) would permit as an increase to statutory fees and did a comprehensive internal analysis of the costs to the Office of providing special services. In 1994, the Copyright Office increased discretionary fees. As a result of the committee's analysis the Acting Register concluded that an increase in statutory fees in 1995 to the limit Congress permitted under §708(b) would be minimal and would not be cost effective given the costs associated with increasing fees. Moreover, the Office, having not increased fees in 1995, was unsure about whether it would have to wait five more years in order to increase fees and also what years would be calculated in any future fee adjustment. It, therefore, concluded that the existing statutory provision was not clear.

In 1995, the new Register of Copyrights determined that a legislative amendment was necessary to cure this ambiguity in §708(b). Early in 1995, she met with congressional staffers and then forwarded legislation to Congress that would give the Copyright Office greater flexibility in setting statutory fees. In hearings that the House Subcommittee on Courts and Intellectual Property held in November of 1995, the Subcommittee concluded that it should give the Copyright Office even more flexibility in setting fees and that the Register should recommend statutory fees based on a study of costs incurred. As discussed below, Congress did not enact the necessary amendments to §708 that would permit such a change in statutory increases until November 1997.

During the two years that the Office actively sought amendments to §708, other studies supported an increase in copyright fees. In 1997, the General Accounting Office (GAO) issued a report on all intellectual property fees and concluded that the copyright fees should be increased immediately. *Intellectual Property -- Fees Are Not Always Commensurate with the Cost of Service*, GAO/ RCED - 97, May 1997. In addition, GAO contracted with Booz-Allen & Hamilton, Incorporated to conduct a management review of the Library, and that contractor recommended full recovery of copyright costs. *Library of Congress: Opportunities to Improve General and Financial Management*, GAO/T-GGD/AIMD-96-115, May 7, 1996.

1.3 Amendments to Fee Structure

Amendments to the copyright fee structure were part of the Technical Amendments Act enacted on November 13, 1997, Pub. L. No. 105-80, 111 Stat. 1529 (Nov. 13, 1997). Among other things this Act revised §708(b) and set out specific directions for the Copyright Office to change fees specified in the statute. The main features are:

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, and subject to congressional approval, the Register is authorized to fix fees 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.

1.4 Fee Analysis Task Group (FEATAG)

In the spring of 1997, while Congress was still considering the proposed fee legislation, the Register conferred with the Director of the Library's Financial Services Office on how to proceed. Based on this discussion, the Register appointed a group of Copyright Office staff members to conduct a fee study and recommend appropriate fee changes. This Fee Analysis Task Group (FEATAG) was composed of staff representing most of the Copyright Office Divisions: Register's Office, Administrative Office, Receiving and Processing Division, Examining Division, Cataloging Division, Information and Reference Division, and the General Counsel's Office.

With the advice of FSD the Copyright Office also hired two consulting firms. The Office sought this outside economic and accounting expertise in order to produce an indepth and comprehensive analysis of copyright costs in a limited time frame. These consultants worked closely with FEATAG. Although FEATAG would rely on the cost estimates developed by Abacus, it also considered the information provided by the other consultant, Ron Young, of Ron Young and Associates, in developing its fee recommendations.

1.5 Independent Consultants

1.5.1 Abacus Technology Corporation

The Office selected Abacus Technology Corporation (Abacus), a local account management services firm with experience in activity based costing (ABC), the costing method used by the Federal Standards Advisory Board based on its demonstrated ability to help agencies evaluate, organize, and plan for successful integration of new methodologies and processes with minimal organizational or operational disruption. With critical input from the Library's Financial Services Directorate (FSD), the Office then directed Abacus to examine Copyright Office operations objectively, to develop a comprehensive and independent assessment of cost recoverable expenses, and to recommend a proposed new fee structure. The scope of Abacus's study included the following activities and deliverables:

- Develop a Project Plan: Planning Report.
- Review the current organization and workflow: Functional Analysis Report.
- Identify the most appropriate costing methodology and compute costs: Cost Report.
- Recommend new user fees: Fee Recommendation Report.
- Establish procedures to evaluate and update costs systematically: Cost Updating Methodology Report.

To complete the study, Abacus was asked to coordinate with FEATAG in the collection of all information, the observation of daily operations, and staff interviews. Each draft and final deliverable was reviewed and edited by FEATAG for accuracy and completeness. Abacus then provided feedback to FEATAG's comments by making appropriate revisions or answering questions.

1.5.2 Ron Young and Associates

On the advice of the Library's Financial Services Directorate, the Copyright Office acquired the services of the consultant, Ron Young of Ron Young and Associates, to provide expert advice in new Federal Managerial Cost Accounting Standards being implemented by all federal agencies, including the Library of Congress. Mr. Young's expertise is derived from his former position as the Executive Director of the Federal Accounting Standards Advisory Board (FASAB). The Library of Congress concluded that since the Copyright Office was performing a full and comprehensive analysis of its costs, the Office's work would serve as a model for the rest of the Library.

In July 1995, the Office of Management and Budget (OMB), the U.S. Treasury Department, and the General Accounting Office (GAO) approved and published the Statement of Federal Financial Accounting Standards (SFFAS) NO. 4, Managerial Cost Accounting Concepts and Standards for the Federal Government, as recommended by the FASAB. See

Appendix D.

As of October 1, 1997, federal entities were required to implement new managerial cost accounting standards. The new standards were driven by the principle that federal managers are witnessing shrinking budgets and have fewer resources to do larger tasks. In such an environment, cost accounting plays an important part in providing managers with total cost information to manage scarce resources in the most efficient manner. Pricing decisions and cost reimbursements cannot be made without proper cost data that may include support from other agencies.

With this complete cost information, managers will be able to determine the price charged for nongovernmental user fees (OMB Circular A-25). See Appendix E. This cost information consists of identifying the full costs of providing the service to include direct costs, indirect costs, and other federal entity costs.

- Direct costs are the cost of resources consumed by an activity. They are costs which are directly traced to the activity, good or service. See Appendix B for a Glossary of Terms.
- Indirect costs are resources that are used in delivering more than one type of activity, but which cannot be specifically identified in an economically feasible way to any single cost object. Indirect costs are often referred to as General and Administrative (G&A costs). Overhead is an example of indirect costs.
- Intra-entity costs are other organizational components within an agency that provide direct or indirect support to the producing organization. Intra-entity support for the Copyright Office is provided by the Library of Congress through its various service sectors. This includes direct LC costs for its Information and Technology Services (ITS) and indirect LC costs for Integrated Support Services (ISS), Human Resources Services (HRS), and the Financial Services Directorate (FSD).
- Inter-entity costs are those support services received from other federal entities outside the current agency. For the Copyright Office, these costs include pension costs funded by the Office of Personnel Management, facilities provided by the Architect of the Capitol (AOC), and space at the Federal Records Center.

1.5.3 Monitoring and Reporting on the Fee Identification Process

The following report presents the results of Abacus' study and analysis of the costs that the Copyright Office incurs in registration of claims, recordation of documents, and the provision of services and recommends a new fee schedule for those services. It is the result of work done over a lengthy period of time which involved a great deal of cooperation among the consultants, FSD, Copyright Office management, and FEATAG to ensure that all questions were addressed. Abacus came up with a methodology for determining what the Office's costs are and determining the fees required to recover part or all of the costs. First Abacus worked with the Copyright Office's Fee Analysis Task Force Group (FEATAG) to establish a framework for determining costs by work

function and to identify the organizational units which perform the work. Then Abacus identified costs by organizational unit and activity. Based on those cost parameters, and at the request of FEATAG, Abacus identified appropriate fees. It was necessary during the ongoing process to determine which costs might not be translated into a fee. For example, FEATAG originally identified correspondence on copyright claims as a service that might carry a fee; however, after FEATAG determined that it was preferable not to impose such a fee, it directed Abacus to transfer the costs identified for correspondence into the cost of processing claims.

Concurrently, the other consultant, Ron Young, reviewed Abacus's report at several stages both to comment on its reliability and to answer any questions FEATAG had about the Abacus methodology and FASAB standards. There were several stages of review by the larger group where representatives of the consulting firm, FSD, Copyright Office management, and FEATAG met to comment on Abacus's progress. FEATAG also continued to review the reports of both consultants in light of certain policy decisions made in consultation with the Register. FEATAG's report summarizes the information given to Abacus, Abacus' work, the fees proposed by Abacus, and FEATAG's policy decisions; it then recommends a schedule for all Copyright Office fees.

2.0 SCOPE OF ABACUS COST STUDY

2.1 Activity Based Costing

The Federal Accounting Standards Advisory Board (FASAB) provides guidelines 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. Activity based cost analysis also provides information that agencies can use to identify areas where costs can be reduced.

This method is particularly appropriate for the Copyright Office where after eliminating the cost of its policy and international programs in 1997 nearly 95% of the personnel costs are directly associated with one or another of the Office's fee services. These FY 97 staff salaries account for 77% of the total cost of operating the Copyright Office. 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.

Abacus Technology Corporation performed its cost accounting using the above methodology. The other consultant, Ron Young, approved of this methodology and assisted FEATAG in monitoring the work performed by Abacus.

2.2 Sources of Financial Information

Fiscal Year (FY) 1996 was used as the base year to estimate future costs because the study was begun before the end of Fiscal Year 1997. Cost information for the study was derived from the following sources:

- Federal financial services (FFS) reports.
- Budget execution reports.
- Payroll and personnel reports.
- Intra-entity cost information from the Library's FSD.
- AOC space distribution and utility usage reports.
- Other inter-entity cost information, i.e. Office of Personnel Management.
- Data from Copyright Office In-Process System (COINS).
- Workload data from meetings with the management of Copyright Office divisions.

2.3 Copyright Office Funding and Program Breakdown

The Copyright Office has five financial funds to pay its expenses. They are the:

1. Basic fund which includes registration of claims, recordations, and policy functions.
2. CORDS fund which is a fund that covers development of a system that will permit electronic registration, recordation, and deposit.
3. Licensing Division fund which covers operation of that division.
4. CARP (Copyright Arbitration Royalty Panels) fund which covers operation of that unit.
5. Fund for reimbursable travel activities.

Both the Abacus cost study and the FEATAG report are primarily concerned with two funds: the basic fund and the CORDS fund, from which expenditures are made in support of registration and related services. The basic fund includes registration of claims, recordations, and policy functions. CORDS is a development fund which supports various efforts toward electronic registration, recordation, and deposit. For purposes of the Abacus report, FEATAG did not include travel reimbursement since most of these expenses are reimbursed from other funds. Licensing and CARP were also excluded since the two funds are fully funded from the royalty pools. Moreover, revenue from both the Licensing and CARP funds is transferred to the copyright basic fund as an overhead charge.

The basic fund covers all registration, recordation, international, and policy functions, and copyright indirect general and administrative costs (G&A). These costs including personnel, equipment, and G&A were computed and linked to the various funds. Early in the study FEATAG determined that policy costs should not be considered as a part of registration and related services, and, therefore, should not be computed in calculating the cost of those services. FEATAG recommends that, as in the past, policy expenses be funded by appropriations.

The Copyright Acquisitions Division (CAD) costs were not computed because that division's primary responsibility is securing copies of unregistered works for the Library's collections under the mandatory deposit provisions of the copyright law. None of the costs of the activities of the Compliance Records Unit of the Cataloging Division were included except the cost of providing deposit receipts because only CAD uses this unit's records. FEATAG maintains that this work should also be funded by direct congressional appropriation.

3.0 COPYRIGHT OFFICE ORGANIZATIONAL STRUCTURE

FEATAG or appropriate management officials provided Abacus with a description of the organizational structure and responsibilities of the divisions providing the fee services. Four divisions are directly involved in providing fee services:

- Receiving and Processing Division (R&P).
- Examining Division.
- Cataloging Division.
- Information and Reference Division (I&R).

Three other Copyright Office divisions provide indirect support to the services performed directly by the four divisions listed above. They are the Copyright Office General Counsel (OGC); the Copyright Office Automation Group (CAG); and the Copyright Office Administrative Offices.

The General Counsel's Office, the Copyright Automation Group and the Administrative Office provide additional support for registration and related services including the preparation and production of (1) Copyright Office studies, regulations, litigation, and legislation; (2) responses to mandatory deposit questions; (3) technology support; (4) full range of administrative and management services; (5) responses to FOIA requests; and (6) workload statistics.

3.1 Receiving and Processing

The Receiving and Processing Division functions as the control and service center for

material that comes into and is processed by the Copyright Office. This division is made up of three sections: Mail and Correspondence Control, Fiscal Control, and Materials Control. Together they receive, process, and disperse all registration and related materials throughout the Office. These sections are responsible for the following activities:

3.1.1 Mail and Correspondence Control

- Receives and initially processes and transmits all Copyright Office claim applications and related mail.
- Furnishes interoffice and outer messenger service for the Office.
- Maintains correspondence and unfinished business files for the operational divisions.
- Processes requests for services in two Information and Reference sections, Reference and Bibliography, and Certifications and Documents.

3.1.2 Fiscal Control

- Prepares an automated, in-process record for each fee request received.
- Examines and schedules all remittances received.
- Makes daily deposits with the U.S. Treasury.
- Maintains all Copyright Office accounting records; reconciles with FSD.
- Prepares required financial statements and reports.

3.1.3 Materials Control

- Searches for material moving through the system that is not easily located and provides information for pending cases.
- Forwards all materials to the Examining Division and Cataloging Division.
- Prepares and forwards deposit copies that are selected for the Library's collection.
- Assigns registration numbers.
- Prepares and mails certificates of registration.

3.2 Examining Division

The Examining Division examines applications for copyright registration including renewals to determine whether these claims are acceptable. It is divided into four sections: Literary, Performing Arts, Visual Arts, and Renewals. For each subject area, the Examining Division:

- Retrieves application material.
- Applies the statute, regulations, and Office practices, examines claims for

correctness and registration eligibility, including renewal claims. Conducts factual research and phone and written correspondence with applicants as needed.

- Approves or rejects registration claims.
- Addresses appeals, withdrawals, cancellations, and supplementary registrations.

3.3 Cataloging Division

The Cataloging Division is responsible for creating and maintaining a complete public record of copyright registrations, deposits, renewals, and documents that serves as a basis for legal and bibliographic research. It includes five sections: Arts, Literary, Serials, Document Recordation, and Technical Support. The Cataloging Division's major responsibilities include the following:

- Records the legal facts of copyright pertaining to each work and creates catalog entries to provide effective online access to all information of record for copyright registration.
- Verifies and records assignments and other documents, including security interests and various court documents.
- Creates records of mandatory deposits.

3.4 Information and Reference Division

The Information and Reference Division consists of five sections: Certification and Documents, Copyright Information, Copyright Publications, Records Management, and Reference and Bibliography that perform the following duties:

- Responds to all copyright information and reference requests and requests for forms and publications.
- Dispatches deposit copies to long-term storage locations; processes deposit copies and records location.
- Furnishes search reports based on Copyright Office records.
- Prepares certifications, access to registration materials, and authorized copies of deposits.
- Administers the Freedom of Information and Privacy Acts for Copyright Office.
- Preserves, maintains, and services copyright related records.

3.5 Summary of Activities

The Abacus Functional Analysis Report contains a detailed list of the responsibilities and activities of each division studied.

4.0 COPYRIGHT OFFICE PRODUCTS AND SERVICES COSTS

After Abacus documented the Office's organizational functions and responsibilities, it organized these functions and responsibilities into activities that produce a specific fee service. It then categorized these fee services as those specified in the copyright law, those specified in regulations under the Register's discretion, and those discretionary services where fees might be imposed in the future. All of these activities are summarized and coded in the Abacus Functional Analysis Report.

5.0 ABACUS COST PROJECTIONS AND PROPOSED FEES

From this list of activities, Abacus assigned direct and indirect costs by allocating resources to activities. A summary of the cost data (based on FY 1996 workload data) by service is shown in exhibit 4-1 in the Abacus Cost Computation Report. The exhibit divides the service costs into statutory fee services, discretionary fee services, and discretionary services with no existing service fee. This information is included in FEATAG's Table I - Abacus Cost Projections for Copyright Registrations and Related Services for FY 1999 - FY 2000. (See Appendix G).

5.1 Comparison of Fees

FEATAG has created the following chart: *Comparison of Current Fee, Fee Proposed by Abacus, and Fee Recommended by FEATAG*, as a quick overview that will enable the reader to compare the current fee, the proposed fee, and the recommended fee for each fee service. A more detailed description of how Abacus arrived at its fee projection appears in the complete Abacus report. In the next chapter of this report, FEATAG discusses policy considerations it evaluated before recommending the fees described in the final chapter.

**COMPARISON OF CURRENT FEE, FEE PROPOSED BY
ABACUS, AND FEE RECOMMENDED BY FEATAG**

Code	Service	Current Fee	Abacus Fee	FEATAG Fee
	Filing Fees & Related Fees			
2A-a	Registration of Copyright Claims - Books, etc.	\$20	\$38	\$45
2A-1b	Registration of Copyright Claims - Serials	\$20	\$36	\$41
2A-1c	Registration of Copyright Claims - Performing Arts & Sound Recordings	\$20	\$40	\$45
2A-1d	Registration of Copyright Claims - Audiovisual Works (Motion Pictures)	\$20	\$59	\$45
2A-1e	Registration of Copyright Claims - Visual Art	\$20	\$42	\$45
2A-1f	Registration of Copyright Claims - Audiovisual Works (TV Series Episodes)	\$20	\$44	\$45
2A-1g	Registration of Copyright Claims - GRCPs (Group Registration/Contributions to Periodicals)	\$20	\$906	\$3/contribution-\$45 minimum
2A-2	Form RE - Renewals	\$20	\$54	\$58
2A-8	Registration of Corrections or Supplements to Copyright Claims - Form CA	\$20	\$58	\$62
2B-3	Form SE/Group - Group registration of Serials	\$10/issue - \$20 minimum	\$27	\$10/issue - \$41 minimum
2B-4	Form MW - Mask Works	\$20	\$68	\$70
2B-5	Form G/DN - Group Daily Newspapers	\$40	\$21	\$54
2B-6a	Form GATT	\$17	\$21	\$45
2B-6b	Form GATT/Group	\$10/claim - \$20 minimum	\$314	\$10/claim - \$41 minimum
2B-8a	Special Handling Fee - Registration	\$330	\$329	\$500
2B-8b	Special Handling Fee - Additional claims	\$50	\$50	\$50
N/A	Unpublished collections	\$20	N/A	\$10/work - \$45 minimum
	Information & Reference Fees			
2A-4a	Additional Certificate	\$8	\$37	\$21
2A-4b	Any other Certification	\$20	\$74	\$64
2A-5a	Search - report prepared from official records (per hour)	\$20	\$75	\$64
2A-5b	Search - locating records (per hour)	\$20	\$85	\$64

2B-1b	Copying fee	\$.50/page - \$7 minimum	\$15	\$1/page - \$15 minimum
Code	Service	Current Fee	Abacus Fee	FEATAG Fee
	Information & Reference Fees			
2B-2	Inspection Fee (per day)	\$10	\$206	\$64
2B-9	Full Term Retention of Published Deposits	\$270	\$341	\$364
	Expedited Information & Reference Fees			
2B-10a	Surcharge for Expedited C&D Services -Additional Certificates (per hour)	\$50	\$26	\$75
2B-10b	Surcharge for Expedited C&D Services - In-Process Searches (per hour)	\$50	\$24	\$75
2B-10c	Surcharge for Expedited C&D Services - Copy of Assignment (per hour)	\$50	\$32	\$75
2B-10d	Surcharge for Expedited C&D Services - Certification of a Copyright Office Record (per hour)	\$50	\$31	\$75
2B-10e	Surcharge for Expedited C&D Services - Copy of a Registered Deposit (per hour)	\$70/1st hour - \$50/add'l hrs.	\$24	\$95/1st hour - \$75/add'l hrs.
2B-10f	Surcharge for Expedited C&D Services - Copy of Correspondence File (per hour)	\$70/1st hour - \$50/add'l hrs.	\$32	\$95/1st hour - \$75/add'l hrs.
2B-11	Surcharge for Expedited Reference & Bibliography Searches (per hour)	\$100/1st hour - \$70/add'l hrs.	\$39	\$125/1st hour - \$95/add'l hrs.
	Recordation Fees			
2A-3	Recordation of Document (single title)	\$20	\$44	\$47
2A-3a	-- Additional titles (per group of 10 titles)	\$10	\$10	\$11
2B-7a	Recordation of NIEs (single title)	\$30	\$33	\$30
2B-7b	-- Additional titles	\$1	\$7	\$1
2B-8c	Special Handling Fee - Recordation of Document	\$330	\$208	\$312
	Extraneous Fees			
2A-7	Receipt for Deposits	\$4	\$17	\$18
1A-2	Fee for Deposit Account Overdraft	N/A	\$66	\$70
1A-3	Fee for Dishonored DA Replenishment Checks	N/A	\$31	\$33
1A-5a	Appeals (First)	N/A	\$731	\$500
1A-5b	Appeals (Second)	N/A	\$1,799	\$1,200
1A-7	Secure Test	N/A	\$39	\$60

1A-6	Short Fee Service Charge	N/A	\$21	\$20
1A-11	Cancellation Fees	N/A	\$42	\$45

6.0 FACTORS AFFECTING FEE CALCULATIONS

FEATAG based its recommendations for new fee levels primarily on the cost study and the proposed fees developed by Abacus Technology Corporation. In those cases where FEATAG disagreed with Abacus' cost estimates and fee proposals, FEATAG has identified the instance of disagreement and explained why it differs from Abacus in the final price recommendations.

In addition to weighing the Abacus report and subsequent advice from Ron Young, FEATAG found it necessary to consider other factors before making its recommendations on fees to the Register of Copyrights. Following is an explanation of some of the factors FEATAG considered.

6.1 Recoverable and Non-recoverable Costs

6.1.1 Copyright Office Policy Program Costs

As explained in section 2.3 of this report, FEATAG recommended to Copyright Office management, which concurred, that costs associated with copyright policy, including legislative, regulatory, judicial, and international work, should not be recovered through fees for services provided to users. FEATAG then excluded the cost of the mandatory deposit program along with purely policy costs. These activities do not directly relate to any fee services; in many cases they do not relate to these services even indirectly. They benefit the public at large, and their costs should be funded by congressional appropriations.

6.1.2 Copyright Office Costs

The full cost to the Copyright Office of providing a fee service is the sum of the direct and indirect costs for performing that service. In his comments on the Abacus cost study Ron Young states: "A fundamental concept in setting prices is that, unless otherwise restricted by law or public interest, each fee should recover at least the direct cost of providing the service." See Appendix C, p. 2. The Office's goal in setting fees, therefore, should be to recover its full cost, whenever doing so is feasible and meets the additional statutory requirement that fees should be fair and equitable and give due consideration to the objectives of the copyright system. For projected cost recovery figures based on FEATAG's recommended fees, see Appendix H.

6.1.2.1 Direct Costs

Under the new federal accounting standards, as interpreted by Ron Young, direct costs, such as staff salaries, in most cases, may be allocated only to the fee service or services with which they are associated. (See Appendix C). The Office cannot shift them to another fee service, even if, for various reasons, it cannot set the pertinent fee service to recover them in full. FEATAG

identified some fee services that, largely for reasons of public policy, cannot be set high enough to recover full direct costs. If all the fees are set at the levels FEATAG recommends, this shortfall will have to be recovered by appropriations. See Appendix I for a summary of direct cost recovery and shortfall based on FEATAG recommended fees.

6.1.2.2 Indirect Costs

A federal agency may allocate indirect costs not associated with any one fee service, for example, administration and Copyright Automation Group costs, where the agency deems appropriate. It need not allocate these costs as a percentage of each service cost. Federal accounting standards permit agencies to shift these costs among the various fee services based on which services seem capable of supporting a higher fee. See Appendix I for a summary of indirect cost recovery based on FEATAG's recommended fees.

Appendix I identifies the fees that will not recover their "share" of indirect costs at projected levels of demand for the service. The fees that are expected to be able to recover a larger proportion of indirect costs are the fees for expedited service, where the customer gets more than the service itself: his or her service request is processed ahead of those received earlier or he or she receives a benefit not available to other customers.

6.1.3 Inter-entity Costs

Agencies are not required to recover inter-entity costs, those costs for support services provided on their behalf by outside agencies. FEATAG concludes it would be unwise to attempt to recover these costs at this time. Both the new fee legislation, summarized in Section 1.3 of this report, which provides for the recovery of reasonable costs incurred by the Copyright Office in providing fee services, and the FASAB guidelines are untried. FEATAG is convinced that merely attempting to recover reasonable Copyright Office costs may have a major impact on service requests and processing and is reluctant to apply this additional increase to the current fee-setting process.

6.1.4 Intra-entity Costs

FEATAG also recommends against attempting to recover intra-entity costs, the expenses the Library of Congress incurs in support of the Copyright Office. To a large extent, these expenses are balanced by the service provided by the Copyright Office in providing more than \$25,000,000 annually in deposit materials for the Library's collections. For reasons of public policy, these costs, including direct LC costs for ITS support of Copyright Office automated systems, are not reciprocally charged.

6.3 Rationale for Setting Average Fee for Three Years

FEATAG considered how frequently the Copyright Office should review its fees and the effect on the Office and the copyright community of fee increases with the option of one, three, or five year cycles. Based on these discussions, FEATAG recommends that a regular review of copyright fees be done on a three year cycle. It concluded that administratively and operationally, a one year cycle would be too short to implement effectively and a five year cycle may not adequately address economic changes during the period. Moreover, a three year cycle will allow the Office to recover cost most efficiently without incurring the burden of yearly change.

It is extremely difficult to communicate fee increases to the copyright community, which includes a very high percentage of individual, occasional claimants who may file only one claim every three to five years. Reviewing the results of the last fee adjustment in 1991, the Office was quite successful in reaching the large, regular claimant who used the Office's services at least six times each year. The individual, occasional claimant made up the vast majority of short fee cases in the second year after the fee adjustment. By the third year following the fee adjustment, almost 100 percent of the more than 25,000 short fee submissions were from individual claimants.

Approximately 20 percent (more than 70,000) of all cash claims received in the year following the 1991 fee adjustment were short fees. This percentage dropped to approximately 10 percent (about 41,000) in the second year, and to about five percent (about 24,000) in the third year. Seven years after this fee adjustment 1.04 percent of all cash claims the Office receives are short fee submissions. FEATAG expects somewhat lower percentages of short fees for the next fee adjustment because recently printed forms and notices issued electronically announce the coming fee revision.

A three year cycle will allow the Office a greater period of time to plan for each fee adjustment; the community who uses Copyright Office services will benefit from greater price stability. Using a three year cycle requires that the Office set fees to recover an amount greater than costs the first year of the new fees, to break even in year two, and presumably to fall short of recovering costs in the third year, when inflation will have raised costs. The surplus from year one should be sufficient to cover the shortfall in year three. For Abacus' summary of cost projections based on a three year fee cycle, see Appendix G. Abacus bases costs on FY2000 through FY2002, the first three full years after implementation of new fees. The Office reserves the right to adjust the fee cycle as required to ensure fiscal well-being.

6.4 Elasticity Issues

Elasticity refers to the change in the number of times a service is requested by the public in reaction to a change in the fee--a ratio between the expected percent in charge of demand and the percent of price increase. For the purposes of this report, elasticity is used more loosely to refer to the expected service requests after implementation of the new fee schedule, whether the change is

attributable entirely, only partially, or not at all to the change in fee. Copyright Office experience shows that when fees are adjusted upward, certain fee services are inelastic, or demand is not affected by a higher fee. Other fee services are elastic, and demand is reduced when a higher fee is imposed. Demand for fee services can also be dependent on other factors, including legal and economic factors. Generally, for elastic services, there follows an impact and recovery period after which demand for the service stabilizes. The Abacus report presents charts demonstrating the effect of reduced demand because of higher prices, and the ability of the Copyright Office to recover costs. The report recommends raising the proposed fees to account for elasticity.

6.4.1 Elasticity in the Abacus Report

After consulting with Abacus, FEATAG directed Abacus to calculate four different demand scenarios for statutory and other filing fees: zero percent, 7.5 percent decrease in demand, 15 percent decrease in demand, and a decrease in demand based on a one percent decrease for each one dollar increase in the basic cost for copyright registration. The 7.5 percent figure reflects the experience when fees were doubled in 1991; the 15 percent figure was included to consider when the cost was more than 200% of the current fee; the one percent per one dollar increase was included to give flexibility when costs might be very near current fees. The zero percent refers to inelastic services.

For discretionary non-filing fees, FEATAG estimated the demand based on numbers rather than percentages. The demand figures represented in Appendix H show which rate, among those calculated by Abacus, FEATAG predicts is likeliest to occur for each fee, based on Abacus' proposed fee for the service and other factors.

6.4.2 Predicted Elasticity for Filing Fees

FEATAG expects that in the first full year following the next fee adjustment the Office will experience, overall, approximately a 7.5 percent decrease in the number of claims submitted and varying decreases in the number of requests for other Copyright Office services. Incidentally, FEATAG also expects a surge of claims submitted under the old fees in the three months preceding the fee adjustments.

In the second full year following the fee adjustment, FEATAG expects the effective elasticity to be approximately 30 percent of the previous year's elasticity, or an effective reduction in demand of an additional 2.25 percent for filing fees. Year three following the fee adjustment would have less than one percent, or statistically negligible, reduction in demand from year two. Thus, the second and third years should show about the same demand for copyright services overall. A growth potential of .015 percent is factored into the above figures, which presupposes no major changes in the vitality of the nation's economy.

In principle, any fee that is subject to negative elasticity, a drop in demand, should be increased beyond predicted costs, if these costs are based on current usage, in order to recover full cost at the lower usage level. As an example, Abacus calculated that, with a decline in demand of 7.5 percent, full cost could be achieved for registration in class VA if the fee were raised to 37 percent above Abacus's recommended fee. Abacus's recommended fee was \$44.00; adding 37 percent would make the fee \$60. FEATAG predicts, however, that a \$60.00 fee for that service would result in even greater reductions in demand. Thus, at \$60.00, the fee would still not recover costs. According to the Abacus model, there is no adjustment that would result in full cost recovery if elasticity were higher than 7.5 percent.

6.4.3 Using Price Elasticity Estimates in Setting Fees

Setting fees to recover costs requires determining as nearly as possible the number of times each fee will be collected at the proposed level and then either setting a fee that will recover current costs, or reducing costs to adjust to income.

If it were possible to adjust costs to income, it would be reasonable to attempt to balance fees with elasticity. In reality, costs respond slowly to changes in workload, particularly when the primary cost is in staff salaries. Further, in the Copyright Office at present, a decline in workload would not even be felt for several months, while backlogs of on-hand work are processed. Though FEATAG realizes cost adjustment is important, it cannot be factored into the setting of fees except in certain cases where cost adjustments can be made quickly. Further, following the initial decrease in demand, there is a predicted recovery period, where costs would also recover. Thus, FEATAG concludes that any attempt to cut costs overall during the first two years of instituting a new set of fees would be unwise.

Based on Abacus' findings, FEATAG recommends not attempting to find an exact balance between fees and demand in this first effort at recovering costs. Instead, it recommends adjusting fees upward in cases where there is a predicted decline in demand, but not at the levels indicated by Abacus' analysis. FEATAG has determined that an adjustment of seven percent where appropriate, would recover some income lost due to a decline in demand but would not greatly affect the predicted level of demand. FEATAG recommends that the Register maintain extra income from last quarter FY98 and full-year FY99 receipts as a reserve to balance anticipated lower receipts in FY00. The Register should take a low risk approach by seeking a reduced appropriation for FY00, but one high enough to protect the Office's ability to provide services if the decline in demand for services reaches a damaging level in the first year following a fee revision.

6.5 Fee Policy Considerations

In preparing its fee recommendations, FEATAG considered a number of policy issues on fees and fee structures based on a report by a subgroup that was presented to the Register's

Conference. Some of the major policy options considered, along with the decision reached in proposing a new schedule of fees and the rationale for the decisions, are noted below:

1. Basic Filing Fee. Should the basic filing be the same for individual claims in the basic classes: Nondramatic Literary Work (TX), Visual Arts (VA), Performing Arts (PA), Sound Recordings (SR), Serials (SE), Renewals (RE)?

The Office believes that for simplicity and ease of application the fees for the basic classes, TX, VA, PA, and SR should be the same. Many claims contain authorship in more than one class and the claimant might choose either. Choice should reflect the preponderance of authorship, not a lower fee. Further, the law, in section 408(c)(1), states that incorrect class does not affect the owner's exclusive rights. Savvy filers might choose the cheapest class even when it is not appropriate.

A correctly filed claim in the wrong class is registered without question at present. The Office would perhaps be obligated to insist on registration in the proper class, if there were a fee differential, but the public would almost certainly object to having to file the correct form and pay an additional fee. Correspondence and processing costs would increase, a burden the Copyright Office would not welcome.

The Office believes that serial claims may vary to reflect a lesser cost without creating a burden on staff or the public and that renewal registrations may reflect a greater cost because they are now optional and because a different fee would not cause administrative problems.

2. Published versus Unpublished. Should there be different fees for published and unpublished works, based on cost of processing?

Varying fees would cause a tremendous administrative burden to the Office. Publication status of a claim is sometimes revised after the claim is in process. The fee would then change. Also, variable fees would influence the class in which some people chose to register a copyright claim, perhaps to the detriment of the public record. Presumably, unpublished works would carry the higher fee, reflecting the requirement in section 709(d) of the copyright law that the Copyright Office retain the deposit for the full term of copyright. The retention cost, not necessarily desired by most filers anyway, would theoretically accrue to the filers less able to pay.

3. Works Made for Hire versus Independently Authored Works. Should a greater fee be charged for works made for hire than for those created independently?

The Copyright Office does not have any statistics on whether or not a registration is for a work made for hire. A differential fee might not be supported by cost. Further, as with the published versus unpublished issues, the applicant does not always know the status of the work or the work falls into a borderline situation where the decision may be made based on securing a lower fee, rather than facts. Also, on the current forms, applicants frequently do not answer the work

made for hire question even when the answer is clear, for example, when the author is a corporation; therefore, the Office's review of whether the fee is correct could be problematic.

4. Value of the Registration. Should the registration fee be based on the value of the work being registered?

The new fee legislation does not provide for setting fees based on actual or perceived value. This distinction would be difficult to apply -- establishing the value in all but the most obvious of situations would be delicate and could lead to disputes. Further, there is no one class in which all works are of high value.

5. Affect on Individual Persons. Should the basic registration fee be low enough that all or nearly all can pay?

The Copyright Office is committed to keeping fees within reach for the average filer, but it recognizes that some people will find it difficult to pay no matter how low the fee. The Office will consider comments from interested parties on the impact of proposed new fees on the average filer.

6. Unpublished Collections. Should a new fee structure be applied to unpublished collections?

Since 1978, unpublished collections, which have been structured so that an applicant may include an unlimited number of unpublished works in a single registration for a single fee, have been costly for the Office to process. The registrations do not list all the contents; therefore, it is not clear from the record what is included in the registration. Because of the cost, the Office does not examine each item in the collection for copyrightability.

The Office has concluded that the clarity and usefulness of registrations for unpublished collections would be increased if such collections were limited to 10 works, listed by title in a new form, and if the Office examined each work for copyrightability before making the registration. To cover the cost of examining and cataloging for each title, the fee needs to reflect the number of works in the collection. The Office also proposes that a fee should be applied per work, with a minimum fee equal to the filing fee for that category of work.

7. Group Registration for Contributions to Periodicals (GR/CP). Should GR/CP claims reflect the cost of processing? Under the law, the Office must offer registration in a single claim for an annual collection of contributions to periodicals.

The current flat filing fee does not reflect the processing cost variation among claims. The cost of processing increases directly in proportion to the number of works in the claim. Note: It does not increase as dramatically as the cost for items in an unpublished collection, as most GR/CP's are copyrightable and the claim generally does not require costly correspondence.

The Office proposes a "per item" fee with a minimum fee equal to the basic filing fee.

8. Mask Works. Should the fee for mask work claims recover their full cost?

Mask works are not protected under copyright law, but under a sui generis kind of protection. Moreover, most filers of claims to mask works are businesses, and the protection sought allows them to compete with other for-profit enterprises. The Office proposes a fee that will recover the full cost to the Office of processing the claims.

9. Corrections and Amplifications. What fee is appropriate for these supplementary registrations?

Supplementary registrations are costly to the Office, as they require at a minimum looking at the original numbered application. The correspondence rate for them is high. The Office believes it is appropriate to charge a fee that recovers the cost of these claims.

10. GATT Claims. Should this fee recover the cost of processing the claims?

GATT claims cost more to process than regular claims; however, the cost is associated with the unusualness of the claims and the expenses associated with doing business with foreign filers. The Office has no wish to impose a higher fee on this group of filers, so proposes to maintain a fee structure equivalent to similar claims filed domestically.

11. GATT/Group. Should the current fee structure, a fee per item with a minimum and maximum number of items, be retained?

This fee structure has worked very well. The Office proposes to keep it, only increasing the minimum fee to that for basic registrations.

12. Filing Fees. Should all filing fees (both statutory and discretionary) be reviewed at the same time?

The Office believes it would be in the best interest of both the Office and the public to change all filing fees, except non-copyright mask works fees, at the same time.

13. Unresolved policy question: Should the law be amended or a fee be assessed to recover the costs of storage of unpublished works?

Storage costs for unpublished works are not currently recovered. The copyright law requires the Office to retain these deposits during the life of their copyright unless it makes a facsimile reproduction of the entire deposit for its records. 17 U.S.C. § 709(d). If the Office does make facsimile copies, it has to keep them.

6.6 Implementation Timeline

Due to the differing requirements for amending discretionary and statutory or filing fees, FEATAG created two timelines to implement fee changes. See Appendix F which illustrates those timelines. Most discretionary fee changes are projected to go into effect on July 1, 1998, and statutory and filing fees on July 1, 1999. Statutory fee changes require more time since the Office perceives a need to hold public hearings before forwarding the recommended fee schedule and accompanying economic analysis to Congress, which has up to 120 days to review the schedule and pass a law if it does not approve it.

7.0 FEATAG'S FEE RECOMMENDATIONS

FEATAG considered each fee proposed by Abacus in conjunction with the Copyright Office's experience with its customers and each described service. It also considered the overall fairness and equity concerns required by Congress in setting fees and noted by Ron Young. Following this review, FEATAG made its own fee recommendation for each service. It accepted most of the fees proposed by Abacus based on its cost study, adjusting for elasticity where indicated, but differed with Abacus in determining the costs associated with a number of services. One example is special expedited services where opportunity costs and fairness and equity concerns, not factors of the Abacus cost determinations, are important to the Office. FEATAG concluded that when a customer requests expedited service, he or she goes ahead of the line and should pay an extra charge since special handling backs up all of the work in process, which disrupts overall regular service and may require the use of overtime to complete the existing jobs on time. See 7.2.10.

7.1 Statutory and Filing Fee Recommendations

In discussing the fees authorized in 17 U.S.C. §708(b), both Abacus and FEATAG separated statutory fees specified in §708(a)(1)-(9) from discretionary fees for special services authorized in §708(a)(10). FEATAG concluded, however, that for purposes of a recommended fee schedule, some discretionary filing fees should be included with statutory fees. By so doing, the Office treats all filing fees alike and ensures that they will all go into effect at the same time.

7.1.1 [2A-1a, c, d, e, and f]¹

¹ The numerical notations contained in brackets before each fee service description is the code used by Abacus to describe that particular fee service.

Filing Fee for Registration of Individual Claims

\$45.00

1. Description. The filing fee to register individual claims to copyright in the basic classes--Class TX (literary, e.g. books), VA (visual arts), PA (performing arts, including audiovisual works), SR (sound recordings)--covers processing, examination, correspondence as required, registration when approved, issuance of a certificate of registration, cataloging of the claim, and storage processing of registration materials. These cited basic classes cover most of the works registered.

2. Explanation for adjusting the Abacus fee. Abacus recommended fees for the basic classes that vary slightly. FEATAG recommends setting a uniform fee for simplicity both for the public and for the Office and to avoid confusion and conflict when a work contains authorship in more than one class. The recommended fee reflects an average cost among the classes and includes a 7% adjustment for elasticity.

7.1.2 [2A-1b] Filing Fee to Register Individual Serial Claims

\$41.00

1. Description. The filing fee for claims to copyright in serial issues covers processing, examination, correspondence as required, registration when approved, issuance of a certificate of registration, and cataloging of a claim in the serial issue as a whole.

FEATAG recommends adopting the fee recommended by Abacus with an adjustment of 7% for elasticity.

7.1.3 [2A-1g] Form GR/CP -- Filing Fee for a Group

\$3.00 per contribution
\$45.00 minimum fee

1. Description. Form GR/CP is an adjunct to classes TX and VA which is used to register a group of contributions to periodicals. The copyright law provides for the registration of any number of contributions to periodicals by the same individual author that were published within a twelve-month period on the basis of a single deposit, application, and fee. Processing requires examination and cataloging of each contribution, and storage of registration materials.

2. Explanation for adjusting the Abacus fee. Abacus proposed a charge of \$906.00 for each GR/CP claim. FEATAG believes that this amount represents a proposed average cost and does not reflect the fact that the cost varies considerably based on the number of contributions, which may range from as few as two to as many as 365. FEATAG proposes a more equitable fee which reflects the fact that those GR/CP's containing more works cost more to process. The \$3.00 contribution charge is lower per item than other fees based on the number of items. FEATAG concluded that a lower per item charge for GR/CP's was justified since there are fewer copyrightability problems with these claims; therefore, filing errors will be mostly clerical and easily corrected.

7.1.4 [2A-2] Form RE--Filing Fee for Registration of Renewal Term \$58.00

1. Description. Class RE is used for renewal of copyrights for which the first term began prior to 1978. Following legislation, effective in 1992, which made renewal automatic, renewal registration is now optional. The renewal filing fee covers all normal processing costs, and in most cases a review of the original registration.

Abacus proposed a fee of \$54.00. FEATAG recommends adopting the fee proposed by Abacus, with an elasticity adjustment of 7%.

7.1.5 [2A-3] Fee for Recordation of Document Related to a Single Work \$47.00

1. Description. A document that transfers copyright ownership or any other document pertaining to a copyright may be recorded in the Copyright Office if the document filed for recordation meets the basic requirements for recordation. The document is verified for acceptability; the parties to the document and the title are made a matter of public record; and the document is electronically imaged for storage and retrieval in the Copyright Office records.

Abacus proposed a fee of \$44.00. FEATAG recommends adopting the fee proposed by Abacus, with an elasticity adjustment of 7%.

7.1.6 [2A-3a] Additional Fee When a Document Relates to More Than One Work \$11.00

1. Description. When a document contains more than one title, each title in the document is indexed in the on-line records of the Copyright Office. Work associated with indexing the additional titles is labor intensive.

Abacus proposed a fee of \$10.00 per group of ten additional titles. FEATAG recommends adopting the fee proposed by Abacus with an elasticity adjustment of 7%.

7.1.7 [2A-4a] Additional Certificates \$21.00

1. Description. An additional certificate is a certified copy of the record of registration.
2. Explanation for adjusting the Abacus fee. Abacus proposed that this fee be \$37.00 per certificate. FEATAG recommends charging only \$21.00 per additional certificate. It maintains that the lower fee is more in line with the actual cost of providing that service and the public interest.

7.1.8 [2A-4b] Any Other Certifications

\$64.00/hour²

1. Description. A certification is an official written representation of the Copyright Office attesting to one or more facts and bearing the seal of the Copyright Office and issued under the name and title of the Register of Copyrights.

2. Explanation for adjusting the Abacus fee. Abacus proposed charging \$74.00 for this service. FEATAG recommends charging \$64.00. It believes that this price is more realistic and better serves the public interest.

7.1.9 [2A-5a] Search-Report Prepared From Official Records

\$64.00/hour

1. Description. This is a fee charged for searching Copyright Office official records and preparing a report.

2. Explanation for adjusting the Abacus fee. Abacus proposed that this fee be \$75.00 per hour. FEATAG recommends charging \$64.00 per hour. Setting this fee too high could force customers to use competitive alternatives. Although other companies provide such reports and charge more, the Copyright Office will only certify its own reports so customers requiring a certified report by a court **must use** the Copyright Office service. Consequently, the Office needs to keep this fee fair and reasonable.

7.1.10 [2A-5b] Search -- Locating Records

\$64.00/hour

1. Description. This search is charged for locating various copyright records.

2. Explanation for adjusting the Abacus fee. Abacus proposed that this fee be \$85.00 per hour. FEATAG recommends charging \$64.00 per hour because this service is always used by the Certificates and Documents section in conjunction with other fee services; a higher fee would make it burdensome to use this service. Moreover, the public is not permitted to search these materials.

7.1.11 [2A-7] Receipt for Mandatory Deposits

\$18.00

1. Description. The copyright law requires that copies of unregistered published works be deposited with the Copyright Office for the collections of the Library of Congress. If the publisher

² All hourly fees are based on performing a service for one hour or a fraction thereof.

wishes to get a receipt for deposit of these works, it must request one.

Abacus proposed a fee of \$17.00. FEATAG recommends adopting the fee proposed by Abacus, with an elasticity adjustment of 7%.

7.1.12 [2A-8] Form CA -- Fee for Processing Corrections or Supplements **\$62.00**

1. Description. A supplementary registration is made to correct or add to the information provided by the applicant in a completed registration. In addition to normal processing, each claim requires careful comparison with the registration it purports to supplement.

Abacus proposed a fee of \$58.00. FEATAG recommends adopting the fee proposed by Abacus, with an elasticity adjustment of 7%.

7.1.13 [2B-3] Form SE/Group -- Filing Fee for Quarterly Registration **\$10.00 per issue
\$41.00 minimum**
fee

1. Description. Group registration of serials is available for domestic serials that meet certain requirements. For serials published weekly or less frequently, the applicant may register all issues published within a three-month period using a single application, deposit, and fee. This group registration option represents a great savings to a remitter over individual registrations.

2. Explanation for adjusting the Abacus fee. Abacus proposed \$27.00 for a Form SE/Group registration. FEATAG is convinced that the Abacus cost study does not accurately reflect the cost of processing these claims. Because of the extensive additional time involved in all aspects of processing these registrations, FEATAG recommends charging \$10.00 per issue, with a minimum fee of \$41.00 (the basic filing fee recommended for serial issues).

7.1.14 [2B-4] Form MW -- Filing Fee for a Mask Work **\$70.00**

1. Description. Mask works are claims in the design of a semiconductor chip that are protected by a sui generis system, established in 17 U.S.C. Chapter 9, the Semiconductor Chip Protection Act. These claims are registered by the Copyright Office and afforded much the same processing as copyright claims. They are almost always submitted by commercial business.

FEATAG recommends adopting the fee Abacus proposed, \$68.00, rounded up to \$70.00.

7.1.15 [2B-5] Form G/DN--Fee for Monthly Registration of Daily Newspapers **\$54.00**

1. Description. Group registration for daily newspapers is available for domestic newspapers that meet certain requirements, including the deposit of a microfilm copy of the month's issues. This group registration option represents a great savings to the remitter over individual registration of each issue.

2. Explanation for adjusting the Abacus fee. Abacus proposed a fee of \$21.00. FEATAG is convinced that the Abacus cost study underestimates the cost of processing these claim. It recommends increasing the current fee of \$40.00 to \$54.00.

7.1.16 [2B-6a] Form GATT

\$45.00

1. Description. The Office has developed a special registration form for works restored under the Uruguay Round Agreements Act which brings the United States into compliance with the General Agreement on Tariff and Trade (GATT). This GATT registration form was developed as part of regulations that went into effect in October of 1995. At that time the Office determined that the fee for such registrations should equal the basic fee for other registrations. Accordingly, the Office has been charging \$20.00 for the basic GATT individual registration.

2. Explanation for adjusting the Abacus fee. Abacus proposed reducing the fee to \$17.00. FEATAG concluded that the cost figures for GATT and GATT/Group claims are disproportionate, that the GATT registration fee should be the same fee as other basic registration fees, and that the increase should be approved by Congress.

7.1.17 [2B-6b] Form GATT/Group Filing

**\$10.00 per title plus
\$45.00 minimum fee**

1. Description. The Office created a special form for GATT group filings and permitted up to ten related individual works published within the same calendar year to be registered with Form GATT/GRP with a filing fee of \$10.00 per individual title.

2. Explanation for adjusting the Abacus fee. Abacus proposed a fee of \$314.00 for up to ten titles. Again FEATAG realizes that the group fee for GATT registrations may need to be increased but recommends that such increases not be implemented until there is an amendment to other group registration fees.

7.1.18 [2B-7a] Recordation of Notices of Intent to Enforce (NIEs)

\$30.00

1. Description. The Office was given the responsibility of recording documents known as Notices of Intent to Enforce copyrights restored under the Uruguay Round Agreements Act. In this Act, Congress authorized the Register of Copyrights to fix reasonable fees based on the costs of receipt, processing, recording, and publications of these notices. The Register set those fees at \$30.00.

2. Explanation for adjusting the Abacus fee. Abacus proposed an increase of \$3.00 to \$33.00. FEATAG recommends that the basic fee remain at \$30.00. The vast majority of copyright owners of restored works who could file such notices with the Office lost their eligibility to file notices with the Office on December 31, 1997. It would cost the Office much more to notify the affected, but unidentified parties, that the fee was being changed than the Office could recover with an increase in the fees.

7.1.19 [2B-7b] Recordation of NIEs -- Additional Works

\$1.00 per title

1. Description. The Office set fees to record additional NIE titles as the basic fee of \$30.00 plus \$1.00 for each additional title.

2. Explanation for adjusting the Abacus fee. Abacus proposed that the charge be \$7.00 for each additional title. The Office knows that it will get very few NIE filings since the majority of rights owners are no longer eligible to file notices with the Office. Moreover, the costs of identifying those still eligible, publicizing such changes to a mostly foreign audience, and attempting to correct short fees would be high. FEATAG, therefore, recommends that the original fee not be changed.

7.1.20 New statutory Filing Fee for Unpublished Collections

**\$10.00 per item
\$45.00 minimum fee**

1. Description. FEATAG proposes revising the way in which collections of unpublished works are registered in classes TX, VA, PA, SR. The current method, whereby an unlimited number of unpublished works are grouped under a collection title, creates an incomplete public record and the certificate of registration does not identify the individual works included in the registration.

FEATAG proposes limiting the number of unpublished works in a collection to ten. Each work will be identified by title on the application form.

2. No Abacus recommended fee. Heretofore, the Copyright Office has handled these claims by a different method. The Abacus cost study models are based on current practice and do not reflect the proposed method. The Office expects the processing of an unpublished collection to

be higher than the cost of an individual claim in the particular class and to exceed the cost of handling unpublished collections now. FEATAG predicts that examining costs will increase because each work in the collection will be examined for copyrightability and correctness and cataloging costs will increase because each title, rather than only a collection title, will be cataloged.

7.2 Discretionary Fee Recommendations

7.2.1 [1A-2] Fee for Deposit Account Overdraft

\$70.00

1. Description. The Copyright Office does not currently charge for this service. It maintains a system of deposit accounts for the convenience of those who frequently use its services. The system allows an individual firm to establish a deposit account in the Copyright Office and to make advance deposits into that account. A deposit account holder can charge copyright fees against the balance in his or her account instead of sending separate remittances with applications and other requests for services.

On occasion, more claims for registration will be submitted than can be funded from the balance in the deposit account. In this case, an account falls into a “no funds status.” Claims that cannot be processed because of insufficient funds in a deposit account must then be set aside and stored until the deposit account holder can be contacted and forward additional funds to the Office. The Office incurs significant administrative costs in the handling of these no funds accounts.

2. Explanation for adjusting the Abacus fee. Abacus proposed a fee of \$66.00 per item. FEATAG concurs with the Abacus proposed fee adding an elasticity adjustment. FEATAG recommends a fee of \$70.00 per instance (as opposed to the Abacus recommendation of charging this fee on a per item basis). This fee will be deducted from the replenishment forwarded by the deposit account holder.

7.2.2 [1A-3] Fee for a Dishonored Check

\$33.00

1. Description. Currently, there is no fee for this service. In the event that a check cannot be negotiated because of insufficient funds in the remitter's account or for other banking problems, the Office will charge a fee to cover the administrative expenses incurred in processing this unacceptable remittance.

This service fee will have to be paid before any additional claims are processed in the claimant's deposit account.

2. Concurrence with the Abacus recommendation. FEATAG concurs with the Abacus

recommendation of \$31.00 for this fee, but adds an elasticity adjustment. This relatively low fee is justified because of the advantage given to deposit account holders, who, in case of no funds have materials held by the Office rather than returned for resubmission.

A dishonored deposit account replenishment check will also incur the fee for a deposit account overdraft if the dishonored check places the deposit account in a “no funds” status.

7.2.3 [1A-5A] First Appeals

\$500.00

1. Description. Currently there is no fee for this service. When the Copyright Office refuses registration for a work or part of a work, for whatever reason, the applicant may exercise his or her right to appeal the decision. In the first appeal, the Examining Division reviews the case in light of the applicant's arguments, as presented in a letter, makes an independent decision as to the registrability of the claim, and communicates that decision to the applicant.

2. Explanation for adjusting the Abacus fee. Abacus proposed a fee of \$731.00 for first appeals. FEATAG recommends a fee lower than that proposed by Abacus because staffing changes in the Examining Division since FY96 have already reduced the cost of processing an appeal by as much as 25%. It is convinced that even that cost will be reduced over time.

7.2.4 [1A-5b] Second Appeals

\$1200.00

1. Description. Currently there is no fee for this service. There are two levels of review within the Office when a claim is rejected. Under the old system the second appeal was made to the Examining Division. It now goes to a Board of Appeals made up of three senior officials. At the time the Office went to an interim system with a Board of Appeals, the steps involved became even more labor intensive and required more administrative support.

2. Explanation for adjusting the Abacus fee. Abacus looked at the steps involved and proposed a fee of \$1799.00 for second appeals. The Office has been operating under the interim system for more than two years and has identified ways to streamline both the administrative process and the legal review. It, therefore, expects these costs to come down. Also appellees must exhaust administrative appeals before seeking review of denial of registration under the Administrative Procedure Act. Consequently, FEATAG finds that a fee of \$1200.00 would be fairer.

7.2.5 [1A-6] Short Fee Service Charge

\$20.00

1. Description. Currently there is no fee for this service. A “short fee” is a remittance received by the Office that is insufficient to pay for the requested fee or service, when the cost of

the service has been identified in advance. Short fees refer only to payments made by cash, check, or money order.

When claimants fail to send the correct remittance, the Office incurs considerable administrative expense in holding the material submitted with a short fee and writing for the additional money funds. Institution of a short fee service charge will help to offset these additional expenses.

For works submitted with a short fee, the effective date of registration is the date when the application, the deposit copies, and the *complete* filing fee are all present, together, in the Office.

2. Explanation for adjusting the Abacus Fee. Abacus had determined that the copyright cost for handling each short fee remittance is \$21.00. FEATAG is recommending that the short fee service charge be set at \$20.00, an amount that will be administratively easier to collect.

FEATAG also recommends that this service charge go into effect at the same time as the new discretionary fee adjustments. When new statutory fees become effective, the Office may allow a very limited grace period for the major class applications such as TX, VA, PA, RE, and SR before imposing this fee.

7.2.6 [1A-7] Hourly Fee for Processing of Secure Tests

\$60.00

1. Description. Currently there is no fee for this service. Secure tests are tests which are given to groups of persons to determine aptitude or knowledge. Publishers of these tests ensure the confidentiality of the test by collecting all test booklets after the test. In order to maintain strict secrecy, the Office examines these tests in the presence of the applicant, returns the test material, and keeps only a small portion of material photocopied from the original as the deposit. This process is carried out by appointment in a closed room.

2. Explanation for adjusting the Abacus Fee. Abacus proposed a fee of \$39.00, and FEATAG recommends that the fee be \$60.00. The Office is providing a benefit valued beyond the cost of providing the service. These clients have an exclusive opportunity, not offered to other registrants, for private, secure examination of their deposits.

7.2.7 [1A-11] Fee to Cancel a Completed Registration/Recordation

\$45.00

1. Description. Currently there is no fee for this service. Cancellation of a completed registration is carried out either at the instigation of the Office, in case of erroneous registration, through a court order, or at the request of the copyright claimant, who determines that the claim should not have been filed. The fee will only apply in those rare instances when cancellation is undertaken at the request of the claimant.

2. Explanation for adjusting the Abacus fees. Abacus proposed a fee of \$42.00. FEATAG recommends \$45.00 for convenience in processing.

7.2.8 [2B-1b] Copying Fee

**\$15.00 minimum for 15 pages or less
\$1.00 charge per page thereafter**

1. Description. The copying fee is the amount of money the Copyright Office charges the customer for photocopying a deposit or copyright records.

2. Explanation for adjusting the Abacus fee. Abacus proposed charging a \$15.00 minimum to copy up to 15 pages and charging a little over a dollar a page after 15 pages. FEATAG recommends charging a \$15.00 minimum for 15 pages or less and charging \$1.00 per page after that.

7.2.9 [2B-2] Inspection Fee

\$64.00

1. Description. The inspection fee is a daily fee charged the customer who wishes to inspect a deposit or Copyright Office records without getting copies.

2. Explanation for adjusting the Abacus fee. Abacus proposed charging a daily fee of \$206.00 for this service. FEATAG recommends charging a daily fee of \$64.00. This fee would always be charged in combination with a search fee of \$64.00 per hour. Therefore, the minimum fee would be \$128.00 which FEATAG believes is a reasonable fee. Again, only the Certificates and Documents section can provide this service.

7.2.10 [2B-8a] Special Handling Fee for Registration

\$500.00

1. Description. Special handling is a procedure established within the Copyright Office to reduce the length of time required to process an application for registration of a claim to copyright. Special handling is granted only when the claim meets the criteria established by regulation. If a claim is eligible for special handling, the Copyright Office will make every effort to process the claim within five working days after the request has been approved. Within that period the Office will either issue a certificate of copyright or notify the applicant of any registration problems.

When a fee is charged for special handling, this fee is added to the regular fee for registration. For example, under the new fee schedule proposed by FEATAG, the total cost for a TX claim receiving Special Handling would be \$545.00 (\$500.00 for Special Handling, plus the TX registration fee of \$45.00).

2. Explanation for adjusting the Abacus fee. The current special handling fee is \$330.00.

Abacus proposed a lesser fee of \$329.00, which would only recover the copyright costs. FEATAG recommends a higher charge of \$500.00 for the following reasons: Special handling of requests for issuance of a certificate of copyright affect every step of the registration process. Normal applications pass through the various processing steps in a first in first out manner which is administratively efficient. A claim that receives special handling must be processed outside of the normal work flow, necessitating individual handling at each step and individual routing between work stations. A separate system of controls must be maintained for a special handling claim to assure that it moves expeditiously and can be located quickly if necessary. The large (and growing) number of special handling requests is extremely disruptive of routine procedures. Special handling claims take staff away from processing all other claims, including those received earlier, in order to process special handling claims in a substantially shorter time period.

7.2.11 [2B-8c] Special Handling Fee for Recordation of a Document \$312.00

1. Description. Special handling of a document is the expedited processing of a document submitted for recordation. When special handling is approved, the Office attempts completion of the recordation process within five working days.

2. Explanation for adjusting the Abacus fee. The current fee is \$330.00 and Abacus proposed a fee of \$208.00. FEATAG recommends a fee of \$312.00. With one exception the same policy arguments for an increase discussed in 7.2.10 apply here. The exception is elimination of movement between many parts of the Office by centralization of almost all aspects of the documents recordation process in a product-line environment. All other factors are equally applicable in special handling of documents recordation. Centralization of processing results in a special handling fee for documents recordation which is lower than the fee for special handling of a claim.

7.2.12 [2B-9] Full Term Retention of Deposits \$364.00

1. Description. Full term retention of deposits is a special fee charged when a copyright claimant requests that the Copyright Office retain published deposits in storage for the full copyright term, which could be up to 125 years.

2. Explanation for adjusting the Abacus fee. Abacus proposed charging \$341.00. FEATAG concurs with an elasticity adjustment of 7%.

7.2.13 [2B-10a] Surcharge for Expedited Additional Certificate \$75.00

1. Description. This is a surcharge assessed the customer by the Copyright Office for providing additional certificates of registration on a rush basis. An additional certificate is a

certified copy of the record of registration. A rush request is processed within ten to fifteen business days from the receipt date of the request.

2. Explanation for adjusting the Abacus fee. Abacus proposed charging \$26.00 for each additional certificate. As noted in the discussion of costs associated with special handling requests, any request to move one claim in front of another causes a considerable disruption in the Office's normal processing system which moves all requests in the order that they arrive. Fulfilling requests for any expedited service pulls regular staff away from their regular duties and necessitates special treatment for the expedited claim. Beyond the additional processing cost and description to services not requesting expedited processing, FEATAG added a premium for the benefit of getting the request handled ahead of other requests received earlier.

7.2.14 [2B-10b] Surcharge for Expedited In-Process Searches

\$75.00

1. Description. This is a surcharge assessed the customer by the Copyright Office for providing an in-process search report on a rush basis. An in-process search report is a report on certain information contained in the Copyright Office in-process files. A rush basis is ten to fifteen business days from the receipt date of the request.

2. Explanation for adjusting the Abacus fee. Abacus proposed charging \$24.00 for this service. Because the disruption of doing work on a rush basis creates a backlog of regular work, and in the interest of fairness and equity, FEATAG recommends increasing this expedited service fee by \$25.00. FEATAG notes that the same policy arguments which justify an increase in 7.2.13 apply here.

7.2.15 [2B-10c] Surcharge for Expedited Copy of Assignment

\$75.00

1. Description. This is a surcharge assessed the customer by the Copyright Office for providing a copy of an assignment or transfer of copyright ownership on a rush basis. A rush request is processed within ten to fifteen business days from the receipt date of the request.

2. Explanation for adjusting Abacus fee. Abacus recommends charging \$32.00 for this service. Because the disruption of doing work on a rush basis creates a backlog of regular work, and in the interests of fairness and equity, FEATAG recommends increasing this expedited service fee by \$25.00. FEATAG notes that the same policy arguments made in 7.2.13 apply here.

7.2.16 [2B-10d] Surcharge for Expedited Certification of Records

\$75.00

1. Description. This is a surcharge assessed the customer for providing an official written representation of the Copyright Office attesting to one or more facts and bearing the seal of the

Office and issued under the name and title of the Register of Copyrights on a rush basis. A rush request is processed within ten to fifteen business days from the receipt date of the request.

2. Explanation for adjusting the Abacus fee. Abacus proposed charging \$31.00. Because the disruption of doing work on a rush basis creates a backlog of regular work and in the interests of fairness and equity, FEATAG recommends increasing this expedited service fee by \$25.00. The same policy arguments which justify an increase discussed in 7.2.13 apply here.

7.2.17 [2B-10e] Surcharge for Expedited Copy of a Registered Deposit **1st hour \$95.00**
other hours \$75.00

1. Description. This is a surcharge assessed the customer by the Copyright Office for providing a copy of a registered deposit on a rush basis. A rush request is processed within ten to fifteen business days from the receipt date of the request.

2. Explanation for adjusting the Abacus fee. Abacus proposed charging \$24.00 per hour for this service. Because the disruption of doing work on an expedited basis creates a backlog of regular work and in the interests of fairness and equity, FEATAG recommends increasing this expedited service fee by \$25.00 per hour. The same policy arguments which justify an increase in 7.2.13 apply here.

7.2.18 [2B-10f] Surcharge for Expedited Copy of Correspondence File **1st hour \$95.00**
other hours \$75.00

1. Description. This is a surcharge assessed the customer by the Copyright Office for providing a copy of a correspondence file pertaining to a Copyright Office claim on a rush basis. A rush request is processed within ten to fifteen business days from the receipt date of the request.

2. Explanation for adjusting the Abacus fee. Abacus proposed charging \$32.00 per hour for this service. Because the disruption of doing work on a rush basis creates a backlog of regular work, and in the interests of fairness and equity, FEATAG recommends increasing this expedited service fee by \$25.00 per hour. The same policy arguments which justify an increase in 7.2.13 apply here.

7.2.19 [2B-11] Surcharge for Reference and Bibliography Search **1st hour \$125.00**
other hours \$95.00

1. Description. This is a surcharge assessed the customer by the Copyright Office for providing a written search report using Copyright Office records on a rush basis. A rush basis is a request processed within five business days from the receipt date of the request.

2. Explanation for adjusting the Abacus fee. Abacus proposed charging \$39.00 per hour for this service. Because the disruption of doing work on a rush basis creates a backlog of regular

work, and in the interests of fairness and equity, FEATAG recommends increasing this expedited service fee by \$25.00 per hour. The same policy arguments which justify an increase in 7.2.13 apply here.