



# **PROPOSED SCHEDULE AND ANALYSIS OF COPYRIGHT RECORDATION FEE TO GO INTO EFFECT ON OR ABOUT DECEMBER 18, 2017**

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SUBMITTED TO CONGRESS AUGUST 18, 2017





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**The Register of Copyrights of the United States of America**

United States Copyright Office · 101 Independence Avenue SE · Washington, DC 20559-6000 · (202) 707-8350

August 18, 2017

Dear Mr. President:

On behalf of the United States Copyright Office and in accordance with section 708(b) of title 17 of the United States Code, I am pleased to present a schedule and analysis of a proposed fee for recording certain types of documents with the Office.

This schedule and analysis concern a single Copyright Office service: document recordation. The Office proposes to establish a separate, lower fee for documents submitted for recordation that are accompanied by an electronic title list; *i.e.*, a list of certain indexing information about the copyrighted works to which such documents pertain. These lists save Office staff from needing to find and input this often voluminous information manually. The Office anticipates that a lower fee will incentivize more remitters to use these electronic lists, which should help the Office to improve its processing efficiency. The Office also anticipates that a lower fee should result in an increase in documents submitted for recordation. As required by the statute, the proposed schedule contemplates both the costs of the Office in administering this service and the overall objectives of the copyright system.

By law, the Register may institute the new fee 120 days after the proposed schedule is submitted to Congress unless Congress enacts a law within the 120-day period stating that it does not approve the schedule. The Office seeks to implement the new fee on or about December 18, 2017.

Thank you for your consideration of this proposed fee schedule.

Respectfully,

Karyn Temple Claggett  
Acting Register of Copyrights and Director  
U.S. Copyright Office

Enclosure

The Honorable Michael R. Pence  
President of the Senate  
Washington, DC 20510



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A handwritten signature in blue ink, appearing to read "Karyn Temple Claggett".

Karyn Temple Claggett  
Acting Register of Copyrights and Director  
U.S. Copyright Office

Enclosure

The Honorable Paul D. Ryan  
Speaker of the House of Representatives  
Washington, DC 20515

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## Introduction

The U.S. Copyright Office has prepared this analysis and proposed fee schedule pursuant to 17 U.S.C. § 708, which governs the legal authority of the Register of Copyrights to establish, adjust, and recover fees for certain services it provides to the public under the Copyright Act. Such fees must be “fair and equitable and give due consideration to the objectives of the copyright system.”<sup>1</sup> The study described herein concerns the fee for a single service: the recording of documents accompanied by electronic title lists; *i.e.*, lists of certain indexing information<sup>2</sup> about the works to which such documents pertain.

Since 1870, the U.S. Copyright Office has recorded documents pertaining to works under copyright, such as assignments, licenses, and grants of security interests. Under the Copyright Act, recordation of such documents is voluntary, but provides certain legal entitlements, such as constructive notice of the facts stated in the recorded document when certain conditions are met.<sup>3</sup> Thus, the Office has an important interest in ensuring that the public record of copyright transactions is as timely, complete, and accurate as possible.

In general, the recordation process is still paper-based, and Office staff manually transcribe information from documents into an electronic format to permit indexing in the Office’s public catalog. Among the information that must be indexed are the titles of and related information for copyrighted works associated with the document submitted for recordation, which are typically presented in a list appended to the document, referred to informally as a “title appendix.” A title appendix associated with a document can include hundreds, or even thousands, of titles.

The manual entry of information from title appendices is a significant contributor to long processing times in the Office’s Recordation Section. In 2014, to gain efficiencies, the Office promulgated a new rule permitting documents submitted for recordation to be accompanied by an electronic title list in the form of an Excel spreadsheet.<sup>4</sup> Document recordation fees, however, were last adjusted before the introduction of electronic title lists. Thus, the Office has never set a separate fee for recording

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<sup>1</sup> 17 U.S.C. § 708(b)(4).

<sup>2</sup> Examples of such indexing information can include the types of works, the titles of the works (including alternate titles), their respective registration numbers, and authorship information.

<sup>3</sup> 17 U.S.C. § 205(c) (“Recordation of a document in the Copyright Office gives all persons constructive notice of the facts stated in the recorded document, but only if—(1) the document, or material attached to it, specifically identifies the work to which it pertains so that, after the document is indexed by the Register of Copyrights, it would be revealed by a reasonable search under the title or registration number of the work; and (2) registration has been made for the work.”).

<sup>4</sup> See 79 Fed. Reg. 55,633 (Sept. 17, 2014) (codified at 37 C.F.R. § 201.4(c)(4)).

documents with such lists, and currently charges the same recordation fee regardless of whether the document has an electronic title list.

Although the Office is currently undertaking a comprehensive study of all Copyright Office costs and fees, which is expected to be completed and submitted to Congress next year, this limited fee proposal is being submitted now to allow the Office to more quickly implement a reduced recordation fee for electronic title lists. Adopting such a fee will incentivize remitters to provide such electronic lists, which are quicker to process than paper title appendices.

The delivery of this study to Congress is also timed to account for the development and implementation of needed technological adjustments to the Office's backend recordation and cataloging systems to accommodate the reduced fee and efficiencies in submitting documents with electronic title lists. That update, along with other related technological and administrative adjustments, should be completed in mid-December 2017. The Office wishes to provide the reduced fee to the public as soon as that update is finished, as an initial step in the Office's overall modernization efforts.

The Office is not proposing to adjust the baseline document recordation fee of \$105 at this time; that fee will remain the same for recordations made both with and without electronic title lists. Nor is the Office proposing to adjust the fee for groups of additional titles when an electronic title list is not used. Proposals for these fees will be included in the full fee study. The proposed fee adjustment herein only pertains to the fee for groups of additional titles provided in an electronic title list.

In order to conduct the study, the Office reviewed all of the activities necessary to record the information contained in an electronic title list. Because the basic recordation fee is not being adjusted at this time, activities that are the same regardless of whether an electronic title list is provided were not taken into account (*e.g.*, scanning the document and mailing a certificate of recordation). The costs of the relevant activities were then aggregated to determine the cost of the service.

Consistent with the provisions of section 708, the fee proposed herein will take effect in December 2017 pursuant to regulations to be issued by the Register of Copyrights unless, within 120 days of the date of the submission of this proposal to Congress, Congress chooses to enact a law stating that it does not approve the new fee.<sup>5</sup>

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<sup>5</sup> See 17 U.S.C. § 708(b)(5).

## I. Budgetary, Legal, and Policy Framework

### A. Sources of Funding

The basic budget<sup>6</sup> of the Copyright Office is derived from two sources: (1) fees collected from members of the public to obtain Office services; and (2) appropriations from Congress.<sup>7</sup> Historically, fees have made up the lion's share of the Office's basic budget, with a range of 58% to 65% over the past five years. Congress decides, in the course of the federal budget authorization, how much fee income the Office may utilize to cover its costs. Thus, the Office may spend incoming fees, but only up to the amount authorized by Congress. Excess fees are held in a reserve, which the Office can request to use. For example, the Office is utilizing these fees for IT projects in fiscal year 2017 and has requested to use such fees again in fiscal year 2018. Appropriated dollars make up a smaller but still critical part of the budget, and help the Office pay for essential operations. This part of the appropriations process reflects the fact that many of the services of the Copyright Office benefit not only individual copyright owners or users of Copyright Office services, but also the general public, for example, by providing the public with a searchable database of copyright registration and ownership information at no cost.

### B. Budget for Fiscal Year 2017

For fiscal year 2017, the Office has an overall annual operating basic budget of approximately \$61.7 million. Approximately 54% of the Office's budget is funded through fee receipts from the current year, with appropriated dollars covering 36%, and reliance on fees held in the reserve account providing the remaining 10%.

### C. Fee Types and Adjustments

Section 708(a) of the Copyright Act specifies that "[f]ees shall be paid to the Register of Copyrights" for the following services:

- 1) Filing an application under section 408 for registration of a copyright claim or for a supplementary registration, including the issuance of a certificate of registration if registration is made;

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<sup>6</sup> In addition to the Office's basic budget, the Copyright Office salaries and expenses appropriation includes a budget for the Copyright Royalty Judges and for the Office's Licensing Division.

<sup>7</sup> Although the Copyright Office is organizationally within the Library of Congress, it receives a separate appropriation. See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, div. I, tit. I, 129 Stat. 2242, 2667 (2015); see generally U.S. Copyright Office, *Budget Testimony*, COPYRIGHT.GOV, <https://www.copyright.gov/about/budget/>.



- 2) Filing an application for registration of a claim for renewal of a subsisting copyright, including the issuance of a certificate of registration if registration is made;
- 3) Issuing a receipt for a deposit under section 407;
- 4) Recording a transfer of copyright ownership or other document under section 205;
- 5) Filing a notice of intention to obtain a compulsory license under section 115(b);
- 6) Recording a statement revealing the identity of an author of an anonymous or pseudonymous work, or for recording a statement relating to the death of an author;
- 7) Issuing an additional certificate of registration;
- 8) Issuing any other certification;
- 9) Making and reporting of a search, and for any related services;
- 10) Filing a statement of account based on secondary transmissions of primary transmissions pursuant to sections 119 and 122; and
- 11) Filing a statement of account based on secondary transmissions of primary transmissions pursuant to section 111.<sup>8</sup>

In addition, section 708(a) authorizes the Register to fix fees for other services, such as the cost of preparing copies of Office records.<sup>9</sup>

Section 708 contemplates two different fee-setting mechanisms. Fees for the services set forth in (1) through (9) above—which include the Office’s registration and recordation functions and thus reflect especially important public policy objectives—are to be set forth in a proposed schedule that is sent to Congress 120 days before the adjusted fees can take effect.<sup>10</sup> Other fees, including those for the filing of cable and satellite statements of account under (10) and (11) and additional Office services, are not submitted to Congress, but are instead established by the Register of Copyrights based on the Office’s costs.<sup>11</sup>

Before proposing new fees for the services enumerated in (1) through (9), the Register must conduct a study of the Office’s costs for registering claims, recording documents,

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<sup>8</sup> 17 U.S.C. § 708(a).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* § 708(b).

<sup>11</sup> *Id.* § 708(a).

and providing other services, and must consider the timing of any fee adjustments and the Office's authority to use the fees consistent with the Office's budget.<sup>12</sup> Section 708(b) further provides that the Register may adjust these fees to "not more than that necessary to cover the reasonable costs incurred by the Copyright Office for . . . [such services], plus a reasonable inflation adjustment to account for any estimated increase in costs."<sup>13</sup> Finally, section 708(b) also mandates that the "[f]ees [so] established . . . shall be fair and equitable and give due consideration to the objectives of the copyright system."<sup>14</sup>

#### ***D. Fee-Setting Objectives***

When considering adjustments to its fee structure, in addition to fiscal considerations, the Office must weigh, among other things, the public importance of registration, recordation, and other filings made with the Office, as well as the availability of legal protections for authors and other copyright owners.<sup>15</sup> The adjusted fees must not diminish the vitality of the U.S. copyright system. The Office therefore attempts to set fees at a level that will allow it to recoup a large portion of its costs while maintaining a robust and accurate system of copyright records and deposit materials for the Library of Congress.

The Office is acutely aware of its financial responsibilities as an agency of the federal government, but at the same time, the Copyright Office cannot be viewed outside of the larger copyright system in which it operates, in which copyright transactions are a large and economically significant portion of the nation's gross domestic product.<sup>16</sup> Although the fee receipts of the Office comprise the largest share of its budget, the Office has never been funded entirely by such fees.

## **II. Fee Setting Methodology**

The cost study for this proposed fee schedule used activity-based costing principles which comply with standards set for federal managerial accounting<sup>17</sup> and with guidance for fee setting as published by the Office of Management and Budget Circular A-25

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<sup>12</sup> *Id.* § 708(b)(1).

<sup>13</sup> *Id.* § 708(b)(2).

<sup>14</sup> *Id.* § 708(b)(4).

<sup>15</sup> *See id.* (fees must reflect objectives of the copyright system).

<sup>16</sup> *See* STEPHEN E. SIWEK, INT'L INTELLECTUAL PROP. ALL., COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY: THE 2016 REPORT 5 (2016), available at <http://www.iipawebsite.com/pdf/2016CpyrtRptFull.PDF> (reporting that total copyright industries contributed nearly \$2.1 trillion to the U.S. economy in 2015, which accounted for 11.69% of total U.S. gross domestic product).

<sup>17</sup> This includes the Federal Accounting Standards Advisory Board's *Managerial Cost Accounting Concepts and Standards for the Federal Government*, which promotes activity-based costing for calculating the cost of providing services. *See* FED. ACCOUNTING STANDARDS ADVISORY BD., STATEMENT OF FEDERAL FINANCIAL ACCOUNTING STANDARDS NO. 4: MANAGERIAL COST ACCOUNTING CONCEPTS AND STANDARDS FOR THE FEDERAL GOVERNMENT (1995).

Revised: User Charges,<sup>18</sup> and the Government Accountability Office.<sup>19</sup> Under the approach, total costs for the entire recordation function were used to develop a time-based multiplier, which was then used to calculate the cost of the individual activities for recording the information contained in electronic title lists. The total cost of completing an electronic title list transaction was determined by aggregating the cost of each individual activity. Due to the constraints of performing a fee study on a single service, without a comprehensive review of all the services, other approaches such as the Activity Based Pricing methodology were not feasible.

As the Office's comprehensive fee study is in its early phases, the Office is still gathering data to critically assess the impact of interrelated service delivery processes on the electronic title list transaction costs, including support functions and indirect overhead. In addition, the full cost to the Office and to the federal government would include inter-entity costs that are funded by other federal agencies (*e.g.*, building services performed by the Architect of the Capitol and litigation support by the Department of Justice). These inter-entity costs are not reported to the Copyright Office. They are not compensated and are not included in the cost study. Full costs also include intra-entity costs, *i.e.*, equipment and services that are provided to and from the Library of Congress. Only the costs reimbursed under the Copyright basic appropriation are included in the cost study. Those plus the direct costs to the Copyright Office are used as the basis for determining the cost of services.

Cost studies of this type are typically retrospective, using actual data from a fiscal year that has concluded. This study used actual data from fiscal year 2016, but the methodology was applied prospectively against a planned new service. This prospective approach was used because the Office intends to implement a new, more efficient process for providing this service than the one currently employed.

The methodology used for this study was reviewed and validated by an independent consulting firm. The same firm is also under contract to perform the Office's comprehensive fee study, to be submitted next year.

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<sup>18</sup> See Office of Mgmt. and Budget, *Circular No. A-25 Revised: User Charges*, WHITEHOUSE.GOV, [http://www.whitehouse.gov/omb/circulars\\_a025](http://www.whitehouse.gov/omb/circulars_a025) (last visited Aug. 13, 2017).

<sup>19</sup> See U.S. GOV'T ACCOUNTABILITY OFFICE, *FEDERAL USER FEES: A DESIGN GUIDE* (GAO-08-386SP) (2008).

### III. Proposed Fee

#### A. Schedule of Proposed Adjustments

Service	Current Fee	Proposed New Fee
Recordation of a document <sup>20</sup>		
Single title	\$105	N/A
Additional titles (per group of 1 to 10 titles)	\$35	N/A
Additional titles provided in an electronic title list		
1 to 50 additional titles	N/A	\$60
51 to 500 additional titles	N/A	\$225
501 to 1,000 additional titles	N/A	\$390
1,001 to 10,000 additional titles	N/A	\$555
10,001 or more additional titles	N/A	\$5,550

#### B. Analysis

Document recordation, while a voluntary process, is critical to maintaining a public record of copyright ownership. As such, it should be encouraged and made available to the public at a reasonable price. Document recordation, however, remains a paper-driven process, with remitters still submitting their documents in hard copy. Once received, Copyright Office staff must, among other things, digitize the paper document, process the fee payment including confirming that the correct fee was submitted, examine the document to confirm its eligibility for recordation, search through the document for various and often extensive indexing information, manually input such information into the Office's public catalog, and print and mail back to the remitter a copy of the document marked as having been recorded along with a certificate of recordation. The Office has been unable to recover the full cost associated with processing more substantial documents that pertain to multiple copyrighted works. These documents can concern thousands of works, and historically, the indexing information for each work had to be individually and manually inputted by Office staff—a costly and time-consuming process. However, when electronic title lists are

<sup>20</sup> The basic recordation fee and the fee for groups of additional titles not provided in an electronic title list are being evaluated as part of the full fee study that will be submitted to Congress next year.

submitted, instead of entering all of the information by hand, staff can import the list into the Office's catalog after reviewing it and making some relatively minor adjustments. This significantly increases processing efficiency. Remitters, however, currently have little incentive to submit electronic title lists. Creating them, in some cases, may be more work for remitters than just submitting the document by itself, and there is little direct benefit for doing so.

As an initial step toward overall modernization, the Office seeks to adopt the proposed fee primarily to incentivize use of electronic title lists for documents with more than ten additional titles<sup>21</sup> in an effort to increase administrative efficiency and to offer a less expensive avenue to obtaining the benefits of recording a document with the Copyright Office. Based on its study, the Office has determined that the cost to the Office to record a document accompanied by an electronic title list is less than the cost to record a document without one. When Office staff manually indexes documents, more works generally means more processing time and higher costs. In contrast, when there is an electronic title list, processing time is typically more constant.

In considering the fairness, equity, and due consideration of the objectives of the copyright system, the Office believes that offering recordation services for a lower fee, where remitters have done the work to create an electronic title list, should result in a wider range of remitters submitting documents and may also result in existing remitters submitting additional or updated documents with more frequency than they might otherwise. Receipt of additional recorded documents should result in greater copyright ownership data for the Office's records, which furthers the Office's mission and benefits the public at large.

In evaluating these considerations, the Office also recognizes that while costs to the Office may be similar regardless of the number of works a document concerns, the benefits of recordation to remitters or the parties they represent may not. If the Office were to charge a uniform fee for recording a document without concern for the number of relevant works, the parties to a document with many works will have obtained a more favorable per-work fee than parties to a document with fewer works. Consequently, the proposed fee schedule allows for price discrimination based on the number of works to which the document pertains so that larger filers submitting documents with a high number of works pay more for the added benefit they receive to offset the lower total fee for smaller filers with fewer works. The first four tiers of the proposed schedule increase incrementally based on the total number of additional titles submitted. The reason for the larger jump between the fourth and fifth tiers is because of the added costs to the Office to process documents with 10,000 or more titles. Current

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<sup>21</sup> Though documents with ten or fewer additional titles may be submitted with an electronic title list, the proposed fee schedule would deliver fee savings to remitters where documents have more than ten additional titles.

system limitations cap the number of titles a catalog record can contain such that when the Office receives a document that exceeds that limit, staff must record the document multiple times (as if multiple different and unrelated documents were submitted) and divide the titles among each of those separate catalog entries. The individual records are then linked together to make clear that they concern the same document. Doing this significantly complicates internal workflow and takes considerable extra processing time such that the Office believes the higher fee is warranted.

The Office notes that the proposed fee schedule will be revisited as part of the complete study of all Office costs and fees to be completed next year. As discussed above, the goal of the proposed fee schedule is primarily to incentivize use of electronic title lists. To do that, the proposed fee offers a discount from the ordinary recordation fee of \$35 per group of ten additional titles. When the full fee study examines all Office costs and evaluates an appropriate fee to record a document without an electronic title list in light of current costs, it is possible that fee will increase, in which case it is also possible that the fee schedule proposed herein for using an electronic title list may be adjusted upward as well to ensure adequate cost recovery.

Based on the foregoing, the Office believes that the importance of providing an incentive for remitters to use electronic title lists, the associated anticipated cost savings, and the public benefit of the Office receiving more documents for recordation all justify a lower fee for recordations accompanied by electronic title lists.

#### **IV. Budgetary Impact of Proposed Fee Change**

With respect to the projected change in revenues, the net impact to the Office will be a reduction in receipts for recordations with electronic title lists when compared against receipts generated from the fees currently applied to those transactions; however, the impact to overall Office revenue is expected to be mitigated by new incentives for increased filing activity, which will stem from the lowered transaction costs. Those increased filings are expected to partially offset decreased receipts resulting from the lower fee structure.

This fee proposal's timing is to allow the Office to take advantage of efficiencies gained as part of pending system upgrades. However, since this study involves assessment of one transaction type in isolation from the many performed throughout the Office; there are inherent limitations in evaluating the overall impact of the proposed fee change. The comprehensive Office-wide fee study currently underway will provide a more definitive analysis of the costs and adequacy of the fees of the Office's services, as that study will also incorporate economic trends and other internal and external factors which affect both Copyright Office costs and the public's demand for its services. The conclusions of that study may necessitate a further refinement of the fees proposed here.

**Conclusion**

The Office takes very seriously its obligation to administer the national copyright system it oversees in a fiscally responsible manner that serves its customers and the greater public interest. The Office has undertaken a careful examination of the costs of its services and proposes the fee schedule herein based on its determination that, as required under the Copyright Act, the recommended fee is fair, equitable, and gives due consideration to the objectives of the copyright system.

