

April 14, 2012

***via Electronic Filing***

Maria A. Pallante,  
Register of Copyrights.  
U.S. Copyright Office  
101 Independence Ave. S.E.  
Washington, D.C. 20559-6000

Re: Comments on Copyright Office Fees, COLC-2012-0004-0001

Dear Ms. Pallante:

I am filing this comment in response to the Copyright Office of the Library of Congress' (COLC) request for comments on its proposed rule regarding the proposed Copyright Office fees. 77 Fed. Reg. 60 (Mar. 28, 2012). As a member of the general public, a soon to be lawyer, and a potential holder of future copyrights, my primary interest is in preserving the viability of the U.S. copyright system and maintaining a workable relationship between creators of copyrightable materials and the federal system that "promote[s] the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." (U.S. Constitution Article 1, Section 8, Clause 8). The COLC provides a valuable service to the public as a whole, and innovating citizens in particular. For the reasons discussed below, I strongly urge the COLC to reconsider its lowering of the fee for registration of a renewal copyrights.

**I. My Personal Background**

In less than a month I will graduate from law school at Indiana University – Robert H. McKinney School of Law. I hope that at least a portion of my future practice of law will be in the area of copyright law. Previous to law school I graduated with a Bachelors of Fine Arts with a concentration in drawing and oil painting from Indiana University, a nationally renowned program. I am a visual artist and I enjoy writing. I plan to participate in the U.S. copyright system by securing copyrights at a future date. As a creator of what I hope would be considered "useful arts," I also have particular interest in the information kept by the COLC being current and correct. As a member of the general public I have an interest in the U.S. copyright system promoting ingenuity and progress, while

maintaining the public's confidence in the preservation of creator's rights. My personal circumstances make me substantially qualified to comment on this subject.

## **II. Background on the Proposed Rule**

The background and reasoning behind COLC's proposed reduction is described in the Federal Register:

The Office is proposing a reduction in the fee for filing a renewal claim from \$115 to \$100. Renewal registration was required in the 28th year for works published or registered prior to 1978. The law no longer requires registration for the renewal term to vest. Renewal registration primarily serves those parties who need a certificate of registration for various commercial purposes. The cost study reveals that the actual cost of processing these claims is quite high. To set a fee to recover full cost would be prohibitive and negate the goals of the Office in encouraging registration of these older claims, many of which may still be commercially viable, and incorporating these claims into the public record. Similarly, the Office is proposing to reduce the fee for filing a Renewal Addendum, the necessary filing for renewal when basic registration for the work was not made during the original term, from \$220 to \$100 to avoid deterring these registrations.

77 Fed. Reg. 60 (Mar. 28, 2012). The COLC has provided additional information on renewal of copyrights on the webpage [www.copyright.gov](http://www.copyright.gov). Here the COLC sets forth some of the benefits of renewing the registration of a copyright. They outline 3 specific benefits:

1. The renewal copyright vested in the name of the renewal claimant on the effective date of the renewal registration. For example, if a renewal registration was made in the 28<sup>th</sup> year and the renewal claimant died following the renewal registration but before the end of the year, the renewal copyright was secured on behalf of that renewal claimant.
2. The Copyright Office issues a renewal certificate, which constitutes prima facie evidence as to the validity of the copyright during the renewed and extended term and of the facts stated in the certificate.

3. The right to use the derivative work in the extended term may be affected.

U.S. Copyright Office – Library of Congress, [www.copyright.gov](http://www.copyright.gov), Circular 15, Revised 07/2006

### **III. My Personal Comments**

According to statute, the Register of Copyrights is given the power to adjust fees for services offered by the COLC. 17 U.S.C. 708(b). There are several requirements for these fee adjustments outlined in statute. The fee must not be “more than that necessary to cover reasonable costs incurred by the Copyright Office for the services ... plus a reasonable inflation adjustment,” and the fees must be based on a study required by paragraph (1) that finds the cost incurred by the Copyright Office in providing a service. 17 U.S.C. 708(b)(2). The statute also requires that the fees be “fair and equitable and give due consideration to the objectives of the copyright system.” 17 U.S.C. 708(b)(4).

In regard to the cost study done on registration of renewals of copyrights the COLC said, “The cost study reveals that the actual cost of processing these claims is quite high. To set a fee to recover full cost would be prohibitive and negate the goals of the Office in encouraging registration of these older claims.” So the Copyright Office is using government funds to subsidize the registration of these copyright renewals. The COLC recognizes in their statement in the Federal Register that the law currently automatically renews a copyright for the extended term, but registration allows for certain benefits to the COLC and the holder of the Copyright. It is important to look at the factors that should be considered in assigning an amount to this renewal registration.

#### **A. Benefits to the Copyright Holder**

In the Federal Register, the COLC sites the need of a certificate of registration for various commercial purposes and mentions an interest in preserving records on copyrights in particular that are still commercially viable. In their circular quoted above the COLC also recognizes that having a renewal certificate give the holder a significant power in enforcing the copyright because that certificate gives them prima facie evidence of a valid copyright. Additionally it secures rights in derivative works. As mentioned before copyrights are now automatically renewed even without registration. The benefits listed above are the benefits to the copyright holder that come from registration of that automatic

renewal. It is important to note that any copyright in which the holder is seeking to enforce after 28 year or is seeking to renew for commercial purposes must carry some substantial financial value to the holder.

## B. Benefits to the COLC

The copyright statute allow the COLC to give “due consideration to the objectives of the copyright system” when adjusting a fee. The COLC sites two of these directly in their notice: encouraging the registration of these older claims, or avoid deterring these registrations, and incorporating these claims into the public record. It is clear that the COLC, as stewards of a vast and complicated U.S. copyright system, has an intense and valid interest in maintaining a complete and current record of all copyrights that are valid in the U.S. The more complete and current that the COLC records are the more benefit it will be to both holders of copyright and the general public.

## C. Balancing with Other Considerations

There are several substantial counterbalancing interests that should be considered in weighing the appropriateness of this adjustment. The reason for the copyright system, as set out in the U.S. Constitution, is to promote the progress of science and useful arts. In establishing and adjusting the length of the rights of copyrights, the Congress has long tried to balance the two sometimes competing interests of promoting progress and granting long-lasting rights. While long-lasting rights give encouragement to people to create a representation of an idea first, the same length of those rights can stifle further development of those or similar ideas. An appropriately balanced duration will give the proper incentive to individuals while maintaining a progressive collective momentum.

If, after 28 years, it is still worth it to an individual, either monetarily or morally, to assert the rights of their copyright and enjoy the benefits provided by the certification of their copyright, then we as a public should expect those individuals to pay for the cost of processing that registration. The Constitution says that these rights given to copyright holders should be for a limited time. It should not be the responsibility of the tax-payers to subsidize the registration of stale copyrights just for the benefit of an individual. If it is of enough value, then that individual should gladly be willing to pay the cost of the COLC in processing that renewal. The benefits of promoting, or not discouraging, the registration of older copyrights, and having complete and current information, in my estimation, are far outweighed by both maintaining a reasonable fiscal stewardship of citizen's

taxes, and holding true to the principle of limitation placed on copyrights by the Constitution. It is not fair or equitable to rob the taxpayers to give benefits to a few copyright holders. Like I said before, if it is worth it to them to enjoy those rights, it should be of enough worth to pay for it.

It also appears to be the statutory obligation of the COLC to base their adjustments on the cost study that is required to be done. In this circumstance the suggested adjustment admittedly disregards that cost study. For this and the other reasons listed above, I recommend that the COLC not only abstain from lowering the price they charge for registration of a copyright renewal, but that they raise the price to be more representative of what it costs the COLC to process those registrations.

I appreciate the opportunity to comment on this important issue. If you have any questions, please contact me at [kymhunte@iupui.edu](mailto:kymhunte@iupui.edu).

Respectfully Submitted,

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