

***ANALYSIS AND PROPOSED
COPYRIGHT FEE SCHEDULE
TO GO INTO EFFECT
July 1, 1999***

By

**Marybeth Peters
Register of Copyrights
February 1, 1999**



Library of Congress Cataloging-in-Publication Data

Library of Congress. Copyright Office.

Report on Copyright and digital distance education / U.S.
Copyright Office.

p. cm.

— — — Copy 3 Z663.8.R.39 1999

1. Copyright and electronic data processing--United States.
2. Computer-assisted and legislation--United States
3. Fair use (Copyright)--United States.
4. Computer-assisted instruction. I. Title.

KF2994.L53 1989

346.73@4' 82--dc21

99-33196

CIP



The Register of Copyrights
of the
United States of America

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

February 1, 1999

(202) 707-8350

Dear Mr. President:

I am pleased to present a schedule of proposed new copyright fees and the accompanying analysis as required in the Technical Amendments Act, Pub. L. No. 105-80, 111 Stat. 1529 (1997). In the past these fees have been published in the copyright statute; in the future, subject to congressional approval, they will be published in Copyright Office regulations. In order for the proposed fees to become effective, the following criteria must be met:

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 at a level not more than that necessary to recover reasonable costs incurred for the services described plus a reasonable adjustment for inflation.
3. The fees should also be fair and equitable and give due consideration to the objectives of the copyright system.
4. The Register must then submit a proposed fee schedule with the accompanying economic analysis to Congress for its approval. The Register may institute the new fees 120-days after the schedule is submitted to Congress unless Congress enacts a law within the 120-day period stating that it does not approve the schedule.

As described in the attached analysis, the Office has followed the steps outlined above and proposes to institute the new copyright fees on July 1, 1999. In completing this analysis, the Office conducted an extensive study of costs and considered other pertinent information, including public comment and the effect of a fee increase on collections and exchange programs of the Library of Congress.

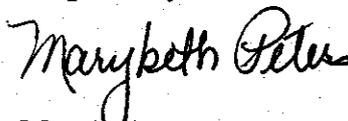
The Honorable
Albert Gore

2

February 1, 1999

My staff and I are available to answer any questions you, any Member, or any congressional staffer may have about the proposed fees or the accompanying analysis and to provide any material referenced in this analysis.

Respectfully,



Marybeth Peters
Register of Copyrights

The Honorable Albert Gore
President of the Senate
Washington, D.C. 20510



The Register of Copyrights
of the
United States of America

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

February 1, 1999

(202) 707-8350

Dear Mr. Speaker:

I am pleased to present a schedule of proposed new copyright fees and the accompanying analysis as required in the Technical Amendments Act, Pub. L. No. 105-80, 111 Stat. 1529 (1997). In the past these fees have been published in the copyright statute; in the future, subject to congressional approval, they will be published in Copyright Office regulations. In order for the proposed fees to become effective, the following criteria must be met:

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 at a level not more than that necessary to recover reasonable costs incurred for the services described plus a reasonable adjustment for inflation.
3. The fees should also be fair and equitable and give due consideration to the objectives of the copyright system.
4. The Register must then submit a proposed fee schedule with the accompanying economic analysis to Congress for its approval. The Register may institute the new fees 120-days after the schedule is submitted to Congress unless Congress enacts a law within the 120-day period stating that it does not approve the schedule.

As described in the attached analysis, the Office has followed the steps outlined above and proposes to institute the new copyright fees on July 1, 1999. In completing this analysis, the Office conducted an extensive study of costs and considered other pertinent information, including public comment and the effect of a fee increase on collections and exchange programs of the Library of Congress.

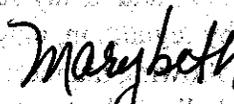
The Honorable
J. Dennis Hastert

2

February 1, 1999

My staff and I are available to answer any questions you, any Member, or any congressional staffer may have about the proposed fees or the accompanying analysis and to provide any material referenced in this analysis.

Sincerely,



Marybeth Peters
Register of Copyrights

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

ANALYSIS AND PROPOSED COPYRIGHT FEE SCHEDULE

TABLE OF CONTENTS

EXECUTIVE SUMMARY	i
Introduction:	
I. Background on Copyright Fees	3
A. Determining the relationship between Copyright Office costs and benefits	3
B. Assessing relationship between Copyright Office budget and Library of Congress budget	5
II. Office's Response to New Congressional Fee Directives	6
A. Consideration of other internal fee studies, management reports, and outside studies on what fees should be	7
B. Development and commissioning of a cost study	8
C. Gathering additional data to fulfill congressional directives	10
D. Development of strategy for seeking public comment	12
III. Summary of Issues Discussed in Meetings, Written Comments, and Public Hearing	15
A. Based on the fees proposed in Schedule I, who is unlikely to register? Based on the fees proposed in Schedule II, who is unlikely to register?	16
B. Should an individual author of unpublished works pay a lower registration fee?	19
C. Should there be a small business exemption?	20
D. If some individuals and/or organizations must pay lower fees, who should pay higher fees?	20
E. Are there any practical alternatives for fee increases that will allow the Office to recover its reasonable costs?	23

F.	Should the Office exclude certain costs that do not relate directly to core registration/recording functions and allocate some registration costs to other beneficiaries?	25
IV.	Evaluation of Cost Study, other Congressional Criteria, and Public Input	26
A.	Assessment of economic effect of higher copyright fees	27
1.	Effect of increase to full cost based on Abacus cost study on individual authors and small publishers	28
2.	Effect of diminished registration deposit on Library of Congress	29
3.	Effect of two-tier fee with special fee for individual authors on publishers, users, and Copyright Office	32
4.	Effect of decreased registrations on public record and user community.	33
B.	Determination of reasonable cost for copyright registration fee based on statutory criteria	37
C.	Announcement of proposed fee schedule	40
1.	Basic registration fee	41
2.	Other statutory fees	41
3.	Other related fee changes	42
V.	Addressing Other Concerns Raised in Fee Study or through public comment	43
A.	Amendment of section 412	43
B.	Amendment of statutory grace period	44
C.	Group registration of photographs	44
D.	CORDS	45
	Conclusion	46

Executive Summary

This report contains the analysis Congress required the Office to submit pursuant to a new structure for setting copyright fees. Congress stated that the fees should be based on recovery of reasonable cost and should also be fair and equitable, and give due consideration to the objectives of the copyright system. It begins with a background section establishing the congressional framework that led to passage of the new fee structure, providing an overview of how Congress set fees in the past, and noting the relationship between the Copyright Office budget and the Library of Congress budget. It then provides a step by step discussion of how the Office responded to the new congressional fee directives through developing a cost study and a process that would elicit public comment and require consideration of the specific statutory guidelines. It summarizes the public comments and analyzes the economic effect of weighing the statutory criteria in the determination of copyright fees, especially registration fees. Finally, it provides the fee schedule that the Office proposes and notes why careful evaluation of all relevant data led the Office to conclude that the basic registration fee cannot recover the full cost of registering a work, if it is to be reasonable, fair, and equitable. It also states why other statutory fees should recover the costs of the corresponding service and addresses some of the other concerns raised in public comment.

I. Background on Copyright Fees

This section reviews how Congress traditionally set copyright fees, including those for registration of a copyright claim, the criteria Congress considered in setting the fees, and an approximation of the ratio of the fee Congress set to the cost of providing the service. It affirms that in setting copyright fees, Congress consider who benefits from the service provided. It notes that the

Office does much more than just register copyright claims and recognizes that not all costs of the Office should be borne by the registration fee since the Office performs other valuable services--such as responding to requests for information, rulemaking activities, participation in the development of national and international copyright policy, and preparation of reports and studies for Congress--that benefit the public and thus should be supported by taxpayers.

It also recognizes the ties between the budget of the Copyright Office and the Library of Congress. The Office assumes certain responsibilities for the Library, and the Library assumes certain administrative and infrastructure expenses for the Copyright Office. The Library through its budget assumes intra-entity expenses supporting the Copyright Office in the Offices of Human Resource Services, Financial Services, Integrated Support Services, and Information Technology Services. In turn, the Copyright Office through its budget oversees the deposit provisions of the copyright law and annually provides a large number of copies of valuable works for the Library's use.

II. Office's Response to New Congressional Fee Directives.

This section discusses how the Office began its study of what copyright fees should be based on the criteria in the pending legislation. In this respect it reviewed existing studies on assessing fees and considered what a cost study should cover. The Copyright Office had conducted an internal study in 1994 to determine the cost to the Office of providing its various services. The Office was aware of and commented on several ongoing government studies, two of which recommended increases in copyright fees. The Office also looked at a 1996 management study which considered the two government studies and also gave weight to the relationship between, or the budgetary connection of, the Library of Congress and the Copyright Office, especially as they relate to mandatory deposit, and to the general public benefit of many of the services provided by the Copyright Office.

In the spring of 1997, the Register conferred with the Director of the Library's Office of Financial Services on how to proceed with the congressional mandate. Based on this discussion, the Register appointed a group of Copyright Office staff members known as the Fee Analysis Task Group (FEATAG) to conduct a fee study and to recommend appropriate fee changes. The Copyright Office hired two consulting firms, with expertise in cost accounting and federal cost accounting regulations, to assist in this effort.

The primary contractor, Abacus Technology Corporation (Abacus), identified all of the Copyright Office costs and then, as directed, excluded certain costs. The Office recognized its goal in setting fees should be to recover its full cost, whenever doing so is feasible and meets the additional statutory requirements that fees should be fair, equitable, and give due consideration to the objectives of the copyright system. The Office determined that some costs not related to providing specified registration and related services should not be included in the study. It directed Abacus to exclude all Licensing Division and Copyright Arbitration Royalty Panel (CARP) unit costs, purely policy costs, *i.e.*, costs related to legislative, regulatory, judicial, and international responsibilities, which do not directly relate to any fee service, and the costs of the Copyright Acquisitions Division, whose primary responsibility is securing copies of works published in the United States that have not been registered or voluntarily deposited.

Abacus recommended fees calculated to recover certain costs the Copyright Office incurs in registering claims, recording documents, and providing related services. FEATAG made fee recommendations based upon Abacus's cost determinations, and preliminary assessments of other statutory criteria with adjustments for inflation and elasticity in demand for services.

At every step of the process, the Office considered whether it had gathered the necessary data to make economic evaluations and ensure that statutory criteria had been met. The Office determined that it should seek the broadest possible comment from users of the copyright system including holding a public hearing as well as permitting a liberal comment period. It developed an outreach plan to ensure public awareness of the proposed fee increases, and the Register offered to meet with representatives of authors and owners groups whose members use the copyright system. A number of those contacted responded by coming in to meet, calling, or submitting written comments.

For preliminary discussion purposes, the Office released a chart that showed the current fee, the fee proposed by Abacus to recover direct costs, and the fees as adjusted by FEATAG. FEATAG proposed a fee of \$45 for registering any claim. Although those who made preliminary comments raised a number of issues, their primary concern and objection was that the proposed registration fee was too high, was not fair to individual authors and small publishers, and, if approved, would decrease their ability to register and, therefore, decrease the likelihood that they could benefit from the copyright system. After examining the major concern raised in these preliminary discussions that copyright registration fees should remain within reach financially for individual authors, the Office considered a two-tier system, with a lower fee for individual authors, and the additional administrative burdens and costs of such a system. The Office then published a Notice of Proposed Rulemaking with two fee schedules, one based on the adjusted Abacus figures, and the other containing a reduced fee for registration by individual authors with an increase in the rate for other registrants to compensate for that reduction.

III. Summary of Issues Discussed in Meetings, Written Comments and Public Hearing

This section summarizes the comments made in response to the proposed fee increases. In all,

26 comments were filed with the Office, seven of these parties testified at the October 1, 1998 hearing.

The representatives of various interested groups almost unanimously commented that the proposed fee increases were too high and argued that if the fees were increased according to either published schedule, their members would not be able to register.

The link between timely registration and the availability of two important remedies for infringement afforded by section 412 of the copyright law concerned most commentators, and one stated that the assumption that these remedies should be available to all underlay the premise of reasonable registration fees.

Eight groups representing individual authors supported a lower fee for registrations by their members, primarily individual authors. Two groups opposed this, noting that if the purpose of the fee increase is to recover costs, one should not offer a lower fee for reasons that do not relate to the actual cost to the Office.

Although five organizations favored a small business exemption and the parties offered various solutions for how the exemption should be crafted, questions remained about the terms of the exemption, its administration, and its associated costs.

The parties discussed assessing higher registration fees to some to compensate for lower registration fees for individual authors. There was discussion of assessing higher fees based on: (1) whether the author was an employer for hire; (2) the net worth of a corporation; and (3) the commercial value of the work. Although organizations representing individual authors generally supported distinctions in assessing fees, such distinctions were criticized because they were not based on the cost of providing services.

Some commentators urged the Office to delay any fee increase until the Office could take into

account the more economical processing and greater efficiency expected from CORDS, the Copyright Office Electronic Registration Recordation and Deposit System.

Finally, commentators stated that the proposed fees threatened the goals of the copyright system and the statutory mandate that any fee increase be fair and equitable. They asserted that imposing full or near full cost recovery on individual authors is patently unfair because it would place the benefits of registration, including the all-important benefits of section 412, beyond their reach.

IV. Evaluation of Cost Study, other Congressional Criteria, and Public Input

This section evaluates the effect of the fee increase on all parties, applies the congressional criteria, and proposes a new fee schedule. In public comment, no one considered the proposed fees fair or equitable. Authors and other copyright owners made a strong argument that copyright applicants should not bear the full cost of registering their claims with the Copyright Office because others, including the general public, benefit from the registration system.

The value of the copyright deposits to the Library must be considered when determining what the registration fee should be. Deposit copies of works submitted with claims for registration become the property of the Library under 17 U.S.C. 704(c), and as such, are added to its collections or exchanged for valuable material from other libraries. If registrations substantially declined, the Library would not receive the copies that flow to it automatically through the registration system. This would have a considerable negative impact on the Library of Congress.

With respect to a two-tier registration system, the processing costs and administrative problems would make such a system extremely counterproductive to cost recovery.

To determine reasonable costs, the Office analyzed previous congressional fee increases, the

Consumer Price Index, and the cost of providing services. Based on that analysis, the Office is forwarding a Announcement of Proposed Fee Schedule that sets the basic original registration fee at \$30, keeps the fee for group registrations of contributions at the same level as original registration, and generally recovers costs for most other services.

V. Addressing other Concerns Raised in Fee Study or through Public Comment

Many of the groups' comments addressed issues other than fees, arguing that the amount of the fees for registration is less relevant than other deterrents to registration. Representatives of some authors' groups urged that their members often fail to register due to difficulties in the registration process that have nothing to do with fees. The Office does not believe that these concerns are directly relevant to the determination of the amount of the fees to be charged, but the Office recognizes the concerns of these groups and believes that some of their concerns can be addressed by regulatory or legislative action outside of the fee-setting process.

In this regard, the Office considered two suggestions to amend 17 U.S.C. 412: one that would make it easier for an author of a contribution to a collective work to obtain statutory damages and attorney's fees; the other one to set a lengthier statutory grace period to the exception afforded published works to the rule that a work must be registered before an infringement takes place in order to obtain statutory damages and attorney's fees.

The Office has been urged by organizations representing photographers to provide a more flexible procedure for group registration of photographs, including procedures that would permit registration of photographs without requiring copies of all the photographs in the group to be deposited. The Office is willing to consider more flexible forms of deposit, so long as there is a deposit

of an identifiable image of each photograph included in the registration. The Office is also prepared to respond to other concerns of photographers that would make it easier to register photographs.

Finally, in response to those commentators who urged the Office not to increase fees until the Copyright Office Electronic Registration, Recordation, and Deposit (CORDS) System is fully deployed, the Office considers it premature to consider the effect of CORDS or any other planned efficiencies in setting the fees for the first three year-cycle which would begin on July 1, 1999.

Conclusion

The Office believes that a schedule of fees based on a \$30 fee for registration in recognition of the public benefit the registration system serves, will advance the statutory goals of fairness, equity, and due consideration to the objectives of the copyright system, while taking account of the reasonable costs of the services performed by the Office. Other fees, which do not have the same impact on the copyright system, are proposed at amounts that will recover costs.

ANALYSIS AND PROPOSED COPYRIGHT FEE SCHEDULE

Introduction:

In 1997 Congress created a new fee system which permits the Copyright Office to set all of its fees by regulation rather than in the statute.¹ Traditionally, Congress set the fee for certain basic copyright services, including registration and recordation in the statute; these fees are usually referred to by the Copyright Office as statutory fees. The Register set the fees for other special services by regulation.² In enacting statutory copyright fees, Congress considered a number of criteria, including the cost of providing the service, the value of the copyright deposit to the Library of Congress, and the benefit of the service to the general public.

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

² Special service fees cover services which are not required in the law and which require a substantive amount of time and expense. They are not set by Congress but by the Register. 17 U.S.C. § 708(a)(10). Most special service fees are not at issue here. They were increased effective July 1, 1998, pursuant to a Notice of Proposed Rulemaking (NOPR) published April 1, 1998. 63 Fed. Reg. 15,802 (April 1, 1998), and final rule, 63 Fed. Reg. 29,137 (May 28, 1998). But see infra text at 40 for announcement of other special fees.

In 1990, Congress considered the same criteria in adjusting all of the statutory copyright fees and it fixed the basic fee for registering a claim to copyright or recording a document at \$20.³ In the same legislation, Congress gave the Copyright Office authority to adjust fees at five-year intervals, based upon the change in the Consumer Price Index (CPI).⁴ Under this authority, in 1994, the Acting Register of Copyrights appointed an internal committee to study costs and recommend revised fees. The committee examined what 17 U.S.C. ' 708(b) would permit as a statutory fee increase, comprehensively analyzed the costs to the Office of providing other special services, and increased fees for special services. Statutory fees were not increased. As a result of the committee's analysis, the Acting Register concluded that a 1995 increase in statutory fees to the limit permitted under 17 U.S.C. ' 708(b) would be minimal and would not be cost effective given the administrative costs associated with increasing fees. Having not increased these fees in 1995, the Office 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 based on the CPI. It sought congressional clarification.

Congress responded in 1997 by passing new legislation giving the Register of Copyrights the authority to recommend copyright fees based on certain criteria, with Congress retaining the authority to approve the fees. This fee legislation set specific guidelines for the Register to follow:

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.

³ See 17 U.S.C. ' 708(a)(1)-(9).

⁴ Pub. L. No. 101-318, 104 Stat. 287 (1990).

2. On the basis of the study, and subject to congressional approval, the Register is authorized to fix fees at a level not more than that necessary to recover reasonable costs incurred for the services described plus a reasonable adjustment for inflation.
3. The fees should also be fair and equitable and give due consideration to the objectives of the copyright system.
4. The Register must then submit a proposed fee schedule with the accompanying economic analysis to Congress for its approval. The Register may institute the new fees 120-days after the schedule is submitted to Congress unless Congress enacts a law within the 120-day period stating that it does not approve the schedule.

This report contains the analysis Congress required the Office to submit with its proposed fee schedule for those fees formerly set in the Copyright Act which will be published in regulations in the future. It also sets new fees for services related to registration that do not have to be reviewed by Congress. The report begins with a necessary background section establishing the congressional framework that led to passage of the new fee structure, providing an overview of how Congress set fees in the past, and noting the relationship between the Copyright Office budget and the Library of Congress budget. It then provides a step by step discussion of how the Office responded to the new congressional fee directives through developing a cost study and a process that would elicit public comment and require consideration of the specific statutory guidelines of "fair," "equitable," and "the objectives of the copyright system." It summarizes the public comments filed in response to issues identified by the Office or one of the interested parties and analyzes the economic effect of weighing

⁵ Technical Amendments Act, Pub. L. No. 105-80, 111 Stat. 1529 (1997). It also contained a provision ' 708(b)(4) regarding rounding off fees.

⁶ This includes two group registrations--newsletters and contribution to periodicals which are referred to in 17 U.S.C. ' 408 (c)(2)--that were discussed and modified on the basis of public comment.

the statutory criteria in the determination of copyright fees, especially registration fees. Finally, it provides the fee schedule that the Office proposes and notes why careful evaluation of all relevant data led the Office to conclude that the basic registration fee cannot recover the full cost of registering a work, if the fee is to be reasonable, fair, equitable, and meet the objectives of the copyright system. It also states why other statutory fees should recover the costs of the corresponding service and addresses some of the other concerns raised in public comment.

I. Background on Copyright Fees

A. Determining the relationship between Copyright Office costs and benefits

In the past, at the request of the Copyright Office or one of the appropriation committees, Congress has reviewed certain copyright fees, including those set for registration of a copyright claim, and then set those fees in the statute. Review of legislation and legislative history reveals the criteria Congress considered in setting fees in relation to the costs of providing the service. It affirms that in setting copyright fees, Congress has considered who benefits overall from the service provided, and has adhered to the principle that copyright fees should not necessarily recover full costs of registering a work. For example, in determining whether copyright fees should be increased in 1961, and, if so, what they should cover, the Register of Copyrights reported:

In recent years the total of fees received, plus the estimated value of deposits added to the collections of the Library of Congress, has been slightly greater than the total expenditures of the Copyright Office. Leaving aside the value of the deposits, the fees alone have been approximately equal to the expenditures that could be attributed directly to the performance of the services for which fees are charged.

The expenditures in excess of the fees can be traced to the

⁷ Although the Office studied the costs of all fee services and proposed changes to all statutory fees, most of the public interest and discussion centered on the basic fee to register a work.

governmental functions of the Office -- including services performed for the Congress, the Library, other Government agencies, and the general public -- which we think the fees should not be expected to cover.

Congress did not increase fees in 1961; and when it reviewed and increased copyright fees in 1965, again it was accepted that copyright fees would not recover the costs for certain governmental functions performed by the Copyright Office.

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

In 1965, Congress increased the registration fee from \$4 to \$6, bringing recovery of Office expenditures from 62 percent to an estimated 80 percent. A 1978 fee increase to \$10 brought revenues to about 80 percent of expenditures, but by 1989, revenues had again diminished to a new low of 40 percent of the Office's expenditures. The most recent fee increase, to \$20, enacted in 1990 and made effective in 1991, raised income to about 65 percent of expenditures; significantly, the

⁸ Copyright Law Division, Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law, 87th Cong., 145 (Comm. Print 1961) (emphasis added).

⁹ Act of July 8, 16 Stat. 198 (1870).

¹⁰ Id. '92. Fees for recording an assignment of copyright were set at 154 for every 100 words.

House Judiciary Committee defeated an amendment to increase the fee to \$30, which would have achieved full-cost recovery.

Criteria Congress considered in setting fees. During more than 100 years that the Copyright Office has been operating as a separate department of the Library of Congress, it has come to do much more than just register copyright claims; it has increased its services to the Library, the United States Congress, the Administration, and the American public, and expanded its international and national policy role. Consequently, both Congress and the Office have recognized that not all costs of the Office should be borne by the fees.

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

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

It is clear that Congress determined that not all costs of the Copyright Office should be borne by the user since it set fees for basic services at a level that would recover only about two-thirds of the Office's costs, with the rest of the budget to come from taxpayer revenue.

B. Assessing relationship between Copyright Office budget and Library of Congress budget

¹¹ H.R. Rep. No. 101-279, at 2 (1989).

Since the 1897 creation of the copyright department, later known as the Copyright Office, the ties between the budget of the Copyright Office and the Library of Congress have increased. The Office performs certain valuable functions for the Library, and the Library assumes certain administrative and infrastructure expenses for the Copyright Office. The Copyright Office has an appropriation separate from that of the Library's, and this appropriation totaled \$34,891,000, for FY 1999. Unlike the Library's appropriation, approximately 60 percent of the Copyright Office's total FY 1999 appropriation is based on fees. These funds support activities associated with administering the copyright law, including registration of claims, recordation of documents, and related services; and the administration of the compulsory and statutory licensing provisions of the copyright law. The latter includes the convening and supporting of arbitration panels to determine the disposition of royalties collected from organizations invoking the compulsory and statutory licenses, setting and adjusting the rates of those compulsory licenses, and reviewing the decisions of the panels and making recommendations to the Librarian.

The Copyright Office net appropriation, approximately 40 percent of the FY 1999 total appropriation, represents funding provided by Congress rather than through fees, and supports policy and mandatory deposit expenses unrelated to fee services as well as those costs not fully recovered through fees.

The Library of Congress through its budget assumes intra-entity expenses supporting the Copyright Office, including those offered by the Offices of Human Resource Services, Financial Services, Integrated Support Services, Information and Technology Services. In turn, the Copyright Office annually provides the Library of Congress with very valuable materials, including books, CD's, CD-ROMs, music, and motion pictures, for the Library's collections or use in its exchange programs. This value of these deposits is increasing and was estimated at approximately \$27 million in fiscal year 1998.

II. Office's Response to New Congressional Fee Directives.

Even before the new fee-setting system had been enacted as law, the Copyright Office began its study of what copyright fees should be based on the criteria in the pending legislation. In this respect it reviewed existing studies on assessing fees and considered what a cost study should cover.

A. Consideration of other internal fee studies, management reports, and outside studies on what fees should be

The Office continued to review what it should consider in connection with setting copyright fees. In 1994, the Copyright Office conducted an internal study to determine the cost to the Office of providing its various services. That study led the Office to increase the fees for special services.

The Office was aware of and commented on several ongoing government studies, two of which recommended increases 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. In addition, GAO contracted with Booz-Allen & Hamilton, Inc., to conduct a management review of the Library of Congress, including the Copyright Office; that contractor recommended that copyright fees be adjusted to recover fully the cost of providing services. This recommendation was reported to Congress by GAO.

Significantly, neither of these studies gave weight to the relationship between, or the budgetary connection of, the Library of Congress and the Copyright Office, especially as they relate to mandatory deposit, or to the general public benefit of many of the services provided by the

¹² Report to the Chairman, Committee on the Judiciary, U.S. Senate, INTELLECTUAL PROPERTY -- *Fees Are Not Always Commensurate with the Cost of Service*, GAO/RCED-97-113 (May 1997).

¹³ See Library of Congress: *Opportunities to Improve General and Financial Management*, GAO/T-GGD/AIMD-96-115 (May 7, 1996).

¹⁴ Mandatory deposit refers to the requirement in the copyright law that all owners of copyright or of the exclusive right of publication in a work published in the United States deposit copies of the best edition within three

Copyright Office. Early in 1996, the Librarian of Congress assigned Don Curran, a Senior Advisor, to conduct another management study of the Copyright Office to assess how cost recovery goals should be addressed. In particular he was asked to:

Identify and develop an outline for a cost center structure of the Copyright Office that could be used to rationalize the fee structure.

In particular, identify costs that should be recovered by service fees and those costs which are more properly paid from general appropriations.

Over a six-month period, Mr. Curran met with Copyright Office staff, analyzed all aspects of Office management, and produced a report with recommendations for the near and long terms. Based on the criteria in the Copyright Clarification Act of 1996, his final report to the Librarian of Congress proposed "that relevant costs be fully recovered for fee services, that activities of the Office not associated with fee services continue to be supported by Congressional appropriations, and that the Library of Congress' support cost continue to be considered a *quid pro quo* for the value of the copyright deposits made available to the Library's collections."

B. Development and commissioning of a cost study

In the spring of 1997, the Register conferred with the Director of the Library's Financial Services Directorate (FSD) on how to proceed with a fee increase proposal. Following this discussion, the Register appointed a group of Copyright Office staff members known as the Fee Analysis Task Group (FEATAG) to conduct a fee study and to recommend appropriate fee changes. The Copyright Office hired two consulting firms, Abacus Technology Corporation (Abacus) and Ron

of publication. 17 U.S.C. ' 807. See infra text at 29-32.

¹⁵ This was the original title of the fee bill, later enacted as the Technical Amendments Act.

¹⁶ Curran, Copyright Office Management Report, at iii (October 1, 1996) (hereinafter referred to as the Curran Report).

Young and Associates, with expertise in cost accounting and federal cost accounting regulations, to assist in this effort.

The core of the cost study and analysis was done by Abacus, which developed a methodology for determining the Office's full costs and the fees required to recover part or all of the costs.

Abacus identified all of the Copyright Office costs and then excluded certain costs. The full cost to the Copyright Office of providing a fee service is the sum of the direct costs and indirect costs for performing that service. In his comments on the Abacus cost study Ron Young stated: "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." 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, equitable, and give due consideration to the objectives of the copyright system. Based on the 1996 Curran report and past practice, the Office concluded that some costs should not be included in the study. It directed Abacus to exclude all Licensing Division and Copyright Arbitration Royalty Panel (CARP) unit costs almost exclusively handled through royalty pools. It also directed Abacus to exclude purely policy costs, *i.e.*, costs related to legislative, regulatory, judicial, and international responsibilities, which do not directly relate to any fee service and in many cases do not relate even indirectly to any service. Excluded policy expenses include certain staff from the Office of the General Counsel and the Public Information Office and all Policy and International Affairs staff. The Office also directed Abacus to exclude the costs of the Copyright Acquisitions Division, whose primary responsibility is securing

¹⁷ See Appendix C, p. 2. FEATAG Report described infra note 21.

copies of works published in the United States that have not been registered or voluntarily deposited for the use of the Library of Congress, and certain overhead expenses associated with these activities.

The Abacus study used the activity-based costing (ABC) methodology approved in Managerial Cost Accounting Standards for the Federal Government, Statement of Federal Financial Accounting Standards, no. 4, published by the Office of Management and Budget, on July 31, 1995.

Under this approach, resource costs were assigned to activities, and activities were assigned to specified services. Most Copyright Office activity costs were treated as fee services. Certain general and administrative costs related to fee services were treated as indirect costs and were allocated proportionately across all fee services.

Based on those cost parameters, Abacus recommended fees to recover certain costs that the Copyright Office incurs in registering claims, recording documents, and providing related services.

Ron Young of Ron Young and Associates reviewed Abacus's work for compliance with the new federal financial accounting standards. On March 25, 1998, FEATAG submitted its report to the Register of Copyrights. This report analyzed the commissioned Abacus Cost Study's determination

¹⁸ The Copyright Office's efforts to determine costs utilized in establishing new fees served as a Library of Congress model for implementing the new Federal Managerial Cost Accounting Standards.

¹⁹ For a more extensive discussion of how Abacus determined costs, see the FEATAG Report, described infra note 21.

²⁰ Abacus Technology Corporation, Copyright Fee Cost Study (March 27, 1998) (hereinafter referred to as the Abacus Cost Study).

²¹ Fee Analysis Task Group, Copyright Cost Study and Fee Recommendations: A Report Prepared for the Register of Copyrights (March 25, 1998) (hereinafter referred to as the FEATAG Report).

The FEATAG Report is available on the Copyright Office's website via the Internet and may be accessed at <http://lcweb.loc.gov/copyright>. In addition, both the FEATAG Report and the ABACUS Cost Study are available

of costs. FEATAG realized that the commissioned cost study was only the first step, since Congress had asked the Register to consider other criteria in setting fees. FEATAG, in turn, made fee recommendations based upon Abacus's cost determinations, and preliminary assessments of other statutory criteria with adjustments for elasticity in demand for services.

C. Gathering additional data to fulfill congressional directives

In the new fee legislation, Congress stated that the fees should be fair and equitable and should give due consideration to the objectives of the copyright system. In its analysis, then, the Office had to consider whether the proposed fees achieved fairness and equity and gave such due consideration to the copyright system. In this context, the Office reviewed its mission:

- ! Providing policy advice and technical assistance to the Congress and to Executive Branch agencies;
- ! Examining claims to copyright, masked works, and vessel hull designs and, as appropriate, issuing certificates;
- ! Recording documents such as assignments and other transfers of ownership;
- ! Creating the on-line catalog record of copyright registrations, masked works, vessel hull designs, and related documents;
- ! Obtaining copies of works for the collections of the Library of Congress by registering copyright claims (which require submission of deposits) and enforcing compliance with the mandatory deposit provisions of the copyright law;
- ! Furnishing reports based on searches of Copyright Office records; preparing certifications and other legal documents; providing for the inspection of works submitted for copyright registration; preparing authorized reproductions of works submitted for registration; and preserving, maintaining, and servicing copyright and related records, including the deposit copies of registered works;

for inspection and copying in the Copyright Office's Public Information Office, 101 Independence Avenue, S.E., LM-402, Washington, D.C. 20540 between 8:30 a.m. and 5:00 p.m. Eastern time Monday through Friday except holidays.

- ! Responding to copyright information and reference requests from the public in person, over the telephone, through written correspondence, and electronically through the Web;
- ! Overseeing compulsory and statutory licenses for secondary transmissions by cable; for making and distributing of phonorecords; for the public performances of digital audio transmissions; for the use of certain works in connection with noncommercial broadcasting; for secondary transmissions by satellite carriers for private home viewing; and for the distribution of digital audio recording devices or media; and, as appropriate, collecting royalty fees;
- ! Convening Copyright Arbitration Royalty Panels (CARPs) to distribute royalty fees in controversy and to set and adjust royalty fee rates, and recommend to the Librarian of Congress whether to adopt or reject the determination of the CARP.

A review of the mission objectives demonstrates that a number of services provided by the Office to further the copyright system go far beyond registering a claim or recording a document. For example, in the near future as directed by Congress, the Office will implement legislative changes through rulemakings under the Vessel Hull Design Protection Act and the Digital Millennium Copyright Act (DMCA). It will also ensure the completion of several studies mandated in the DMCA, including a report on promotion of distance education through digital technologies; an evaluation of the Vessel Hull Design Protection Act; a study on the exemption in new section 1201(g) for encryption research; and a report on the development of electronic commerce and emerging technologies on the operation of sections 109 and 117.

At every step of the fee process, the Office had to consider whether it had gathered the necessary data to make economic evaluations and ensure that statutory criteria had been met. It also had to consider the uniqueness of the copyright registration system. Unlike patents, which are issued

²² See generally, Curran, Copyright Office Management Report, at A-2b, A-2-c (October 1, 1996).

by the Patent and Trademark Office after an extensive examination and search of prior art, copyright protection is automatic. Although registration of a copyright claim is voluntary, U.S. authors and owners cannot go into court without submitting a claim for registration, and timely registration makes the registrant eligible for certain statutory benefits. Registration provides a valuable public record and includes deposit for use by the Library of Congress. While registration benefits the applicant, the registration record and deposit benefit both the Library and the general public. Moreover, not every copyright owner considers the benefits of registration to justify its cost, and those copyright owners may choose not to register. When registrations decline, the Library and the public are the losers because the Library's collections and the public record are adversely affected.

D. Development of strategy for seeking public comment

The Office determined it should seek the broadest possible comment from users of the copyright system including through a public hearing. It developed an outreach plan to ensure public awareness of the proposed fee increases, and the Register notified members of Congress about this plan. It issued a press release to publicize the public hearing and published several announcements, both in the Federal Register and on its home page.

In May of 1998, the Register wrote to representatives of authors and owners groups whose members use the system; she reported the pendency of a fee increase, noted what the Office had done thus far, and stated that there would be ample opportunity for comment. She also asked whether they wanted to meet with the Office or provide written comments addressing their views and concerns.

²³ 63 Fed. Reg. 15,802 (1998); 63 Fed. Reg. 29,137 (1998); 63 Fed. Reg. 43,426 (1998).

A number of those representatives responded by either coming in to meet with the Register, writing, or calling.

For preliminary discussion purposes, the Office released to those interested parties a chart that showed the current fee, the fee proposed by Abacus to recover direct costs, and the fee as adjusted by FEATAG. The fee proposed to recover basic registration costs was \$45. Although interested parties raised a number of issues, their primary focus was that the proposed registration fee was too high and was not fair to individual authors or small publishers; and, if approved, would lead to a significant reduction in the number of applications submitted for registration. Believing that copyright registration fees should remain within reach financially for individual authors, the Office considered the financial and administrative effect of proposing a two-tier system with a reduced fee for the unpublished works of individual authors. To determine the impact on potential income, the Office reviewed a number of registrations completed in 1997 for each of the unpublished classes-- literary, performing arts, visual arts, and sound recordings--to see what percentage of applicants would have qualified for a special reduced fee for individual authors had it been available. Applying the percentages to the projected receipts for Fiscal Year 2000, the Office estimated it would forfeit \$1.4 million in potential income by adopting a reduced fee of \$35 rather than \$45 for individual authors. Based on the potential loss, the Office then offered two registration fee alternatives for public consideration and comment. It developed as Schedule I a proposal based on the adjusted Abacus proposal that would fix the basic registration fee for all works at \$45.

²⁴ See Appendix I. The report from which this chart comes is detailed more completely, supra note 21.

²⁵ See Appendix I.

In Schedule II, as an alternative to address concerns for individual authors, the Office proposed a reduced fee of \$35 for an unpublished single work, e.g., a poem, a song, or photograph, of which the author is an individual (not an employer for hire) and where the author is the owner of copyright. The second fee schedule shows the adjustment in other registration fees to make up for the income lost because of a reduced fee for individual authors. The fee proposed for claims that did not qualify for the reduced fee was \$50.

On August 13, 1998, the Office published a Notice of Inquiry containing both proposed fee schedules, and seeking comment on them and the following questions:

1. Do you agree that individual authors of unpublished works should pay a lower registration fee? If so, why? If not, why not?
2. Are there other distinctions that the Office should make in assessing fees?
 - ! Should a corporation with a certain net worth pay more than others? Should there be a small business exemption? If so, how should this be determined?
 - ! Should a distinction be made between published and unpublished works in setting registration fees? If so, is this equitable given the fact that many commercially valuable works, including computer programs, databases, and motion pictures, are often registered in unpublished form?
 - ! Should there be a higher fee for works made for hire?
3. The Office did not suggest different fees for different classes or types of works. Instead for administrative efficiency and cost concerns, it suggested the same fee for all classes and types of works (except serials). Do you agree with this decision? If not, how would you recommend structuring the fees and why?
4. Are there other practical alternatives for fee increases that will allow the Office to recover its reasonable costs?
5. Based on the fees proposed in Schedule I, who is unlikely to register? Based on the fees proposed in Schedule II, who is unlikely to register?

6. In assessing fees for the registration and related services detailed in the schedules set out above, the Office concluded that certain costs should be recovered through appropriations. It also distinguished between direct and indirect costs in assessing what costs should be recovered. Do you agree with the Office's exclusion of such costs in assessing fees for registration and related services? If not, why not?
7. Are any of the specified fees too high? If so, why?

III. Summary of Issues Discussed in Meetings, Written Comments, and Public Hearing

The Office received a total of 26 comments (nine initial, ten supplemental, and seven reply comments). Seven of the commentators testified at the October 1, 1998, hearing. In several ways, the comments track the initial concerns expressed about fee increases noted in the Register's meetings with representatives of interested groups. Some of those commentators asked the Office to expand the opportunities to group works together and register them on a single application with a reduced fee. The Office is aware that group registrations affect the total amount a copyright owner pays for registration claims, the specificity of the public record, and sometimes the nature of the deposit. The issues related to unpublished collections of works or of group registrations are really beyond the scope of this fee-setting proceeding which was initiated to consider only those statutory fees specified in 17 U.S.C. ' 708 (a)(1-9). As noted below, the Office did review certain special fees, but most group registrations will be considered in a separate rulemaking at a later date.

²⁶ 63 Fed. Reg. 43,426 (1998). See Appendix II.

²⁷ All comments are on file with the U.S. Copyright Office, and available for public inspection. In addition to the twenty-four comments on behalf of groups, the Office received twenty comments from individual authors--eighteen submitted as an appendix to a graphic artist organization's submission, and two individual comments. See Appendix III for a list of all comments, including those who filed as part of a group comment.

In preliminary discussions, representatives of several organizations of individual authors commented that the \$45 registration fee found in Schedule I would be too high. In response to these concerns, the Office proposed Schedule II, which reduced the Schedule I fee for registrations by individual authors by \$10 and increased the fee for other registrations by \$5, to recover the revenue lost to the Office by that adjustment. Although the comments and testimony responded to the issues raised in the NOI, the major concern addressed by individual authors and representatives of interested groups was the size of either proposed increase for registration.

A. Based on the fees proposed in Schedule I, who is unlikely to register? Based on the fees proposed in Schedule II, who is unlikely to register?

Fourteen representatives of various interested groups responded that if the fees were increased according to either published schedule, their members would not be able to register. The groups included small and midsize music publishers, individual songwriters and their estates, graphic artists, journalists, newsletter publishers, writers, illustrators, photographers, and UMI, an agent for authors of dissertations, which asserts that it is the Copyright Office's largest single customer, with approximately 23,000 registrations, per year. At least four commentators referred to the overall erosion of the value of the copyright registration records that would result from the inability of many applicants to afford registration.

²⁸ Comment on Proposed Fee Increase, Donna Bergsgaard, Copyright Services, West Group at 2 (hereinafter West Comment) (An unintended consequence of the fee increase may be a reduction in registrations); Comment from David Sanders, National Music Council at 1 (hereinafter NMC Comment). (Increased fees may "ultimately erode the value of Copyright Office registration records as a resource for users of works and the general public"); Comment from Thomas Broido, Theodore Presser Co. (hereinafter Presser Comment) ("If the proposed increases are put into effect, I believe registrations will fall dramatically"). See also Comment from Jennifer Insogna, EMI Music Publishing at 2 (hereinafter EMI Comment).

Photographers and graphic artists asserted that a large percentage of their membership do not register under the current system because copyright registration fees are already too expensive. Although representative composers expressed wider support for registration as the prevailing choice of legal protection, one comment noted that at current levels many composers and publishers choose not to register copyrights because of the expense.

The commentators painted vivid pictures of the dire consequences they would suffer if fees were set at the levels proposed. In effect, individual authors and small and medium sized publishers asserted that since increased registration fees meant nonregistration, the proposals not only invited but insured open season on the infringement of their works. Every organization representing authors and small organizations, and every individual author, echoed this view. The only group that stated its nonopposition to the proposed fee increase, the West Group, still noted that a fee increase of this significance is likely to discourage filing, and that even West might reevaluate its filing practices. Except for West, all other commentators stating a position opposed the fee increase. No one supported it.

²⁹ *Hearing on Proposed Fee Increase*, U.S. Copyright Office (October 1, 1998) (statement of Polly Law, Graphic Artists Guild at 1) (hereinafter Statement of [witness]), transcript at 27. One guild member wrote to Ms. Law: "My return per piece doesn't justify even the \$20 registration fee." Law states: "If more than 80% of graphic artists already forego registration due to its high costs in time and money, it stands to reason that if fees are raised, even fewer artists will register their works."

³⁰ Presser Comment at 1.

³¹ Comment from Betty Rothbart, Dan Carlinsky and Dodi Schultz, American Society of Journalists and Authors at 3 (hereinafter ASJA Comment) ("[A] sharp increase, which will keep even more of us from registering, can only be another nail in the coffin of independent journalists in America.") Comment from Paul Basista, Graphic Artists Guild at 7 (Hereinafter GAG Comment)("Individual artists and designers, authors-in-fact, would lose all incentives to create new works if they had to pay increased registration fees.")

³² E.g., Comment from West, National Music Publishers' Association, Inc., and others (September 18, 1998)(hereinafter NMPA Coalition Comment); ASJA Comment at 3; Professional Photographers of America

To obtain further substantiation on the affordability of the proposed fees, the Office asked another question: Whether the proposed fees are too high and why? All twenty-five comments addressed this point. Some stated that the fees represented too large a portion of the revenue generated by their works (e.g., the Graphic Artists Guild (GAG), American Society of Journalists and Authors (ASJA)); others pointed to the percentage of the increase in relation to the fee itself (e.g., the West Group, and a coalition composed of the National Music Publishers' Association; the Recording Industry Association of America, Inc; Software Publishers Association, Motion Picture Association of America, and the Association of American Publishers (NMPA coalition)); still others noted the difference between the proposed fee increase and their current total cost (e.g., Mr. Paul Warren, Newsletter Publishers' Association (Warren), Picture Agency Council of America (PACA)). UMI, which pays registration fees of approximately \$450,000 annually, stated that an increase of the magnitude proposed by the Office would potentially create an enormous cash flow burden on UMI, with a cash impact of from \$337,500 to \$562,500 in the year in which the change was enacted.

Some characterized the increase as unfair, and urged that individual authors would suffer grave hardships and alienation from the copyright system. (e.g., Professional Photographers of America (PPA), Songwriters Guild of American (SGA)). Others argued that since their members were least able to afford registration at these levels, the increase would operate as a penalty and,

(hereinafter PPA Comment).

³³ GAG Comment at 2; ASJA Comment at 3.

³⁴ See, e.g., West Comment at 2; NMPA Coalition Comment at 3.

³⁵ Comment from James D. Barcelona, Vice President, UMI at 1 (hereinafter UMI Comment).

therefore, could not comply with the statutory prerequisites of "fair and equitable." (GAG, SGA).

The link between registration and the availability of strong remedies for infringement afforded by section 412 of the copyright law concerned most commentators, and one stated that the assumption that these remedies would be available to all underlay the premise of reasonable registration fees.

B. Should an individual author of unpublished works pay a lower registration fee?

Eight groups representing individual authors supported a lower fee for registrations by their members: ASJA, GAG, National Writers Union (NWU), Authors Guild (AG), American Society of Media Photographers (ASMP), Picture Agency Council of America (PACA), the National Music Council (NMC), and UMI. These organizations' approval of this option does not necessarily indicate that they favored this option for unpublished works exclusively. Those representing composers and lyricists supported the fee "discount" for unpublished works. UMI supported a lower fee for the 23,000 registrations it submits annually on behalf of authors of dissertations. But an organization representing journalists and authors noted the higher susceptibility of published works to infringement, and would expand this option to include individual authors of published works. An organization representing photographers and illustrators also noted that because they made large groups of works available for publication at their client's option, the individual authors often did not

³⁶ PPA Comment at 1.

³⁷ Comment from Picture Agency Council of America at 5 (hereinafter PACA Comment).

³⁸ ASJA Comment at 4; GAG Comment at 3; NWU Comment at 6; AG Comment at 2; ASMP Comment at 4; NMC Comment at 1; PACA Comment at 6.

³⁹ ASJA Comment at 3.

know whether or not some of their works were published. Thus, this group too favored extending the option to published works.

Two groups did not support lower fees for individual authors. West noted that if the purpose of the fee is to recover costs, the Office should not offer a lower fee for reasons that do not relate to the actual cost to the Office. The NMPA Coalition agreed that the Office should avoid tying fees to distinctions unrelated to the cost of providing services.

C. Should there be a small business exemption?

Five organizations favored a small business exemption. The parties offered various solutions for how the exemption should be crafted. One representative suggested that corporations with fewer than 100 employees should receive a 50 percent reduction in fees (Warren). Another suggested that a company with 50 or fewer employees should qualify for an exemption (PPA). Other organizations (ASJA, NWU) noted that every individual author is a small business. Another organization (PACA), expressing reservations about regulating the small business exemption, questioned whether freelance authors of contributions to collective works would qualify as a small business. Further, when the Office asked about the difficulty of defining small businesses, Warren predicted that businesses would not want to disclose their net worth for the public record for this purpose.

⁴⁰ PACA Comment at 4.

⁴¹ West Comment at 1; NMPA Coalition Comment at 3.

⁴² Comment from Warren Publishing at 2 (hereinafter Warren Comment); PPA Comment at 12; ASJA Comment at 3; NWU Comment at 6; PACA Comment at 6.

Three organizations, including two who had favored the exemption, noted potential problems with administering the exemption, and the NMPA coalition emphasized the increased costs associated with such an exemption.

D. If some individuals and/or organizations must pay lower fees, who should pay higher fees?

1. Should corporations of a certain net worth pay higher fees?

After a newsletter publisher noted the reluctance of companies to provide net worth information on the public record for the purpose of receiving a small business discount, it seemed likely that larger companies would be even more unwilling to disclose this information (Warren). UMI saw no reason to differentiate on the basis of ability to pay or whether the work is a work made for hire.

2. Should there be a higher fee for works made for hire?

This two-tier option was strongly supported by writer organizations (ASJA, GAG, NWU, and AG), while representatives of the motion picture and computer software industries opposed this option (NMPA coalition). One common interest of groups favoring higher fees for works for hire was the collective desire to deter publishers from forcing works made for hire agreements on unwilling authors. Those supporting this option noted that those who enjoy the greatest protection from copyright infringement should pay a higher premium, asserting that, for example, an artist of a greeting card worth \$35 shouldn't have to pay the same registration fee as a major film producer whose motion picture is worth millions of dollars. While these organizations generally concluded that

⁴³ Statement of Warren Publishing, transcript at 12.

publishers should bear a larger part of the cost recovery burden, one organization (NWU) acknowledged that not all works for hire are created by large organizations. That organization would also grant nonprofit and smaller corporate authors of works made for hire an exemption from higher fees.

The NMPA Coalition disagreed that registration for works made for hire should be more costly, since it saw no policy link between works made for hire and cost recovery. Overall, support for and opposition to this option was nearly equal, because a number of groups consisted of members who were one-person enterprises that, for business reasons, create their works on a for hire basis (PACA, PPA).

3. Should there be other distinctions in assessing fees such as the commercial value of the work?

The other distinctions centered around whether there should be higher fees for works of greater commercial value. One organization stressed that equity demands making distinctions based on the value of the work, since some present applicants would otherwise find themselves outside the registration system (PPA). This organization suggested a system based on a sliding scale relating to a work's expected revenue. It suggested that works earning less than \$5,000 could pay the current registration fee of \$20; works earning up to \$50,000 could pay \$45; works earning up to \$500,000

⁴⁴ Statement of NWU, transcript at 39.

⁴⁵ ASJA Comment at 4; GAG Comment at 3; NWU Comment at 3, AG Comment at 2; NMPA Coalition Comment at 6.

⁴⁶ NMPA Coalition Comment at 6.

⁴⁷ PACA Comment at 6; PPA Comment at 11.

could pay \$100; and works earning more than \$500,000 could pay \$500. The organization maintained that such a system, where the applicant makes a good faith reasonable estimate of revenue, examined facially, would be simple and inexpensive to administer. It asserted that deliberate misrepresentations of value could be made cause for finding the registration, but not the copyright, invalid.

An author's group (AG) and a playwright (Mr. Daniel Damiano) agreed that large corporations, such as the software and motion picture industries, should pay more for registrations simply because other smaller corporations and individuals would be unable to afford full copyright protection if their fees were increased.

Making distinctions based on value was rejected by six commentators, representing a diverse range of interests. West and the NMPA coalition noted the speculative nature of any attempt to determine the value of a work at the time of registration, and again pointed to the added costs resulting from additional steps such as these. In addition, an accountant, Trisha Harris, a representative of graphic artists (GAG), and ASCAP agreed that the notion of tying registration fees to sales value should be expressly rejected.

⁴⁸ PPA Comment at 2, 11-12.

⁴⁹ AG Comment at 3.

⁵⁰ West Comment at 1; NMPA Coalition Comment at 5.

⁵¹ Comment from Trisha Harris on Proposed Fee Increase (hereinafter Harris Comment); Comment from American Society of Composers, Authors and Publishers on Proposed Fee Increase (hereinafter ASCAP Comment).

Representatives of visual artists answered a slightly different question, stating that there should be no difference in registration fees based on the size, type, or amount of material being registered. (GAG, ASMP).

E. Are there any practical alternatives for fee increases that will allow the Office to recover its reasonable costs?

The sole comments pertaining directly this question came from the Graphic Artists Guild (GAG), and the American Society of Journalists and Authors (ASJA), whose suggestions in this vein dealt with collective works and contributions to those works by individual authors. These organizations suggested that the Office impose a per item fee on all contributions owned by the publisher to be covered by the collective work. This would call for additional fees in collective work registrations where the publisher's registration covers articles by individual authors, in addition to the compilation and editing. Other comments pertained to cost recovery whether or not fees were increased. For example, two commentators suggested that the Office discontinue any unnecessary services, and one of these suggested that the Office outsource for greater efficiency.

As a related matter concerning efficiency, the NMPA Coalition and ASCAP recounted the more economical processing and greater efficiency expected from CORDS, the Copyright Office

⁵² GAG Comment at 7; ASMP Comment at 4.

⁵³ Statement of American Society of Journalists and Authors (hereinafter statement of ASJA), transcript at 36.

⁵⁴ To assist the author of the contribution and simultaneously increase Office revenue, the Guild also suggested an amendment to section 412 that would allow an author of a contribution to register after an infringement has occurred and become eligible for attorney's fees and statutory damages provided they pay a significantly higher registration fee. GAG Comment at 2.

⁵⁵ GAG Comment at 4; Harris Comment at 1.

Electronic Registration, Recordation and Deposit System. These groups urged the Office to postpone the anticipated fee increase, or at least implement the increases in incremental phases on an interim basis, giving the public an opportunity to comment and the Office an opportunity to reassess the matter at a future date. Although UMI supported a reduction in fees for electronic submission of applications, it believed a lower fee schedule should apply whenever a large volume of similar applications is submitted simultaneously by the same remitter, based on reduced processing costs.

Most commentators answered a question that had not been asked: What other ideas do you have for procedures that will effectively reduce your members' fees? Seven of those offering views suggested making changes in group registrations (GAG, ASMP, PACA, ASJA, NWU, West, PPA). These comments included suggestions for amendments to permit longer grace periods for registration while qualifying for infringement remedies (West, NWU), allowing both published and unpublished works to be included in a single registration (GAG, PACA), allowing for quarterly group registration of the output of photographers with deposits of identifying material instead of copies of the actual photographs (ASMP, PPA), and ensuring that daily newsletters pay the same group registration fee as do daily newspapers (Warren). Two organizations contended that the Office should exempt from registrations individual contributions to collective works where the collective work has been registered, since the Library's interest in acquiring the work would have been served. These groups

⁵⁶ NMPA Coalition Comment at 4; ASCAP Comment at 2.

⁵⁷ See also EMI Comment at 1 (requesting that, for efficiency purposes, renewal registration be placed on the front line for electronic registration, and resulting savings be passed on to the Office's customers).

⁵⁸ Statement of PACA, transcript at 102; Statement of ASJA, transcript at 36.

(PACA, ASJA) called for a presumption that a collective work owner's registration protects the author as owner of his or her constituent contributions unless the contrary is proved.

F. Should the Office exclude certain costs that do not relate directly to core registration/recordation functions and allocate some registration costs to other beneficiaries?

Although numerous commentators discussed the detriment increased costs would have on the objective of the copyright system, three commentators, West, PACA, and the PPA, specifically supported the exclusion of certain costs. The PPA went further, urging that the taxpayer bear a greater portion of registration costs, since the public benefits from the copyright system.

Five commentators questioned whether the statutory mandate of fairness and equity was addressed in the proposed fee increase. Warren invoked equity vis-a-vis publishers of daily newspapers when urging the Office to provide parity for registration of daily newsletters. Similarly, photographers argued that they should be able, as authors of software are, to deposit identifying material instead of the entire copyrightable work. Collectively these groups contended that up to a billion photographs produced by various publishers of photographs in this country are not the kind of works likely to be selected for Library of Congress collections, even if the Library could find enough space to store these works. Photographers asserted that acquiring the most meaningful protection is particularly critical at this time, when technology has made their works susceptible to

⁵⁹ West Comment at 2; PACA Comment at 7; PPA Comment at 2.

⁶⁰ Warren Comment at 3.

⁶¹ PPA Comment at 10.

increased infringing uses without payment to the author. In this context, they would prefer the Office to maintain only ownership and authorship records, since that information best facilitates licensing, rather than actual copies of photographic works.

Adding to the discussion, the ASJA complained that the size of the fee increase makes copyright protection for freelance authors an empty shell. They pointed out that the Internet, with its global reach, is reducing their secondary markets and the proposed fees would make them even more vulnerable to infringement. The NWU emphasized the importance of 17 U.S.C. ' 412 to these discussions, basically suggesting that as long as section 412 remains unchanged, it is patently unfair to place the benefits of registration beyond the reach of individual authors.

Finally, commentators stated that the proposed fees threatened the goals of the copyright system. Emphasizing that the size of the proposed fee increase threatened erosion of the public record, they noted the wide range of beneficiaries of the copyright system available to share the full economic burden of registration. The commentators left the clear impression that imposing full or near full cost recovery on marginally profitable works of applicants, who self-nominate their works to the public record, complete their own copyright applications, and are consumed by making a living from their works, will likely cause them to drop out of the system.

IV. Evaluation of Cost Study, other Congressional Criteria, and Public Input

In performing the required analysis, the Office must evaluate the public comment, weigh the cost study provided by Abacus, and apply the criteria set by Congress. As discussed above, it is clear from public comment that no one considered the proposed fees, which would in some cases more

⁶² Statement of PPA, transcript at 94.

⁶³ Statement of ASJA, transcript at 34.

⁶⁴ NWU Comment at 4.

⁶⁵ PPA Comment at 9.

than double current fees, fair or equitable. The reduced fee for individual authors proposed in Schedule II did not gain popularity with other owners, because it would increase their registration fee by \$5 to compensate for the shortfall in income from individual authors. Moreover, even individual authors found Schedule II appealing in theory only. The idea of paying a reduced fee appealed to authors more than the actual fee in Schedule II. In preliminary meetings, comments, and testimony, authors, owners, and their representatives asserted their basic inability to absorb any increase in registration fees of the size proposed in either Schedule I or Schedule II.

A. Assessment of economic effect of higher copyright fees

Authors and other copyright owners made a strong argument that copyright applicants should not bear the full cost of registering their claims with the Copyright Office because others, including the general public, benefit from the registration system. They urged that increasing the registration fee to \$45 -- more than double the existing fee -- would result in fewer registrations and ultimately would have a significant economic effect on those other beneficiaries.

Copyright registration is very different from other types of fee-based services. For one thing, registration is largely voluntary: it is mandated only for U.S. authors who want to institute an infringement action in the United States, and for all copyright owners who wish to obtain statutory damages or have the possibility of attorney's fees in a copyright infringement action. It is also required for documents concerning transfers to receive constructive notice. Registration as provided for in our copyright law benefits not only the author or other copyright owner (by preserving the possibility of statutory damages and attorney's fees and affording an evidentiary presumption and

certain priorities over any conflicting ownership), but also the public (by feeding a national database of registered works including information on ownership and authorship). Perhaps even more important, the deposit accompanying copyright claims including books, serials, computer programs, musical works, sound recordings, and motion pictures, is the principal source of the Library of Congress' vast collection of materials published in the United States and, as such, serves the entire nation.

⁶⁶ 17 U.S.C. §§ 412, 410(c), 205(d).

1. Effect of increase to full cost based on Abacus Cost Study on individual authors and small publishers

At the outset, the Office's proposals to Congress for increased fees must be fair and equitable. Fairness and equity can be viewed in a number of ways. Some argue that it means all authors pay the same fee; others urge that it means registration fees must be low enough so that anyone wishing to register works is not deterred from doing so based solely on the fee. Individual authors assert that the proposed fee increase is unfair to them because these fees are plainly beyond their ability to pay. The objective proof they offer is average revenue generated by their works when compared with the fee in Schedule II--by some accounts the new reduced fee would amount to 10 percent of total revenue. Any increase in fees will amount to a larger percentage of the revenue a work generates; the presumption is that 10 percent is a much greater percentage of revenue than a normal cost of doing business would support. Thus, individual authors claim that the fee increase will lead to the inequitable result that only those who receive substantial revenue from their work will be able to participate in the registration system, leading in turn to a registration record consisting of works that generate a great deal of income. Organizations representing certain types of authors, for example, journalists, writers, photographers and illustrators, acknowledge that many of their authors, 86 percent according to a group representing graphic artists, do not choose to register their works even at current fees. They, along with a group representing photographers, point to the substantial costs of aggregating and preparing deposit copies. Thus, a large fee increase will discourage even more of these authors from registering their works, diminishing their representation in the public record even further. Since a large percentage of individual authors of certain types of works are not registering their works now, the Office is not likely to increase its total revenue by a substantial

amount, even if every author of every kind of work who is currently registering continues to register after a fee increase.

A primary incentive for registering works is said to be the availability of extraordinary remedies for copyright infringement. As the Authors' Guild noted, the demand for these benefits is more elastic here than for other expenses because the potential harm from infringement is more remote than with more immediate but competing costs of doing business. On the other hand, we are told that a large number of individual authors do not register their works for reasons other than the cost of the registration fee itself, for example, the cost of copies, and the administrative burden from the applicant's point of view.

Finally authors, publishers, and organizations representing authors state that the proposed fees are so high that they are beyond the Office's power to recommend to Congress, in view of the "fair and equitable" mandate.

2. Effect of diminished registration deposit on Library of Congress

As noted earlier, the close relationship between the copyright system and the Library of Congress began more than one and a quarter centuries ago, when, in 1870, Congress first centralized copyright functions in the Library of Congress. A separate copyright department was created in 1897, and the relationship was cemented further by the 1909 Copyright Act, which tied registration to deposit as a source of collection materials for the Library.

In the current copyright code, effective January 1, 1978, federal copyright is "automatic"; that is, a single federal system of copyright covers both published and unpublished works, and begins the

⁶⁷ See, e.g., Statement of ASMP, transcript at 92.

moment a work is first "fixed" in any tangible means of expression. Deposit remains an incident of registration, but registration is voluntary.

The Copyright Office receives more than 620,000 claims covering more than 850,000 works for registration annually; deposits submitted with those registrations become the property of the federal government pursuant to 17 U.S.C. ' 704(c). This section empowers the Library to add to its collections any work deposited in connection with copyright registration, including works that are not published. Since the work becomes the property of the Library, it is at the Library's disposal, and duplicate or triplicate copies of published works play an important role in the Library of Congress' exchange program. The Library exchanges extra copies for valuable materials from other libraries, and Library records demonstrate that copyright materials are the backbone of this exchange program. For example, the African/Asian Acquisitions and Overseas Operations Division sends approximately 9,000 pieces each year to international exchange partners in Africa and the Middle East. At least 80 percent of these are from copyright; for some subjects such as law, science and technology, nearly 100 percent come from copyright. As shown in Copyright Office records, 60 percent of all books deposited with the Office are selected for the Library's collections; the other 40 percent are made available for the Library's exchange program.

The law contains a mandatory deposit provision that requires the deposit of the best edition of each copyrighted work published within the United States, whether or not that work is registered. Enforcement of that provision is costly, and it does not extend to unpublished works. If the Library

⁶⁸ See Appendix IV showing types of works and value of deposits, both registration and mandatory, transferred from the Copyright Office to the Library from 1995 - 1998, beginning with 1998.

⁶⁹ 17 U.S.C. ' 407.

were denied the works voluntarily deposited through copyright, many works would be lost to the collections because they are unpublished and therefore cannot be demanded. Examples of works that have voluntarily been deposited through copyright, but could not have been demanded, range from a first edition of Dvorak's opera "Armida," to an unpublished play by Zelda Fitzgerald, to Agnes DeMille's choreography for the ballet "Rodeo," to an unpublished composition by then 14-year old Aaron Copeland.

When fees are raised, the number of registrations drops, increasing the workload of the division responsible for making demands on publishers who have failed to deposit voluntarily, and resulting in the transfer of fewer deposits to the Library's collections. For example, in the year following the most recent fee increase, the Office's demand activity nearly doubled, rising from 4,894 demands in 1991 to 7,405 demands in 1992, while the number of deposits transferred to the Library declined from 511,445 to 478,234. At the same time, the number of claims registered declined from 663,684 in 1991 to 606,253 in 1992. The number of claims had increased steadily each year from 1978 to 1991, during which time fees had not been raised.

Last year, the Copyright Office contributed almost 850,000 copies of works, valued at nearly \$27 million, to the Library's vast, universal collection. Of this amount \$20 million was attributed to copies deposited for registration, and the remainder was attributed to mandatory deposit copies. The value of these copyright deposits of every kind of work is increasing. In fiscal year 1997, the Office transferred to the Library works valued at more than \$25 million; in fiscal year 1996, more than \$20

⁷⁰ Compare Appendix IV, Part A with Part B.

million; and in fiscal year 1995, more than \$20 million. The value of copyright deposits to the Library must, therefore, be considered when determining what the registration fee should be.

Only by preserving a strong voluntary registration system, with its accompanying deposits, is the Library assured of receiving this wealth of materials at relatively low cost. Indeed, the mutually beneficial collaboration between the Copyright Office and the Library remains one of the great success stories of our nation's history. The Copyright Office enjoys a permanent home in the Library, which houses copyright deposits, assembles them, and makes them maximally accessible to Congress, researchers, and the public-at-large. And, the Library uses the best edition of published copyright deposits to develop its collections.

3. Effect of two-tier fee with special fee for individual authors on publishers, users, and Copyright Office.

If the Office were to recommend a lower fee for individual authors, as proposed in Schedule II, it would need to impose a proportionately greater burden for recovery of costs on motion picture companies, the software industry, and music, record, and book publishers. As suggested by those groups, assessing a higher fee based on ability to pay does not appear fair.

Other factors weighing against imposing a fee schedule that allocates greater costs to claims registered by corporate and other business owners of these works, assuming for these purposes that one can separate qualifying small or closely held businesses, relate to the uniform costs of processing claims through the Copyright Office regardless of origin. Since the costs of providing services for these works is not higher based on ownership of the work, the fee increase would have no

⁷¹ See Appendix IV, Part C.

relationship to the service the Office performs in processing the works. In fact, the Office's costs would be increased. Two different fees for registration would sharply increase the time it would take to move claims through the Office. Increasing processing time and labor to determine who should pay higher costs is even more counterproductive to cost recovery.

A two-tier registration fee schedule necessarily would require corporate and business owners to pay a greater fee than the fee they would pay under a single-fee system. While it may be tempting to assume that businesses will be willing to absorb the greater cost, it is likely that many may conclude that the benefits of registration are outweighed by the increased costs imposed by a two-tier system. The result might well be even fewer registrations.

4. Effect of decreased registrations on public record and user community.

a. *Effect on Copyright Owners.* Registration provides authors and other copyright owners with a number of benefits. Regardless of means, all copyright owners should be entitled to enjoy these benefits. According to reports, however, more authors will not be able to register if the fees are significantly increased. Registration provides authors with a permanent and official record of their copyright claims and proof of the existence of their works at a particular time and the facts supporting their copyright claims. Particularly important to authors is the certificate of registration, which constitutes prima facie evidence of the stated facts and is generally accepted as proof of copyright. The certificate is also useful to authors in trade circles for assignments and licenses.

⁷² For a more detailed report of the administrative costs of adopting a two-tier system at this time, see Susie Barfield, Chief of the Receiving and Processing Division, U.S. Copyright Office, Projected Impact of Two-Tier Filing Fee System.

Potential judicial remedies, to some copyright owners, are extremely important. When the work is not timely registered, the copyright owner loses access to two potentially powerful remedies for copyright infringement, and is denied access to courts through the inability to file suit. The owner is denied access to crucial remedies of statutory damages and attorney's fees, and does not receive the prima facie presumption of validity that accompanies a timely registered copyright claim. The Office is told that infringement could become more prevalent if authors of modest means no longer register due to the increased costs. Such authors or their representatives imply that the fee increases would place their works under a compulsory license, in effect, since they would only be able to sue for egregious ongoing infringements with easily established damages.

b. *Effect on Users of Copyrighted Works.* Although some users of copyrighted works might seek to benefit from infringement, many users seek to comply with the law by licensing or receiving permission to use from the copyright owner. The existence of extensive registrations records serves other purposes for persons who wish to use copyrighted materials legitimately, including copyright owners who create derivative works from other copyrighted works. Currently, users have access to official records from which they can obtain information regarding the existence and basis of a copyright claim, the extent of the claim (e.g., in a new version of a preexisting work), its duration, and its initial ownership. In conjunction with the recordation records which contain assignments and other transfers of ownership, users are able to trace title to the copyright. In order to avoid infringement, our records assist a user in identifying the person from whom permission must be obtained before using a copyrighted work. If the public record is substantially diminished, searching for copyright owners will be much more difficult.

In a period of high demand for information and entertainment resources, licensing is one of the most difficult copyright issues that users, including scholars, educational institutions and libraries, must navigate. Since copyright protection is created automatically, without any formal requirement to register or publish the work with a copyright notice, and recently, the copyright term has been extended, a greater number of creative works now enjoy copyright protection. In that sense, potential exposure to the risk of infringing a copyright has never been greater.

On the other hand, the public benefits from using works that legitimately belong to the public or in domain. Among these works are those whose copyright term has expired, those forfeited by nonobservance of formal requirements, and uncopyrightable works. Without recourse to comprehensive copyright registration records, users may not discover these works, and the public may be unfairly deprived of unrestricted use of public domain works.

c. *Effect on Judicial System.* The standards of copyrightability might suffer if the Office does not maintain a large public registry. Legal principles are developed after enough jurisprudence evolves from a sufficient number of individual cases on particular issues that are subjected to judicial analysis in an iterative fashion.

Generally, the courts and litigants--including defendants in copyright infringement suits--benefit from the Office's receipt of the works and examination for compliance with the law.

⁷³ Copyright Term Extension Act, P.L. 105-304, 112 Stat. 2860 (1998).

⁷⁴ After studying the issue of copyright registration in the context of the Berne Convention Implementation Act of 1988, the Administrative Office of the United States Court expressed strong support for the current system. In a letter addressed to Chairman Robert Kastenmeier, Director L. Ralph Mechem made the following statement:
The [Judicial] Conference decided not to take a position on any of [the Berne Convention implementation] bills. It did, however, approve the suggestion of its Committee on Federal-State Jurisdiction that Congress be advised that, to the

Copyright registration and deposit provide the courts with objective evidence of the status of a work, including its form and content, at the time of registration (which is frequently prior to the alleged infringement). It generally enables the court and litigants to compare the work alleged to be infringed with the work deposited for registration. If the work at issue is unpublished, or a published work from the 1909 Act era, the Office or the Library of Congress, having obtained its copy from the Copyright Office, may be one of the few sources, or the only source for the work. To the extent judicial access is available, the Copyright Office prescreening of works promotes judicial economy.

d. *Effect on Copyright Industries.* A strong public registration system facilitates commercial transactions relating to copyright. In furtherance thereof, a comprehensive central registry alleviates the necessity of having to maintain extensive industry-by-industry records duplicating those in the Copyright Office. Review of experience in countries where there is no central public registry reveals that authors and owners have to rely on library materials, performing rights registers, and publishers in the particular industry for copyright information. Moreover, not all types of works are maintained in a private registry, only those in a particular subject matter area.

In foreign countries, copyright industries may also rely on legal deposit to obtain copies of certain types of copyrighted works. In the United States, however, the Library of Congress, the

extent the bills delete the requirement of registration of a copyright as a prerequisite to litigation, there is likely to be increased difficulty in trying copyright cases. In effect, the Conference concluded that it was helpful to point out to the Congress the usefulness of the registration requirement in trying copyright cases . . .

Copyright Reform Act: Hearings on H.R. 897 Before the Subcomm. on Intellectual Property and Judicial Administration of the House Committee on the Judiciary, 103rd Cong. 222 (1993).

beneficiary of the functional equivalent of a legal deposit system, obtains by far the greater number of works through deposit associated with registration rather than through mandatory deposit. Thus, if the number of registrations is significantly reduced, the legal deposit system is weakened. In sum, a sharp diminution in the number of registered claims results in a much less comprehensive registry. This would serve neither the general public nor the copyright industries.

e. *Overall Value of Copyright Registration System.* When the fees are substantially increased, the incentive to register is weakened, resulting in an overall weakening of the registration system by limiting, as mentioned above, its comprehensiveness. Thus, the negative effect of "cost recovery based fee increases" are many. In the United States, a system of copyright registration has been a basic feature of the copyright law since 1790. The Library of Congress has been a depository for copyrighted works intermittently since 1846, and during that period the system has proved its value. Such a system has both practical and historical value to national and international researchers and scholars.

In the major foreign countries that have no public registry for copyrights, private organizations find it necessary to maintain much the same kind of copyright records for their own use. But a public registry is vastly preferable: it provides a single, comprehensive record that is official, based on an objective administrative review, which is freely accessible to the entire public. Private records may serve the purpose of the particular groups that maintain them, but they do not provide, for users of copyright materials the public or the courts, the accessible source of objective authoritative information afforded by a central public registry.

Several years ago, a major study was undertaken on the cost-effectiveness of the U.S. copyright system, compared with foreign copyright systems. The study examined copyright enforcement policies of the motion picture industry and the fabric industry. Of the countries studied, only the United States possessed a largely universal public record system. The study concluded that the system in place in the United States was far more cost-effective because of the legal and commercial benefits which flowed from the public record.

More than 28,000,000 copyright claims have been registered and are reflected in Copyright Office records. This vast wealth of information concerning a work's status, its ownership, and the extent of the copyright claim is freely available to copyright users, scholars, and the public. Because the registration system requires the deposit of copies and specific information concerning each copyright claim, the registration records are comprehensive.

B. Determination of reasonable cost for copyright registration fee based on statutory criteria

The most challenging task facing the Office was to determine reasonable costs. In the past, Congress has legislated fees that recovered approximately two-thirds of costs. The Technical Amendments Act mandated that the Copyright Office set fees based on cost, fairness, equity, and consideration of the objectives of the registration system. The Abacus Cost Study determined the cost of providing each copyright service, excluding certain costs described earlier in this analysis. It did not attempt to evaluate the other statutory criteria.

⁷⁵ King Research, Inc., Cost-Benefit Analysis of U.S. Copyright Formalities (February 1987).

See supra text pages 3-5.

The Register published two schedules of proposed fees last summer, one with a flat registration fee of \$45 and one providing a lower fee for individual authors. Published comments revealed that no one supported full cost recovery; many felt no fee increase should be undertaken or at most a modest one, based on their views of what is reasonable, fair, and equitable. In order not to undermine the value of the registration system, particularly for individual authors and small businesses and not to reduce the deposit of material for Library of Congress collections and programs, the Register realized that the Office must avoid too large an increase.

Previous congressional fee increases had two characteristics: they occurred infrequently, about every 12 to 15 years, and they were significant increases, an increase of fifty percent to one hundred percent above the previous fee. With respect to the 1999 fee increase, nine years have passed since the last increase, and a 50 percent increase at this time seems reasonable.

Even under a Consumer Price Index (CPI) analysis, the \$30 fee is reasonable. From January 1991 to June 1998, the CPI increased by 19.7 percent. A 1998 fee based on that measure would be \$23.92. If the CPI continued to increase by about 3 percent per year, the fee could be projected as \$24.63 in 1999 (year in which the fee increase will be implemented), \$25.37 in 2000, and \$26.13 in 2001. Considering the need to adjust upward for the decline in usership that accompanies any increase and the Office's intention of raising fees at three-year intervals in the future, a fee set above \$25, even at \$30, is reasonable. Future fee increases will occur more frequently, but the percentage increase will be smaller.

The \$30 fee responds both to the individual authors' wish not to face a dramatic fee increase that would price them out of the system and to the Office's obligation to recover more of its operating

costs through fees. Setting the basic registration fee at \$30 should enable the Office to recover somewhat more than 70 percent of costs in FY 2000. In comparison, the new fees in 1991 recovered only about 65 percent of costs the first year, eroding to about 60 percent in FY 98.

Based on the above analysis, the Office is forwarding a Proposed Fee Schedule that has several changes from those originally published. In particular, as detailed below, it is making changes to the basic registration fee (from \$35 or \$45 to \$30), and it is recommending the same fees originally published in Schedule I for other statutory services. The Office also addresses certain decisions on non-statutory services that do not need to be reviewed by Congress. In particular it is announcing the fee for group registration of daily newsletters (from \$10 per issue to a flat fee of \$55), and the fee for group registration of contributions (from \$3 per contribution to a flat rate of \$30).

⁷⁶ See Appendix V, Projected FY 2000 receipts.

C. Announcement of Proposed Fee Schedule

New statutory fees for congressional approval ' 708(a)(1)-9)	Proposed fee
Registration of a claim in literary materials other than serials (Form TX)	\$30
Registration of a claim in a serial (Form SE)	\$30
Registration of a claim in a work of the performing arts, including sound recordings and audiovisual works (Form PA, Form SR)	\$30
Registration of a claim in a work of the visual arts (Form VA)	\$30
Registration of a claim in a group of contributions to periodicals (GRCP)	\$30
Registration of a renewal claim (Form RE)	
! Claim without Addendum	\$45
! Claim with Addendum	\$60
Registration of a correction or amplification to a claim (Form CA)	\$65
Providing an additional certificate of registration	\$25
Any other certification (per hour)	\$65
Search--report prepared from official records (per hour)	\$65
Search--locating Copyright Office records (per hour)	\$65
Recordation of document (single title)	\$50
! Additional titles (per group of 10 titles)	\$15
Announcement of New special fees ' 708(a)(10) effective July 1, 1999	
Registration of a claim in a group of serials, (Form SE/Group)	\$10/issue - \$30 minimum
Registration of a claim in a group of daily newspapers including qualified newsletter (Form G/DN)	\$55
Registration of a restored copyright (Form GATT)	\$30

Registration of a claim in a group of restored works (Form GATT/Group)	\$10/claim - \$30 minimum
------------------------------------------------------------------------	------------------------------

1. Basic registration fee

The Office is proposing a fee of \$30 for basic (as opposed to supplemental and renewal) registration for all authors and all kinds of works. It concluded that this fee is justified. Moreover, it determined it should make no distinction based on whether the work is by an individual author or is a work-for-hire. In coming to these conclusions, the Office was convinced that data supported the policy arguments that a \$45 registration fee would not be fair or equitable and that a \$35 fee was still too high for individuals to pay for basic registrations. The Office was also persuaded that because of the burden of administering a two-tier system, such a system was not worth pursuing at a time when the Copyright Office Electronic Registration, Recordation and Deposit System (CORDS) is in a preliminary stage, backlogs are high, and a new more efficient processing system is still in the future. Nevertheless, the Office may choose to adopt a two-tier system at a later date. For the present, however, the Office recommends that the basic registration fee be fixed at \$30 for all applicants.

2. Other statutory fees

The Office determined that all other statutory fees for services including the fees for searching our records, recording a document, and renewing a claim in a work should remain at the level Abacus recommended in order to recover the direct costs of providing the service. The Office notes that, unlike basic registration, these fees cover services that are more commercial in nature and that there is no overwhelming principle that would lead the Office to recommend less than the direct cost of providing the service. The Office also observes that some of these fees are for optional services; for example, since renewal is now automatic, a renewal claimant, the applicant determines, based on his or her commercial interest, whether or not to seek a renewal registration.

3. Other related fee changes

a. ***Group registration of daily newsletters.*** Newsletter publishers testified that registrations for their daily newsletter issues cost far more than registration for daily newspaper

issues. Currently, newsletters published more frequently than once per week are permitted to register monthly; the fee is \$10 per issue. Therefore, the monthly cost for a newsletter published five times a week is \$200. An equivalent newspaper now pays a flat \$40 per month. The lower cost for newspapers was justified largely on the basis that the publisher is required to send a high-quality microfilm copy of the newspaper to take advantage of this group option.

Newsletter publishers have expressed a willingness to provide microfilm copies if the Library so desires and accept the other responsibilities of newspaper filers in exchange for the opportunity to use their group system of filing. For reasons of fairness and equity, the Office concludes that newsletters should be treated the same way newspapers are.

The Office has decided to make group registration for qualified newsletters an easier, less expensive process. Beginning July 1, 1999, with the new fee increases, it will offer newspaper-like registration for newsletters that, other than not being newspapers, meet the criteria for group registration outlined at 37 CFR ' 202.(3) (a)(6). This registration option is available only for newsletters that are published two or more times a week.

b. *Group registration of contribution to periodicals.* The Office proposed a "per contribution" fee for group registrations of contributions of individual authors to periodicals published during a one-year period. The cost analysis showed that a registration covering a daily column or cartoon, for example, amounting to 365 contributions, cost the Office more than \$1000 to process. The testimony of authors' groups suggested that a \$3 per contribution fee would be too high for these individual authors, the only authors eligible for this type of registration. This group registration is provided in 17 U.S.C. ' 408(c)(2). In reconsidering, the Office concluded that Congress's intent in enacting this alternative, was to provide a low-cost registration option for these authors and the Office should not undermine this intent. The Office will continue to charge the basic fee regardless of the number of contributions.

V. Addressing other Concerns Raised in Fee Study or through Public Comment

Many of the groups submitting comments and testimony addressed issues other than fees, arguing that the amount of the fees for registration is less relevant than other deterrents to registration, and that their members often fail to register due to difficulties in the registration process that have nothing to do with fees. The Office does not believe that these concerns are directly relevant to the determination of the amount of the fees to be charged, but the Office recognizes the concerns of these groups and believes that some of their concerns can be addressed by regulatory or legislative action outside of the fee-setting process.

A. Amendment of section 412

Representatives of some groups whose works are typically published as contributions to collective works (e.g., freelance writers of articles that appear in periodicals, media photographers and graphic artists) have expressed dissatisfaction with the requirement in section 412 of the Copyright Act that a published work be registered within three months of publication as a prerequisite to obtaining statutory damages and attorney's fees. The Office believes that there may be merit in a legislative amendment to section 412 that would permit an author of a contribution to a collective work to obtain statutory damages and attorney's fees as long as (1) he or she registers the contribution before the commencement of suit, and (2) the collective work in which the contribution first appeared was registered by the publisher within three months of publication. The Office believes that such a proposal should be given further study.

B. Amendment of statutory grace period

Several representatives of groups who do not normally register their copyright claims made a proposal that would require a legislative amendment. They assert that if the statutory grace period

found in section 412 were longer than three months, more of their members would register. The Office finds no convincing proof to justify making this change; there is no evidence that such a change will make more people register. Moreover, there is still a compelling reason to keep this period at three months. It ensures more timely deposit of the copyrighted works with the Library of Congress. The Office is, therefore, not recommending this change.

C. Group registration of photographs

The Office has been urged by groups representing photographers to provide a more flexible procedure for group registration of photographs, including procedures that would permit registration of photographs without requiring copies of all the photographs in the group to be deposited. The Office believes that to relieve photographers of the requirement to deposit a copy of each photograph covered by a registration would damage the integrity of the system of copyright registration and deposit. The Office is considering more flexible forms of deposit; however, deposit would need to include an identifiable copy of each image included in the registration. The Office is also prepared to respond to other concerns of photographers that would make it easier to make group registrations of photographs. A proposed regulation to this effect is likely to be published in the first half of calendar year 1999.

D. CORDS

Although a number of commentators urged waiting on fee increases until the Copyright Office Electronic Registration, Recordation, and Deposit (CORDS) System is fully deployed operational, the Office considers it premature to consider the effect of CORDS, or any other planned efficiencies in setting the first three year-cycle which would begin in July of 1999.

Current processing of copyright claims involves more than 620,000 applications covering more than 700,000 deposit works and more than 1,000,000 deposit copies per year to be routed through many stations in a function-based operation. The Office is developing a detailed plan to restructure its registration and recordation procedures into a more efficient and cost-effective operation and has built into its future budget plans to restructure and streamline the registration and recordation processes in order to improve public service, enhance operational efficiency, contain costs, respond to copyright registration needs for works fixed in new formats, and meet the demands of the copyright community for a reduction in the claims and documents arrearage and the speedier processing of claims and documents.

The Office notes that it is moving forward with the CORDS system which will permit the Office to receive and process an increasing number of claims electronically at a substantial savings in staff time and physical storage space. CORDS is at the threshold of becoming an integral part of the registration processing system for a large number of claims and the potential is being developed to couple online digital applications with physical deposits. With the increase in copyright statutory fees planned for July 1999, the Office should have funding to support these efforts. When CORDS is fully operational and available to the public at large, the Office will analyze costs of services through this system. At that time the Office may recommend different fees for such registrations or recordations. The Office believes that this may include a reduction for CORDS filings, but also observes that the registration fee it is currently recommending is already lower than the cost of providing the service.

Conclusion

United States government policy is moving toward full cost recovery for many government services. Based on its analysis of all pertinent data, the Office concluded that recovery of all costs of registering a work would be detrimental. Voluntary registration benefits not only the copyright owner, but the public, Congress, the courts and the Library of Congress. It is reasonable and equitable to consider these diverse benefits and beneficiaries when setting the registration fee, and to refrain from assessing the full cost of registration to the applicant, since others share the benefits of the system.

The Office's analysis based on the extensive cost analysis conducted by an outside contractor demonstrated that to recover the direct costs of providing a service, it would have to increase fees in some cases to more than double the current level. Based on the public comment received, and subsequent analysis, the Office concluded that the policy of cost recovery cannot withstand the devastating effect the institution of such fees would have on the strong interests of the copyright community, users of the public record, and the copyright system of which a major component is a comprehensive registry, as it currently stands. As a result, the Proposed Fee Schedule factors in, to a more significant degree, the benefits that both direct and indirect participants derive from our unique copyright system. Cost recovery must be balanced against these benefits.

In general, the Office believes that a schedule of fees should be based on full recovery of direct costs. It concluded, however, that a \$30 fee for original registration in recognition of the public benefit the registration system serves, will advance the statutory goals of fairness, equity, and due consideration to the objectives of the copyright system, while taking account of the reasonable

costs of the services performed by the Office. Other fees, which do not have the same impact on the copyright system, are proposed at amounts that will recover costs.

**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	FEATAG Fee

			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

a distributed collection of converted library materials and digital originals to which many American institutions will contribute. The Library of Congress' contribution to the World Wide Web-based virtual library is called American Memory and is created by the Library's National Digital Library Program. Non-profit cultural repositories in the United States with collections of primary resources that are significant for education and research in United States history and culture are eligible to apply to the LC/Ameritech Competition. Collections that are digitized with awards from this competition must be distributable on the Internet.

Applications from Association of Research Libraries (ARL) and non-ARL institutions will be evaluated separately, in order to encourage applications from a variety of institutions. In the final selection among meritorious projects, consideration will be given to the historical subjects emphasized in the guidelines and to the size, type, and geographical location of the applicant institution. The evaluation criteria is as follows:

- The significance of the collection's content for understanding United States history and culture, as well as its breadth of interest and utility to students and the general public.
- The availability and usability of aids to intellectual access that can be integrated into the American Memory resource.
- The technical and administrative viability of the project's plan of work in relation to the scope of the project.

Applications will be evaluated by scholars, educators, librarians, archivists, administrators, and technical specialists external to the Library of Congress. Evaluators will be convened by George Farr, Director of the Division of Preservation and Access of the National Endowment for the Humanities and by Deanna Marcum, President of the Council on Library and Information Resources.

Only costs directly associated with digital conversion may be included in the request. Equipment may not be purchased with award funds. The 1998/99 Guidelines and Application Instructions are available online to view or download from the Library of Congress/Ameritech National Digital Library Competition Web page (<http://memory.loc.gov/ammem/award>).

Dated: August 3, 1998.

James H. Billington,
Librarian of Congress.

[FR Doc. 98-21723 Filed 8-12-98; 8:45 am]

BILLING CODE 1410-10-P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 98-2B]

Fees

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed fee increase and public hearing.

SUMMARY: The Copyright Office issues this notice to inform the public that the Office will hold a public hearing in the course of a rulemaking proceeding during which the Office proposes to increase the fees set forth in 17 U.S.C. 708(a). The proposed fees would recover a significant part of the cost to the Office of registering claims, including supplementary and renewal claims, of recording documents, of issuing receipts for deposits, of issuing additional certificates, and of making and reporting searches.

DATES: A public hearing will be held on Thursday, October 1, 1998, beginning at 10:00 a.m. in Dining Room A, 6th Floor, (yellow core) of the James Madison Memorial Building, of the Library of Congress, First Street and Independence Avenue, S.E., Washington, D.C. 20559-6000. Anyone desiring to present oral testimony should notify the Copyright Office by no later than September 10, 1998. Written comments are invited from both those who wish to testify and those who plan only to file initial or reply comments. All initial written comments must be filed on or before September 18, 1998. All reply comments must be filed on or before October 15, 1998.

ADDRESSES: Those who wish to present oral testimony should notify Marylyn Martin, Office Manager, Office of the General Counsel by fax (202) 707-8366 or by telephone (202) 707-8380. Interested parties should submit an original and fifteen copies of written comments. If delivered BY MAIL, address to Office of the General Counsel, GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. If delivered BY HAND, copies should be brought to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room LM-403, First and Independence Avenue, S.E., Washington, D.C. 20559-6000.

FOR FURTHER INFORMATION CONTACT:

Marilyn J. Kretsinger, Assistant General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380; Telefax: (202) 707-8366.

SUPPLEMENTARY INFORMATION:

I. Background

Benefits of Registration and Recordation

Copyright is secured automatically when the work is created, that is, fixed in a copy or phonorecord for the first time. This protection generally lasts for the author's life plus an additional 50 years after the author's death, or if the work is made for hire, for a term of 75 years from publication or 100 years from creation, whichever is shorter. The rights granted to authors are broad and protection is worldwide because of multilateral and bilateral treaties.

Registration of claims to copyright and recordation of transfers of copyright ownership are optional.¹ However, there are certain benefits. Registration establishes a public record of the copyright claim; this record includes the name of the author, the name and address of the claimant (owner), the type of authorship and the scope of the claim, and the date and nation of first publication, if applicable. A bibliographic entry prepared by the Cataloging Division is available online through the Copyright Office's website.

Registration made within three months after publication of the work or before an infringement of the work will entitle the copyright claimant to statutory damages and the possibility of recovering attorney's fees. Statutory damages are an important remedy because it may be difficult to prove the extent of the economic injury that the infringement has caused. Statutory damages allow the court to consider what is just compensation rather than actual damages. With respect to attorney's fees, timely registration makes this remedy a possibility. A court is not obliged to award reasonable attorney's fees and is authorized to do so only to the prevailing party.

If a work is registered before or within five years of publication, registration will establish *prima facie* evidence in court of the validity of the copyright and the facts stated in the certificate. Although such evidence is rebuttable, the *prima facie* status is valuable; this is especially true when infringement takes place years after the work was published, when facts are sometimes difficult to ascertain and prove. With respect to the copyrightability of the work, the registration is important. The Office examines a work and issues a

¹ In a recent case, a court found that Federal copyright law takes precedence over state laws having to do with the legal validity of any legally recognizable interest in or share of ownership in copyright. Documents having to do with security interests in copyright may be recorded in the Copyright Office.

certificate only when it determines that the work deposited represents copyrightable authorship and that the other legal and formal requirements of the law have been met. The Office's decisions are accorded great weight by courts; generally, their review of Office determinations is limited to the high standard of "abuse of discretion," meaning that a court will defer to the expertise of the Office unless the registration or refusal to register is considered so arbitrary that the court determines it to constitute an abuse of the Register's discretion.

Additionally, the Copyright Office develops, services, preserves and stores the official records, which include the original application for registration, the deposit copies or phonorecords not selected by the Library for its collections or exchange programs or identifying material submitted in place of actual copies or phonorecords, any correspondence concerning the copyright claim, and an online catalog consisting of bibliographic records. Copies of unpublished works must, by law, be retained for the entire life of the copyright. Published works are retained for the period determined practicable by the Register and the Librarian, which at present is five years from the date of deposit unless the work is a pictorial, graphic, sculptural or architectural work where the retention period is 10 years. This material may be inspected by the public. Copies of records other than deposit materials may be requested and can be certified. With respect to deposit materials, the Office provides certified and uncertified copies of materials within the custody of the Office when certain conditions are met.

With respect to transfers of copyright ownership, although recordation is not mandatory, there are several advantages. For example, recordation can, under certain conditions, establish priorities between conflicting transfers, or between a conflicting transfer and a nonexclusive license. Recordation can provide the advantage of according a document "constructive notice"—a legal concept meaning that members of the public are deemed to have knowledge of the facts stated in the document; in other words, they cannot claim they were unaware of the document or its contents.

The Office does not attempt to judge the legal sufficiency of a document; it does check to see that certain requirements are met and verifies certain information. Documents accepted for recordation are numbered, imaged, and indexed under the titles and names they contain for the public record. The original document is

returned to the sender with a certificate of record bearing the date of recordation and the volume and page number where the document can be located. Information about recorded documents is available on the Office's Website; recorded documents are available for inspection and copies of such documents may be made or requested.

History of Copyright Fees in Relation to Costs of Providing Services

In 1870, Congress centralized registration of copyrights in the Library of Congress. The fee for registering a claim to a copyright was set at fifty cents, an amount sufficient to cover the entire cost of registration at that time. Copyright fees were increased in 1909 and 1928, and the Copyright Office remained self-sufficient until 1942, when, for the first time, revenues fell short of expenditures. Another increase in 1948 brought income above expenditures again, but only for one year. From that time, fee increases were never sufficient to cover all of the Office's operating costs, and the percentage of costs covered by income eroded greatly between legislated fee increases.

In 1965, a fee increase from \$4 to \$6 brought income from 62% to an estimated 80% of expenses. A 1978 fee increase to \$10 brought revenues to about 80% of costs, but by 1989, revenues had again diminished to a new low of 40% of costs. The most recent fee increase, to \$20, enacted in 1990 and made effective in 1991, raised income to about 65% of expenditures; the House Judiciary Committee defeated an amendment to increase the fee to \$30, which would have achieved full-cost recovery. H. Rep. No. 279, 101st Cong., 1st Sess. 4 (1989).

History of the Fee Structure

The 1990 legislation adjusted all of the copyright fees enumerated in the copyright law and also gave the Copyright Office authority to adjust fees at five-year intervals, based upon the change in the Consumer Price Index. Public Law 101-318, 104 Stat. 287 (1990). Under this authority, in 1994, the Acting Register of Copyrights appointed an internal committee to study costs and recommend revised fees. The committee examined what 17 U.S.C. 708(b) would permit as a statutory fee increase, and comprehensively analyzed the costs to the Office of providing special services. In 1994, the Copyright Office increased fees for special services.² As a result of

²Special service fees are not at issue here. They were again increased effective July 1, 1998.

the committee's analysis, the Acting Register concluded that a 1995 increase in statutory fees to the limit permitted under 17 U.S.C. 708(b) would be minimal and would not be cost effective given the administrative costs associated with increasing fees. The Office did not increase fees in 1995 and was unsure what years would be computed in increases to the Consumer Price Index the next time it increased fees; consequently, it sought a clarifying legislative amendment. The current fee proposals resulted from that effort.

The Fee Structure Enacted in 1997

Amendments to the copyright fee structure were made part of the Technical Amendments Act which was enacted on November 13, 1997, Public Law 105-80, 111 Stat. 1529 (1997). Among other things, this Act revised 17 USC 708(b) and set out specific guidelines for the Copyright Office to change the fees specified in the statute. It authorized the Register to adjust fees to recover a greater percentage of the Office's costs of providing services. The main directives of this Act 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 at a level not more than that necessary to recover reasonable costs incurred for the services described plus a reasonable adjustment for inflation.
3. The fees should also be fair and equitable and give due consideration to the objectives of the copyright system.
4. The Register must then submit a proposed fee schedule with the accompanying economic analysis to Congress for its approval. The Register may institute the new fees 120-days after the schedule is submitted to Congress unless Congress enacts a law within the 120-day period stating that it does not approve the schedule.

Copyright Office's Response

In the spring of 1997, while Congress was considering the proposed fee legislation that became part of the Technical Amendments Act, the Register conferred with the Director of the Library's Financial Services Directorate (FSD) on how to proceed. Based on this discussion, the Register appointed a group of Copyright Office staff members to conduct a fee study and to recommend appropriate fee changes. With the advice of FSD, the

pursuant to a Notice of Proposed Rulemaking (NPR) published April 1, 1998, 63 FR 15802 (April 1, 1998), and final rule, 63 FR 29137 (May 28, 1998).

Copyright Office hired two consulting firms, Abacus Technology Corporation (Abacus) and Ron Young, with expertise in cost accounting and federal cost accounting regulations to assist in this effort.

On March 25, 1998, the Office's Fee Analysis Task Group (FEATAG) submitted a report to the Register of Copyrights. The report presented the results of the commissioned economic study and analysis of the costs that the Copyright Office incurs in registering claims, recording documents, and providing related services, and recommended a new schedule of fees.

The core of the economic study and analysis was done by Abacus, a private consulting firm who developed a methodology for determining the Office's full costs and the fees required to recover part or all of the costs.

Abacus documented all of the Copyright Office costs. The Office determined that some costs not related to providing specified registration and related services should not be included in the study. It directed Abacus to exclude all Licensing Division and Copyright Arbitration Royalty Panel (CARP) unit costs since they are paid from other appropriated funds. It also directed Abacus to exclude policy costs, the costs of the Copyright Acquisitions Division, whose primary responsibility is securing copies of works published in the United States that have not been deposited for the Library of Congress' collections, and certain overhead expenses associated with these activities. Policy expenses excluded certain staff from the Office of the General Counsel and the Public Information Office and all Policy and International Affairs staff.

The study used the activity based costing (ABC) methodology approved under the new managerial cost accounting standards as described in Managerial Cost Accounting Standards for the Federal Government, Statement of Federal Financial Accounting Standards, no. 4, published by the Office of Management and Budget, on July 31, 1995. Under this approach, resource costs were assigned to activities, and activities were assigned to specified services. Most Copyright Office activity costs were directly related to fee services. Certain general and administrative costs related to fee services were treated as indirect costs and were allocated proportionately across all fee services.

Based on those cost parameters, Abacus proposed the fees which were presented in its report. Ron Young and Associates reviewed the Abacus report for compliance with the new federal

financial accounting standards. FEATAG's final report to the Register made recommendations on the fees based upon Abacus's cost determinations and policy factors such as fairness, equity, and the objectives of the copyright system, with adjustments for elasticity in demand for services. This report is available on the Copyright Office's website via the Internet.³

Fee Policy Considerations

In developing its fee recommendations, FEATAG considered several policy issues on fees and fee structures, both from the point of view of equity and fairness and of practicality and potential administrative burden. The Office resolved three of these policy issues as follows:

1. Basic filing fee. Should the basic filing fee be the same for all administrative classes of material, e.g., Class TX (literary works), Class VA (pictorial, graphic, sculptural and architectural works), Class PA, works of the performing arts including but not limited to music, lyrics, choreography, motion pictures and other audiovisual works), Class SR, (sound recordings); and all types of work within a given class, e.g., poems, databases, novels, computer programs, illustrations, sculptures, photographs, feature films, instructional television programs? Or should a distinction be made based on the Office's administrative classification or alternatively on the type of the work?

The Office concluded that for administrative efficiency, generally the fees should be the same for all types and all classes of works. With respect to types of works, in order to institute different fees for types of works within a class, the Office would need to develop separate applications. Additionally, distinguishing different types of works is not always easy. What is a feature film? What is an instructional television program? With respect to administrative classification, many works contain authorship in more than one class, and filers are asked to choose the class representing the preponderance of material. Claims filed correctly but submitted on the wrong application are generally registered without question. The Office does not wish to "measure" content to determine whether the correct class was chosen and perhaps to assess a higher fee. Further, it prefers that filers not be influenced by a lower fee to select an inappropriate application form.

³The full FEATAG report may be accessed at <http://lcweb.loc.gov/copyright>. In addition, both the FEATAG Report and ABACUS Report are available for inspection and copying in our Public Information Office, 101 Independence Avenue, S.E., LM-402, Washington, D.C. 20540 between 8:30 a.m. and 5:00 p.m. Eastern time Monday thru Friday except holidays.

2. Published versus unpublished. Should there be different fees for published or unpublished works?

The issue can be looked at from two different perspectives—one argues for a higher fee for unpublished works; the other argues for a higher fee for published works. The first argument is that the cost of processing a claim in an unpublished work is higher than the cost of processing a claim in a published work; additionally, the Office is required to store a copy of the unpublished work for the life of the copyright. In the case of published works, the Office either doesn't store the material because it has been selected by the Library or stores it for a limited number of years. The second argument is that published works have entered the stream of commerce and may be earning royalties or other income. Therefore, at the time of registration, the copyright in a published work arguably is more valuable than the copyright in an unpublished work.

After much discussion, the Office decided that different fees based on the status of the work could not easily be justified; moreover, there would be a considerable administrative burden in such a fee structure. Therefore, the Office decided not to propose different fees based on the publication status of a work.

3. Works made for hire versus independently authored works. Should a greater fee be charged for works made for hire?

There was considerable discussion on whether there was a basis to charge a higher fee for works made for hire. However, again the administrative burden of different fees coupled with some uncertainty concerning the authorship status on the part of many registrants, led us to reject any differentiation.

Discussions of Copyright Objectives and Fairness and Equity

In May of 1998, the Register contacted representatives of interested groups who register claims to offer them the opportunity to meet and discuss the forthcoming fee increases and to voice their membership's initial concerns. A number met with the Register; others submitted comments.

These representatives suggested several alternatives to the fee schedules offered by ABACUS and/or recommended by FEATAG. Various groups representing individual authors told the Office that the fee suggested in the FEATAG report, \$45, was too high. They stressed the importance of keeping the registration fee low to keep

registration affordable. Several representatives cautioned that income from statutory fees should be used only for providing the direct service, e.g. registration, recordation, certification. A few spokespersons indicated that most of their members do not register under the current registration procedures for various reasons and anticipated that higher fees will result in even fewer registrations.

Several representatives suggested that there should be more group registration opportunities to ease the burden and cost of registering. One indicated that a doubling of the current fee would be satisfactory, but only if this group of authors could register a very large number of images for one fee. Other spokespersons questioned why those who register daily newsletters must pay more than those who register daily newspapers under the existing fee schedules.

Other suggestions were that the Office keep basic registration and recordation fees low and seek increased revenues from special services, i.e., raise the fees even more for special handling and other special services, consider volume discounts for quantity registrations, balance an increase in fees with a discount for each registration filed by those with deposit accounts, and provide reduced fees for those who use the electronic registration and deposit system when this is available for users. Another suggested that the Office increase fees for registrations by those who commercially exploit works such as publishers or motion picture companies. Several suggested providing an exemption for small businesses. One representative suggested a "means test" to determine the ability of the individual author to pay. Another suggested assessing the fee at a level commensurate with the value of the work.

II. Current Initiatives and Office's Initial Response to These Concerns

Existing Registration Options

The Office wants to keep fees within a reasonable range in order to encourage registration and increase the value of the public record. Consequently, the Office has explored the possibility of providing registration at a lower fee for claims by individual authors.

The Office notes that it already offers two registration options that benefit individual authors who wish to register more than one work.

(1) Unpublished works can be assembled into a collection and registered as a single work under a collective title. The Office examines the claim for copyrightability of the

whole and does not identify any works within the collection that may not be independently copyrightable. Only the collection titles are cataloged; individual titles are not cataloged, even when listed on the application. The option does, however, provide an economical means of registering a number of unpublished works.

(2) Contributions to periodicals can be registered on a single application and with a single fee. This option is provided for in section 408(c)(2) of the law; it offers a single registration for works that were first published as contributions to periodicals, including newspapers, within a twelve-month period.

The Office is considering offering another form of group registration for unpublished works by individual authors. This option would permit registration of up to ten unpublished works in one class, listed by title on the form, and each examined for copyrightability by the Copyright Office. Each title would appear on the certificate of registration and be entered into the Catalog of Copyright Entries. The fee would be determined by the number of items in the group, with a minimum fee not less than the fee for a single work.

Special Fee for Daily Newsletters

The Office considered the request to include daily newsletters with daily newspapers instead of with other serials but concluded that daily newsletters should continue to be assessed the same fees as other serials. The Office is not proposing to change the existing fee for serials other than to increase the minimum number of works that can be registered in one group. The special newspaper fee is only available to newspapers who are willing to provide the Library of Congress with a microfilm deposit that meets certain archival standards; the cost of preparing such copies generally is between \$1000 and \$1200 per year. Moreover, this deposit exceeds the deposit requirements set forth in the law.

Offering Additional Group Registrations

The Office included group fees in this NOPR, although they are special services rather than statutory ones in order to propose increases to all filing fees at the same time. It is currently considering additional group registration options. When it is ready to publish these new group options, the Office will need to amend its regulations. At that time, these options and their accompanying fees will be addressed in a separate rulemaking proceeding.

Assessing a Short Fee Service Charge

The Office notes that it increased certain fees for special services in an earlier rulemaking, including proposing for the first time a charge of \$20.00 for submitting a fee that is insufficient to cover the requested service after the new fees go into effect. This short fee will only be assessed for fees that go into effect in 1999 and will only be assessed for insufficient payments made beginning six months after from the effective date of the new fees.

Reduced Rate for Individual Authors

In order to respond to the plea on behalf of individual authors to keep registration within reach financially, the Office proposes an alternate schedule of fees including a reduced fee for unpublished single works, not including collections registered under a single title, of which the author is an individual (not an employer for hire) and where the author is claiming copyright. The reduced fee, proposed at \$35 for individuals, would negatively affect the Office's income.

To determine the impact on the Copyright Office's income the Office reviewed a number of registrations completed in 1997 in each of the unpublished series TXu, VAu, PAu, and SRu to see what percentage would have qualified for the reduced fee had it been available. Applying the percentages to the projected receipts for Fiscal Year 2000, the Office would forfeit \$1.4 million in income by adopting the reduced fee for individual authors. This loss of income would be much greater if the lower fee for individuals were applied to collections, to published works, or to unpublished works by joint individual authors all of whom were claiming copyright. The Office is, therefore, not proposing to offer the reduced fee for these categories.

The second fee schedule shows the adjustment that would have to be made in fees for other claims to make up for the income lost through this accommodation. Those claims in Classes TX, VA, PA, and SR that did not qualify for the reduced fee would be subject to a higher fee of \$50. The Office proposes keeping the fee for serials at \$45. The lower fee for serials is justified by the lower cost to process them.

III. Proposed New Statutory and Filing Fees

Based on the discussions thus far and the analysis done by the Office, the Office is proposing two different fee schedules. Schedule I contains the fees suggested by the FEATAG report, rounded to the nearest \$5. Assessment

of fees at the level proposed in Schedule I would enable the Office to recover a significant portion of the costs of providing these services and thus fulfill its congressional mandate. Schedule II includes a reduced fee for individual

authors who meet the criteria set out above and adjusts other fees accordingly to recover the revenue lost to the Office by this adjustment.

The Office is not proposing any changes at this time for Recordation of

Notices of Intent to Enforce copyrights restored under the Uruguay Round Amendments Act and group registration of serials.

SCHEDULE I

Statutory service with no special rate for individual authors	Proposed fee
Registration of a claim in literary materials other than serials (Form TX)	\$45.
Registration of a claim in a serial (Form SE)	45.
Registration of a claim in a work of the performing arts, including sound recordings and audiovisual works (Form PA)	45.
Registration of a claim in a work of the visual arts (Form VA)	45.
Registration of a claim in a group of contributions to periodicals (GRCP), including group renewals	3/contribution-45 minimum.
Registration of a renewal claim (Form RE)	
• Claim without addendum	45.
• Claim with addendum	60.
Registration of a correction or supplement to a claim (Form CA)	65.
Registration of a claim in a group of serials, including daily newsletters, (Form SE/Group)	10/issue-45 minimum.
Registration of a claim in a group of daily newspapers (Form G/DN)	55.
Registration of a restored copyright (Form GATT)	45.
Registration of a claim in a group of restored works (Form GATT/Group)	10/claim-45 minimum.
Providing an additional certificate of registration	25.
Any other certification	65.
Search—report prepared from official records (per hour)	65.
Search—locating records (per hour)	65.
Recordation of document (single title)	50.
• Additional titles (per group of 10 titles)	15.
Recordation of Notices of Intent to Enforce (NIEs) (single title)	30.
• Additional titles	1.

SCHEDULE II

Statutory service with a special rate for individual authors	Proposed fees
Registration of a claim in a single work submitted by a qualified individual author in classes TX, VA, PA, and SR	\$35.
Registration of a claim in literary materials other than serials (Form TX)	50.
Registration of a claim in a serial (Form SE)	45.
Registration of a claim in a work of the performing arts, including sound recordings and audiovisual works (Form PA)	50.
Registration of a claim in a work of the visual arts (Form VA)	50.
Registration of a claim in a group of contributions to periodicals (GRCP), including group renewals of contributions to periodicals.	As in Schedule I.
Registration to a renewal claim (Form RE)	
• Claim without addendum	45
• Claim with addendum	60
Registration of a correction or supplement to a claim (Form CA)	As in Schedule I.
Registration of a group of serials, including daily newsletters (Form SE/Group)	Do.
Registration of a group of daily newspapers (Form G/DN)	Do.
Registration of a restored copyright (Form GATT)	Do.
Registration of a group of restored copyrights (Form GATT/Group)	Do.
Providing an additional certificate of registration	Do.
Any other certification	Do.
Search—report prepared from official records (per hour)	Do.
Search—locating records (per hour)	Do.
Recordation of a document (single title)	Do.
• Additional titles (per group of 10 titles)	Do.
Recordation of Notices of Intent (NIEs) (single title)	Do.
• Additional titles	Do.

IV. Request for Comments

The Office seeks comments on the suggestions made by the parties and the fee schedules proposed above. The Office also seeks comments on the following specific questions:

1. Do you agree that individual authors of unpublished works should

pay a lower registration fee? If so, why? If not, why not?

2. Are there other distinctions that the Office should make in assessing fees?

• Should a corporation with a certain net worth pay more than others? Should there be a small business exemption? If so, how should this be determined?

• Should a distinction be made between published and unpublished works in setting registration fees? If so, is this equitable given the fact that many commercially valuable works, including computer programs, databases, and motion pictures, are often registered in unpublished form?

- Should there be a higher fee for works made for hire?

3. The Office did not suggest different fees for different classes or types of works. Instead for administrative efficiency and cost concerns, it suggested the same fee for all classes and types of works (except serials). Do you agree with this decision? If not, how would you recommend structuring the fees and why?

4. Are there other practical alternatives for fee increases that will allow the Office to recover its reasonable costs?

5. Based on the fees proposed in Schedule I, who is unlikely to register? Based on the fees proposed in Schedule II, who is unlikely to register?

6. In assessing fees for the registration and related services detailed in the schedules set out above, the Office concluded that certain costs should be recovered through appropriations. It also distinguished between direct and indirect costs in assessing what costs should be recovered. Do you agree with the Office's exclusion of such costs in assessing fees for registration and related services? If not, why not?

7. Are any of the specified fees too high? If so, why?

Dated: August 6, 1998.

Marybeth Peters,

Register of Copyrights.

Approved By:

James H. Billington,

The Librarian of Congress.

[FR Doc. 98-21738 Filed 8-12-98; 8:45 am]

BILLING CODE 1410-30-P

NUCLEAR REGULATORY COMMISSION

[IA 98-024]

Leland H. Brooks; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Leland H. Brooks was an employee of Westinghouse a contractor to Pacific Gas & Electric Company (PG&E) at the Diablo Canyon Nuclear Power Plant (Diablo Canyon). PG&E holds NRC license Nos. DPR-80 and DPR-82, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. The licenses authorize the operation of Units 1 and 2 of the Diablo Canyon facility in accordance with the conditions specified therein.

II

On April 16, 1997, Mr. Brooks, a millwright, was granted temporary unescorted access to Diablo Canyon as an employee of Westinghouse. PG&E terminated Mr. Brooks access to Diablo Canyon on May 21, 1997, upon completion of the work Mr. Brooks was hired to perform. PG&E's decision to grant Mr. Brooks unescorted access was based on the information Mr. Brooks provided in a signed Personnel Access Questionnaire dated April 7, 1997, including information Mr. Brooks provided about his arrest record. In addition to requesting information about any arrests, this questionnaire clearly stated, "For all arrests and/or convictions that occurred in the last five years, a copy of your court orders must be provided with this application." Mr. Brooks wrote "None" next to this statement. On July 22, 1997, approximately two months after Mr. Brooks' access to Diablo Canyon had been terminated, PG&E received information from the Federal Bureau of Investigation (FBI) which indicated that Mr. Brooks had failed to inform PG&E of several arrests and convictions, including a 1995 felony charge which was still pending. PG&E conducted an investigation and determined that Mr. Brooks knowingly withheld and/or falsified information on the Personnel Access Questionnaire. On August 6, 1997, PG&E issued Mr. Brooks a letter informing Mr. Brooks of this conclusion and denying Mr. Brooks future access to Diablo Canyon.

The deliberately false information that Mr. Brooks provided to the licensee, as well as the failure to provide copies of the required court records, were violations of 10 CFR 50.5, "Deliberate Misconduct." Specifically, Section 50.5(a)(2) provides, in part, that an employee of a contractor to a licensee may not deliberately submit to a licensee information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. The false and incomplete information that Mr. Brooks submitted was material because PG&E is required to consider criminal history in making a determination as to whether to grant unescorted access in accordance with 10 CFR 73.56.

On April 27, 1998, the NRC issued a letter to Mr. Brooks, informing Mr. Brooks that the NRC was considering escalated enforcement action against him and providing Mr. Brooks a choice of requesting a predecisional enforcement conference or submitting a written response. Although Mr. Brooks telephoned the NRC regional office and

stated that he didn't recall ever working at the Diablo Canyon nuclear power plant, he has not submitted a written response or requested a predecisional enforcement conference, and he has not provided any evidence to support his claim. The NRC's letter to Mr. Brooks informed him that in the absence of a response, we would proceed with enforcement action.

Based on the above, the NRC has concluded that Mr. Brooks engaged in deliberate misconduct by deliberately omitting criminal history information when completing a Personnel Access Questionnaire to gain unescorted access to the Diablo Canyon nuclear power plants. The NRC must be able to rely on employees of licensees and their contractors to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Brooks' action in deliberately providing false information to the licensee raises serious doubt about his trustworthiness and reliability and particularly whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to NRC licensees in the future.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Mr. Brooks were permitted to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Brooks be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order. Additionally, Mr. Brooks is required to notify the NRC of his first employment in NRC-licensed activities for the five year period after the above prohibition period. Furthermore, pursuant to 10 CFR 2.202, based on the significance of Mr. Brooks' conduct described above and the fact that he could seek and obtain employment and unescorted access at other nuclear facilities, and engage in licensed activities before his criminal history became known to the licensee, I find that the public health, safety and interest require that this Order be effective immediately.

IV

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 50.5, and 10 CFR 150.20, *It is hereby ordered, effective immediately, that:*

APPENDIX III

List of Commentators in RM 98-2B

A. INITIAL COMMENT LETTERS:

- 1 **Warren Publishing**
(Paul Warren)
- 2 **West Group**
(Donna Bergsgaard)
- 3 **National Music Publishers' Association, Inc. (NMPA)**
(Susan Mann)
Recording Industry Association of America, Inc.
(Linda Bocchi)
Software Publishers Association
(Mark Traphagen)
Motion Picture Association of America
(Fritz Attaway)
Association of American Publishers
(Carol Risher)
- 4 **American Society of Journalists and Authors (ASJA)**
(Dan Carlinsky)
- 5 **Graphic Artists Guild w/Appendix**
(Paul Basista)
(Brett Harvey)
- 5A **Appendix to Graphic Artists Guild Comment**
Lloyd Dangle
Daniel Abraham
L. Jeffrey Lanners
Isabel Samaras
Brian Zick
Thomas Bulat
Susan Steinberg
Robert Rausch
Mark Simon
Diane Clancy
Terry Barker
Sue Mell
Kathern Welsh

**David Jenkins
Gysela Pacheco
Donnasue Jacobi
Todd Pierce
Bill Latta**

- 6 National Writers Union
(Jonathan Tasini)**
- 7 The Authors Guild, Inc.
(Paul Aiken)**
- 8 Professional Photographers of America
(Bruce Joseph)(Valerie Keller)
(Andrew Foster)**
- 9 American Society of Media Photographers, Inc.
(Dick Weisgrau)
(Bruce Blank)**

B. REPLY COMMENT LETTERS:

- 1 National Music Council
(Dr. David Sanders)**
- 2 American Society of Media Photographers, Inc.
(Victor S. Perlman)**
- 3 The American Society of Composers, Authors & Publishers
(I. Fred Koenigsberg)
(Joan M. McGivern)**
- 4 Association of American Publishers
(Carol Risher)
Motion Picture Association of America
(Fritz Attaway)
National Music Publishers' Association, Inc.
(Susan Mann)**

**Recording Industry Association of America
(Linda Bocchi)
Software Publishers Association
(Mark Traphagen)**

**5 American Society of Journalists and Authors, Inc.
(Allison Chimka)
(Alexandra Cantor Owens)**

**6 Daniel Damiano
(Astoria, New York)**

**7 Professional Photographers of America
(Bruce G. Joseph)
(Valerie E. Keller)**

C. SUPPLEMENTAL COMMENT LETTERS:

**1 American Society of Media Photographers, Inc. (ASMP)
(Dick Weisgrau)
(Victor Perlman)**

**2 GhostDance-Aradia
The Aradia Group of Publishing Companies
(Judith Baldwin, Director)
(P.J. LadyHawke Music (ASCAP))
(Deganawidah Music (BMI))
(Gyr Falcon Music (SESAC))
(Gabrielle Music (PRS))**

**3 Songwriters Guild of America
(Alvin Deutsch, Deutsch Klagsbrun & Blasband)**

**4 Picture Agency Council of America (PACA)
(Nancy E. Wolff)**

**5 Mrs. Trisha Harris, CMA, CFM (post card)
Fontana, California**

6 National Music Council

- (Dr. David Sanders)**
- 7 UMI Company
(James D. Barcelona)**
- 8 Graphic Artists Guild
(Paul Basista)**
- 9 Theodore Presser Co.
(Thomas Broido)**
- 10 EMI Music Publishing
(Jennifer Insogna)**

Estimated Value of Materials Transferred, Fiscal 1998

	Registered works transferred to other departments of the Library	Non- registration works transferred to other departments of the Library	Total works transferred to other departments of the Library	Average Unit Price	Total value of works transferred to other departments of the Library
Books ¹	160,769	32,361	193,130		\$10,638,960
<i>Ink Print</i>	135,057	31,923	166,980	\$49.30	\$8,232,114
<i>Microfilm</i>	25,712	438	26,150	\$92.04	\$2,406,846
Serials ²	218,301	315,556	533,857		\$5,698,221
<i>Periodicals</i>	215,268	258,000	473,268	\$18.93	\$5,375,378
<i>Ink Print Newspapers</i>	2,022	55,400	57,422	\$0.91	\$31,352
<i>Microfilm Newspapers</i>	1,011	2,156	3,167	\$92.04	\$291,491
Computer-related works	1,190	1,649	2,839		\$846,029
<i>Software</i>	418	141	559	\$22.51	\$12,583
<i>CD-ROMs</i>	239	1,244 (<i>938 serials</i>)	1,483	\$562.00	\$833,446
<i>Printouts</i>	533	264	797	<i>indeterminate value</i>	
Motion Pictures ³	9,993	9,526	19,519		\$7,475,129
<i>Videotapes</i>	9,493	9,493	18,986	\$82.10	\$1,558,751
<i>Feature Films</i>	718	33	751	\$7,878.00	\$5,916,378
Music	52,757	1,397	54,154	\$27.58	\$1,493,567
Dramatic Works, choreography, and pantomimes	1,866		1,866	\$49.30	\$91,994
Other works of the performing arts	893		893	\$27.58	\$24,629
Sound Recordings	27,818	3,907	31,725	\$16.43	\$521,242
Maps	2,785	168	2,953	\$29.26	\$86,405
Prints, pictures, and works of art	4,731	159	4,890	\$23.64	\$115,600
Total	481,103	364,723	845,826		\$26,991,775

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

2 60% of "SERIALS" are selected for the collections.

3 Includes 218 copies selected by the Library under motion picture agreements.

Estimated Value of Registered Materials Transferred, Fiscal 1998

	Registered works transferred to other departments of the Library	Average Unit Price	Total value of works transferred to other departments of the Library
Books ¹	160,769		\$9,024,843
<i>Ink Print</i>	135,057	\$49.30	\$6,658,310
<i>Microfilm</i>	25,712	\$92.04	\$2,366,532
Serials ²	218,301		\$2,539,170
<i>Periodicals</i>	215,268	\$18.93	\$2,445,014
<i>Ink Print Newspapers</i>	2,022	\$0.91	\$1,104
<i>Microfilm Newspapers</i>	1,011	\$92.04	\$93,052
Computer-related works	1,190		\$143,727
<i>Software</i>	418	\$22.51	\$9,409
<i>CD-ROMs</i>	239	\$562.00	\$134,318
<i>Printouts</i>	533	<i>indeterminate value</i>	
Motion Pictures ³	9,993		\$6,435,779
<i>Videotapes</i>	9,493	\$82.10	\$779,375
<i>Feature Films</i>	718	\$7,878.00	\$5,656,404
Music	52,757	\$27.58	\$1,455,038
Dramatic Works, choreography, and pantomimes	1,866	\$49.30	\$91,994
Other works of the performing arts	893	\$27.58	\$24,629
Sound Recordings	27,818	\$16.43	\$457,050
Maps	2,785	\$29.26	\$81,489
Prints, pictures, and works of art	4,731	\$23.64	\$111,841
Total	481,103		\$20,365,560

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

2 60% of "SERIALS" are selected for the collections.

3 Includes 218 copies selected by the Library under motion picture agreements.

Estimated Value of Materials Transferred, Fiscal 1997

	Registered works transferred to other departments of the Library	Non- registration works transferred to other departments of the Library	Total works transferred to other departments of the Library	Average Unit Price	Total value of works transferred to other departments of the Library
Books	188,292	44,440	232,732		\$12,573,128
<i>Ink Print</i>	168,877	29,734	198,611	\$46.50	\$9,235,412
<i>Microfilm</i>	19,415	14,706	34,121	\$97.82	\$3,337,716
Serials	222,817	302,263	525,080		\$4,699,237
<i>Periodicals</i>	200,535	240,500	441,035	\$16.94	\$4,482,680
<i>Ink Print Newspapers</i>	21,168	59,900	81,068	\$0.86	\$41,831
<i>Microfilm Newspapers</i>	1,114	1,863	2,977	\$97.82	\$174,726
Computer-related works	6,682	1,694	8,376		\$1,439,370
<i>Software</i>	2,339	290	2,629	\$21.85	\$57,444
<i>CD-ROMs (includes 998 serials)</i>	1,336	1,195	2,531	\$546.00	\$1,381,926
<i>Printouts</i>	3,007	209	3,216	<i>indeterminate value</i>	
Motion Pictures	8,866	1,140	10,006		\$4,648,639
<i>Videotapes</i>	8,423	1,065	9,488	\$72.35	\$686,457
<i>Feature Films</i>	443	75	518	\$7,649.00	\$3,962,182
Music	52,628	1,032	53,660	\$32.33	\$1,734,828
Dramatic Works, choreography, and pantomimes	1,457		1,457	\$46.50	\$67,751
Other works of the performing arts	695		695	\$32.33	\$22,469
Sound Recordings	21,482	3,251	24,733	\$14.86	\$367,532
Maps	2,798	616	3,414	\$28.41	\$96,992
Prints, pictures, and works of art	1,932	122	2,054	\$22.95	\$47,139
Total	507,649	354,558	862,207		\$25,697,084

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

2 60% of "SERIALS" are selected for the collections.

3 An additional 505 copies returned to the remitter are available for selection by the Library under motion picture agreements.

 Estimated Value of Materials Transferred, Fiscal 1996

	Registered works transferred to other departments of the Library	Non- registration works transferred to other departments of the Library	Total works transferred to other departments of the Library	Average Unit Price	Total value of works transferred to other departments of the Library
Books ¹	167,203	30,250	197,453		\$9,244,749
<i>Ink Print</i>	158,843	28,738	187,580	\$44.40	\$8,328,568
<i>Microfilm</i>	8,360	1,513	9,873	\$92.80	\$916,182
Serials ²	187,281	265,064	452,345		\$4,030,136
<i>Periodicals</i>	168,553	238,558	407,111	\$15.90	\$3,883,834
<i>Ink Print Newspapers</i>	17,792	25,181	42,973	\$0.79	\$20,369
<i>Microfilm Newspapers</i>	936	1,325	2,262	\$92.80	\$125,933
Computer-related works	6,291	279	6,570		\$746,483
<i>Software</i>	2,202	98	2,300	\$21.20	\$48,749
<i>CD-ROMs</i>	1,258	56	1,314	\$531.00	\$697,734
<i>Printouts</i>	2,831	125	2,956	<i>indeterminate value</i>	
Motion Pictures ³	9,350	601	9,951		\$4,490,289
<i>Videotapes</i>	8,883	571	9,453	\$84.20	\$795,980
<i>Feature Films</i>	468	30	498	\$7,425.00	\$3,694,309
Music	42,322	1,078	43,400	\$25.40	\$1,102,360
Dramatic Works, choreography, and pantomimes	1,054		1,054	\$44.40	\$46,798
Other works of the performing arts	707		707	\$25.40	\$17,958
Sound Recordings	18,520	3,673	22,193	\$14.80	\$328,456
Maps	3,422	128	3,550	\$27.60	\$97,980
Prints, pictures, and works of art	2,000	359	2,359	\$22.30	\$52,606
Total	438,150	301,432	739,582		\$20,157,816

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

2 60% of "SERIALS" are selected for the collections.

3 An additional 756 copies returned to the remitter are available for selection by the Library under motion picture agreements.

Estimated Value of Materials Transferred, Fiscal 1995

	Registered works transferred to other departments of the Library	Non- registration works transferred to other departments of the Library	Total works transferred to other departments of the Library	Average Unit Price	Total value of works transferred to other departments of the Library
Books	181,006	31,178	212,184	\$35.00	\$7,426,440
Serials	267,812	261,500	529,312	\$7.70	\$4,075,702
Computer-related works	7,487	3,362	10,849	²	\$1,654,473
Motion Pictures	11,073 ¹	539	11,612	³	\$5,167,340
Music	54,336	1,621	55,957	\$24.00	\$1,342,968
Dramatic Works, choreography, and pantomimes	1,906		1,906	\$35.00	\$66,710
Other works of the performing arts	1,170		1,170	\$24.00	\$28,080
Sound Recordings	22,465	4,201	26,666	\$10.00	\$266,660
Maps	3,231	276	3,507	\$26.00	\$91,182
Prints, pictures, and works of art	1,627	232	1,859	\$21.00	\$39,039
Total	552,113	302,909	855,022		\$20,158,594

1 An additional 1,624 copies returned to the remitter are available for selection by the Library under motion picture agreements.

2 35% Software @ \$20, 20% CD ROM @ \$500 and 45% printouts of indeterminate value.

3 95% video @ \$100 and 5% films @ \$7,000.

APPENDIX V

1/28/99

PROJECTED FY 2000 REVENUE BASED ON PROPOSED FEES						
Definition	Current Fee	FY1998 Service Actions	Proposed Fee	Elasticity (Decline in Demand)	Estimated FY2000 Service Actions	Estimated Receipts Using Proposed Fee
Registration of Copyright Claims - Form TX - Books, monographs	\$20	212,550	\$30	20.0%	170,040	\$5,101,200
Registration of Copyright Claims - Form SE - Serials	\$20	66,919	\$30	20.0%	53,535	\$1,606,056
Registration of Copyright Claims - Form PA & Form SR - Works of the Performing Arts & Sound Recordings	\$20	210,541	\$30	20.0%	168,433	\$5,052,984
Registration of Copyright Claims - Form VA - Works of the Visual Arts	\$20	111,047	\$30	20.0%	88,838	\$2,665,128
Registration of Copyright Claims - adjunct Form GR/CP - Group Registration of Contributions to Periodicals	\$20	170	\$30	0.0%	170	\$26,520
Registration of Renewal Copyright Claims - Form RE - Renewal of old law copyrights	\$20	28,262	\$45	20.0%	22,610	\$1,021,032
- Renewal addendum - Renewal of copyright when no basic registration was made	N/A	420	\$15	0.0%	420	\$6,300
Recordation of Document - basic fee for recording a document related to a single registered work	\$20	16,370	\$50	7.5%	15,142	\$757,113
-- Additional titles - additional fee when a document relates to more than one work (\$10/each group of 10 or fewer titles)	\$10	55,280	\$15	15%	46,988	\$704,820
Additional Certificate - fee for each certificate of registration beyond the first	\$8	2,913	\$25	15.0%	2,476	\$61,901
Certification of any other CO record - (\$65/hour)	\$20	1,490	\$45	7.5%	1,378	\$89,586
Reference Search - report prepared from official records (\$65/hour)	\$20	5,557	\$45	25%	8,336	\$541,808
Search to locate CO records - (\$65/hour)	\$20	4,196	\$45	7.5%	7,763	\$504,569
Receipt for Deposits - (certified receipt for copies sent to fulfill mandatory deposit requirements)	\$4	264	\$15	7.5%	244	\$3,663
Registration of Corrections or Supplements to Copyright Claims - Form CA	\$20	3,162	\$65	15%	2,688	\$174,701

SUMMARY	
Receipts from Statutory Fees	\$ 18,317,380
Receipts from Special Services Fees	\$2,568,650
Total FY2000 Receipts	\$20,886,030
FY2000 Registration Costs Based on Budget Submission	\$29,585,000
Shortfall of Cost Recovery	\$8,698,971
FY2000 Percentage Cost Recovery	70.6%